

Fairfax Town Council Minutes  
**Special Meeting**  
Fairfax Women's Club  
Tuesday, **April 23, 2019**

Mayor Coler called the Special Meeting to order at 6:30 p.m.

Call to Order/Roll Call/Pledge of Allegiance:

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

**STAFF MEMBERS PRESENT:** Garrett Toy, Town Manager  
Michele Gardner, Town Clerk  
Janet Coleson, Town Attorney  
Ben Berto, Planning Director  
Gail Karish, BBK Attorneys

Approval of Meeting Agenda and Affidavit of Posting

M/S, Goddard/Reed, Motion to approve the Agenda and the Affidavit of Posting.  
AYES: Ackerman, Goddard, Lacques, Reed, Mayor Coler

Regular Agenda

1. Introduce an ordinance to consolidate Titles 19 & 20 ("Telecommunications") of the Fairfax Town Code into a revised Title 19 which establishes uniform and comprehensive regulations for wireless telecommunication facilities (e.g. 5-G) including the regulation of the installation, operation and maintenance of wireless telecommunications within the Town on private property and within the Town's public rights-of-way; CEQA exempt per Section 15060(c)(2), 15378, 15061(b)(3), 15305, and 15303- Town Manager

Town Manager Toy presented the staff report.

Attorney Karish presented a report that included the status of the two appeals to the Ninth District Court and the recent ruling by the State Supreme Court. She answered questions from the Council.

Mayor Coler opened the meeting to public comments.

Dr. Julie Ann Griffith, founder of the Energy Health Center, stated she was a neurologist and she wanted to raise awareness and caution about installing 5G. More research was needed regarding health effects.

Mr. Andy Peri, speaking on behalf of 5G Free Marin, distributed a document that listed the group's recommended changes to the ordinance.

Ms. Roberta Anthes, Snowden Lane, thanked the Council and staff for strengthening the ordinance. She recommended a few more modifications.

Mr. Matt Landman stated he did not consent to the radiation levels associated with 5G.

Ms. Kia Bosey, Sir Francis Drake Boulevard, stated nothing about 5G was a win.

Ms. Kim Cosmick read a letter from Jess Lerner about additional changes that need to be made to the ordinance pertaining to setbacks, zoning, public notification, and monitoring by an independent expert.

Ms. Vicki Seavers stated she worked for the EMF Safety Network. She discussed legislation that addressed 5G.

Ms. Valerie Hood, representing Save Fairfax, urged the Council to join forces with other cities to fight the implementation of 5G. She asked about the status of fiber optics.

Dr. Michelle Perro stated children were more sensitive to EMFs. She asked the Council to slow down and reconsider this issue.

Dr. Jacqueline Chan thanked the Council for the changes made to the ordinance. She asked the Council to demand the safety data from the FCC.

Mr. Robert Ernst, San Rafael, stated 5G should be viewed in a questionable and negative light.

Mr. Marshall Rothman, managing partner for the group that owns the Wall property, stated he had rejected proposals to install cell towers on the Wall property.

Mr. Leonard Holden, San Rafael, stated constant high levels of EMF exposure distorted DNA irreversibly.

Aurora, Fairfax, supported the recommended changes to the ordinance. She discussed an alternative technology.

Ms. Janet Fitzgerald, Canyon Road, was concerned about the FCC usurping local authority. There should be a moratorium on 5G until it can be proven to be safe.

A woman agreed with the idea of a moratorium. She stated the cyber-security issue in the ordinance needed to be clarified.

Ms. Kim Hahn, San Rafael, stated she would like the Council to stand up to the FCC.

Mr. Richard Applebaum, Wood Lane, stated the best strategy is to create an ordinance that "pushed the envelope."

Wendy stated 5G did not make the world better. She discussed the "precautionary principle."

A woman stated she could not tolerate 5G; she already suffered from the effects of EMFs.

Mayor Coler closed the meeting to public comments.

Councilmember Lacques asked if the application permit checklist could be done administratively. Town Manager Toy stated yes. Councilmember Lacques asked staff to look into requiring that public notices be sent to residents within 1,000 feet. He had a question about Federal preemptive issues regarding cyber-security.

Councilmember Goddard asked if a new pole could be erected. Attorney Karish stated “yes, by exception only”.

Mayor Coler stated she would like to see the following: 1) Insurance requirements for the carriers (after the Indemnification section); 2) Adding a definition of “telecommunications facility”; 3) In the chart on Page 9 of Exhibit “A” she would like to see the addition of “OA” (Open Space); 4) A prohibition of wireless telecommunications facilities on ridgelines and new roads in the Open Space; 5) On page 14, (D), she would like the order of preference to be as follows: CH, CS, CC; 6) Exhibit “A”, page 15, (H), “Accessory Equipment”, she would like the words “where possible” deleted and the following words added: “...unless it is an antennae or an electric meter...” and “The applicant shall bear the burden to provide evidence to support allowance of any addition equipment above ground to the Zoning Administrator”. She also had several minor edits.

Councilmember Ackerman stated he would like to see a buffer zone of 200 feet from all residences and 300 feet from day care centers, schools, and playgrounds. Councilmembers Goddard and Reed agreed. Councilmember Ackerman stated the language “testing at the maximum frequencies” should be replaced by “at all relevant frequencies being used”. He was not in favor of the suggested prohibition regarding decorative light poles. He agreed with the use of just “and” (not “and/or”) with respect to story poles. Public notification should be the standard that is used and not 1,000 feet.

Councilmember Reed stated a 300-foot radius is fine and he agreed with the removal of the word “or” with respect to the story poles. He agreed with the wording “all relevant frequencies”. He asked staff to work on a solution regarding distances from a residence. They need to keep antennas away from areas where children play (playgrounds, ballfields, etc.). He supported the findings cited in the Larkspur Ordinance.

Councilmember Goddard stated she would like the recommendations presented by 5G Free Marin incorporated into the ordinance. She would like to add language regarding the promotion of health and safety in the Purpose Section.

The Council discussed testing and monitoring facilities.

Councilmember Lacques stated he supported almost all of the points brought up by 5G Free Marin. He supported the decorative light pole restriction; precluding facilities in the PD Zone; the 300-foot radius for public notification; wanted to delete the language regarding “security”. He had some minor edits of the findings.

Mayor Coler supported the changes suggested by Councilmember Lacques. The 300-foot buffer zone was fine. She suggested a 50-foot buffer for residential and eliminating the listed species. She has a problem with the decorative light poles; they are all over downtown and the telecomm company could ask for a new pole. She liked the idea of requiring a replacement pole and a 300-foot radius for public notification. She was not in favor of waiving all the fee requirements; it should be on a case-by-case basis. She was not in favor of removing the PD Zone from consideration. Independent experts should do the monitoring.

Town Manager Toy stated staff would bring the revised ordinance, the application, the checklist, and the notification process to the Council in June.

The Council took a 10-minute break at 9:50 p.m.

2. Consider introduction and read by title only an ordinance entitled “An Ordinance of the Town Council of the Town of Fairfax Amending Chapter 17.008 (“Definitions”), Chapter

17.016 (“Nonconforming Uses and Structures”), and Chapter 17.136 (“Floor Area”), of The Fairfax Municipal Code, Title 17 (“Zoning”), to Limit Maximum Floor Area for Single-Family Residential and Duplex Properties and to Revise the Standard for Determining Whether a Legal Non-Conforming Structure is More than 50% Destroyed”. CEQA Exempt Per Sections 15060(C)(2), 15061(b)(3), and 15302- Planning Director

Planning Director Berto presented the staff report and gave a PowerPoint presentation. He discussed the Planning Commission’s recommendations. He answered questions from the Council.

Town Attorney Coleson asked the Council if they would like to include accessory dwelling units (ADUs) in the 3,500 square foot calculation. State law required ministerial, and not discretionary, approval of ADU’s.

Councilmember Ackerman stated he would like to include the ADU in the 3,500-square-foot limitation. Councilmember Lacques agreed.

Councilmember Goddard stated she did not want to count the ADU in the 3,500-square-foot limitation. Councilmember Reed and Mayor Coler agreed.

Mayor Coler opened the meeting to public comments.

Mr. Marshall Rothman, managing partner of the owners of the Wall property, stated he was concerned about the proposal because he had seen no evidence that the reduction is needed. He was concerned about restricting private property rights.

Mr. Matthew Querry, Cascade Drive, stated the community needs to make sure there is enough housing for teachers, local workers, etc. He did not support including an ADU in the 3,500 square foot limitation.

Ms. Mallory Geithem stated a 3,500 square-foot-house was not small.

Mayor Coler closed the meeting to public comments.

Town Manager Toy asked the Council to comment on the 50% remodel provision with respect to non-conformities and the requirement to meet current codes.

Mayor Coler stated this provision made sense. Building code requirements must be met but there could be flexibility with respect to Planning requirements.

Councilmember Reed did not support this provision, due to the high number of non-conforming houses in Fairfax.

Councilmember Goddard stated there was a difference between a voluntary 50% rebuild and one that is the result of a disaster. She was concerned that requiring conformance after a disaster scenario would be punitive.

Councilmember Lacques stated he supported allowing a structure over 3,500 square feet to be rebuilt, but not to the non-conforming status. It would be like an extra privilege. Larger houses and smaller houses should be treated the same with respect to conformity.

Town Attorney Coleson asked if the Council supported a rebuild of a larger than 3,500 square foot house that was destroyed by a disaster if the nonconformities are addressed.

Councilmember Lacques stated this is addressed in Section 17.136.040 if the following language is added: "...shall not be deemed a legal non-conforming structure *solely based on floor area*....". They would not be able to rebuild it to the former non-conforming status.

Planning Director Berto stated staff would come back with revised language for Section 17.016.070 (B)(1) and (2) (calamity-induced demolition vs. a voluntary one).

Planning Director Berto asked for comments on the preferred basis for determining a 50% trigger- the cost of replacement vs. the floor area recommendation. Staff was recommending eliminating the cost basis. The Council supported the staff recommendation.

Mayor Coler noted several typographical errors.

After a brief discussion, it was the consensus of the Council to not count an ADU in the 3,500 square-foot limitation.

M/S, Reed/Ackerman, Motion to continue this item to the May 1<sup>st</sup> meeting.  
AYES: Ackerman, Goddard, Lacques, Reed, Mayor Coler

M/S, Reed/Lacques, Motion to adjourn the meeting at 11:30 p.m.  
AYES: Ackerman, Goddard, Lacques, Reed, Mayor Coler

Respectfully submitted,

Toni DeFrancis  
Recording Secretary