

Fairfax Town Council Minutes
Special and Regular Meetings
Wednesday, August 7, 2019
Fairfax Women's Club

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

Roll Call:

Councilmembers present: Bruce Ackerman, Peter Lacques, John Reed, Mayor Barbara Coler.

Councilmembers absent: Vice-Mayor Renee Goddard.

Staff present: Hannah Politzer, Deputy Town Clerk.

1. Interview and appointment of applicant Christopher Lang to the Climate Action Committee- Deputy Town Clerk

The Council interviewed Mr. Christopher Lang for the vacancy on the Climate Action Committee.

M/S Reed/Lacques, Motion to appoint Christopher Lang to the Climate Action Committee to complete an unexpired term to September 30, 2023.

AYES: Ackerman, Lacques, Reed, Mayor Coler

ABSENT: Goddard

The Special meeting was adjourned at 6:50 p.m.

Mayor Coler called the **Regular meeting** to order at 7:01 p.m.

Call to Order/Roll Call:

COUNCILMEMBERS PRESENT: Bruce Ackerman
Barbara Coler
Peter Lacques
John Reed

COUNCILMEMBERS ABSENT: Renee Goddard

STAFF MEMBERS PRESENT: Garrett Toy, Town Manager
Hannah Politzer, Deputy Town Clerk
Janet Coleson, Town Attorney
Ben Berto, Planning Director

Approval of Meeting Agenda and Affidavit of Posting

M/S, Reed/Ackerman, Motion to approve the Affidavit of Posting and the agenda as submitted.

AYES: Ackerman, Lacques, Reed, Mayor Coler

ABSENT: Goddard

Announcements

Mayor Coler made the announcements as they appeared on the agenda

Open Time

Ms. Cindy Swift, Fairfax, recognized the Fairfax Parlor of the Native Sons for replacing the Manor Train sign at the Manor Road bus stop. She discussed some of the other projects that have been undertaken by this organization

Dr. Jody Timms, Fairfax representative to the Commission on Aging, gave a status report. The Commission is quiet this month but will have a presentation on HICAP in September. She discussed the new Age Friendly Fairfax bench that was recently installed at the bus stop and some of the other Age Friendly activities including the forums that will start in September.

Ms. Valerie Hood, representing 5G Free and Save Fairfax, stated they are having an event on August 10th at the San Geronimo Cultural Center at 6:30 p.m. regarding wireless technology.

Ms. Debra Benson, Cascade Drive, discussed the harmful effects of LED lighting. She noted the new streetlights are too bright.

Mr. Mark Bell, Dominga Avenue, complained about the noise and drums at the Farmers Market and the amplified music coming from Peri's Bar.

Mr. Frank Egger, Meadow Way, was concerned about the use of the Consent Calendar since it makes it difficult for residents to speak to those items.

Ms. Ling Shien Bell, Dominga Avenue, agreed with Ms. Benson's comments about the lights. The noise from the Farmer's Market was dreadful.

Consent Calendar

1. Accept Financial Statements and Disbursement Reports June 2019- Finance Director
2. Approve minutes for the July 17, 2019 Town Council meetings- Deputy Town Clerk
3. Receive written reports on Councilmember's assignments, committees, and activities in July- Deputy Town Clerk
4. Adoption of a resolution setting the Living Wage pursuant to annual review requirements of Section 8.56.020 of the Town Code- Deputy Town Clerk
5. Approve response to Marin Grand Jury Report: *School Resource Officers Revisited*- Police Chief, Town Manager
6. Approve Amendment No. 7 to the master agreement with California Infrastructure Consultancy (CIC) to increase the contract amount by \$105,572 for additional services to redesign the retaining wall for the Meadow Way Bridge- Town Manager
7. Authorize Town Manager to contract for Meadow Way Bridge interim repairs in an amount not to exceed \$35,000- Town Manager
8. Approve formation of reconstituted oversight committee for Measure J (Special Municipal Tax)- Town Manager
9. Adopt a Resolution in support of Senator Feinstein's bill S.2012 overruling FCC ruling regarding wireless telecommunication facilities (5G)- Mayor Coler

10. Receive Fiscal Year 2017/18 Audit Report- Finance Director
11. Second reading and adoption of 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) within the Town on private property and within the Town's public right-of-way; CEQA exempt per Section 15060(c)(2), 15378, 15016(b)(3) 15305, and Section 15303- Town Manager
12. Receive report on fire inspections, chipper days 2019, and goat vegetation management efforts- Town Manager
13. Appoint Councilmember Ackerman as the Fairfax alternate to the TAM board to replace Vice-Mayor Goddard- Vice Mayor Goddard, Deputy Town Clerk
14. Approve contract with Maggiora & Ghillotti to repair a certain portion of Bolinas Road (approx. location north of Deer Park Villa) in an amount not to exceed \$26,000- Town Manager
15. Approve preliminary plans for the full Seismic Retrofit of the Pavilion and commit to providing the matching grant requirement of 25% (\$626,977) to secure the 75% (\$1,880,930) grant from FEMA for the estimated total project costs of \$2,507,907 -Town Manager
16. Receive Treasurer's Report as of June 30, 2019- Town Treasurer
17. Endorse "Amazon Reuse Boxes" initiative on behalf of the residents of Fairfax- Mayor Coler

Mayor Coler noted there was a supplement to items #2 and #11.

Councilmember Reed had a comment on item #15.

Councilmember Lacques asked that item #11 be pulled for discussion.

Mr. Frank Egger had comments on item #6 and #15. He asked that item #11 be pulled for discussion

Ms. Carolyn Lund and Ms. Valerie Hood had a comment on item #17.

Ms. Jess Lerner had a comment on item #15.

M/S, Lacques/Ackerman, Motion to approve the Consent Calendar with the supplement to item #2 and the removal of item #11 for discussion. It will be heard prior to item #19.

AYES: Ackerman, Lacques, Reed, Mayor Coler

ABSENT: Goddard

Public Hearings

18. Introduce by title only two ordinances: 1) An Ordinance Amending Chapter 17.110 and Repealing Article III ("Medical Marijuana Cultivation") of Chapter 17.138 to adopt Zoning Standards and Restrictions for Commercial Cannabis Uses and Cannabis Cultivation for Personal Use; and 2) An Ordinance Amending Chapter 5.56 to Regulate Commercial Cannabis Businesses within the Town of Fairfax; CEQA exempt pursuant to State CEQA

Guidelines Section 15061(b)(3) and Business and Professions Code Section 26055(h)-
Planning Director

Planning Director Berto presented a staff report and a PowerPoint presentation. He answered questions from the Council.

Mayor Coler opened the Public Hearing.

Ms. Shelby LaMotte, Manor Road, asked the Council to make balanced decisions about zoning issues.

Mr. Ryan Green stated it was unfortunate that Councilmember Goddard could not participate in VideoChat. He supported a 600-foot buffer zone and a 300-foot zone around pre-schools and tutoring centers.

Mr. Christian Menan opposed a decrease in the buffer zones since it would needlessly endanger children and have no benefits.

Mr. Michael Zelesky, Director of the Tutoring Learning Center, thanked the Council for prioritizing the youth and families in Fairfax and for adding tutoring centers to the list of sensitive receptors needing buffer zones.

Janie stated kids are very impressionable and she discussed the problem of impaired driving.

Mr. Shannonhouse, Fairfax Cares, thanked the Council for its good work. It seems like they are almost back to a "de facto" ban.

Ms. Deb Nelson, Spruce Road, stated Fairfax should have just one medical dispensary delivery service. The community's health and well-being should be the priority.

Mr. David Stampanado, Fairfax, stated the State guideline of 600-foot buffers around schools, pre-schools, youth centers makes sense.

Mr. Gavin Stampanado stated he does not like it when people smoke around the baseball field because it is hard to hit a home run when you are holding your breath.

Ms. Kelsey Fernandez supported Attachment F. Cannabis storefronts should not be located near areas where youth gather and she supported the 600-foot buffer.

Ms. Holly Schaffer, Fairfax, stated Councilmember Goddard should be able to vote remotely by video- it is a courtesy that has been afforded to other Councilmembers in the past. She supports the 600-foot and 300-foot buffer zones.

Mr. Tim Nardel, owner of First Friends Montessori Pre-School, stated the voters of the State of California approved the Adult Use and Youth Protection Ordinance. He supports the State recommended rules including the buffer zones. First Friends is a "school" as defined under California law and there is a mistake in the maps.

Ms. Roselle Nardel stated First Friends has a kindergarten program and she was upset the Council changed the buffer zones.

Mr. Don Carney, Marin County Youth Court, stated the vote should turn out as if Councilmember Goddard were sitting at the dais. Kids are getting marijuana delivered using fake identification.

Ms. Pamela Granger, Co-Chair of Smoke Free Marin, stated lessons could be learned from tobacco control. First Friends should be included in the buffer zone. Fake identifications are a big problem.

Ms. Bridget Clark supports the maximum buffer zones passed by the County's Ordinance. She insists the Town maintain these buffer zones in order to prevent youth's exposure to cannabis. Agrees with Ms. Pamela Granger that Fake identifications are a big problem.

Ms. Bonnie Zelesky, owner of the Tutoring Center, supported buffer zones around sensitive receptors (schools, youth centers, day-care centers, and tutoring centers) since this is where youths congregate.

Ms. Lisa Graham stated she would like the Council and the Town to spend more time talking about ways to create better youth services. She supported Attachment F.

Mr. Richard Applebaum, Woodland Avenue, stated he did not have any issues with Attachment F. He was disturbed that there has been a tone that borders on the demonization of cannabis.

Mr. Mark Bell, Dominga Avenue, stated medical research has proven that medical marijuana was not a "gateway drug." Teens use fake identification to get alcohol not cannabis.

Ms. Mallory Geitheim, Willow Avenue, agreed with the comments made by Mr. Applebaum. She stated Fairfax began as a charming, dope-smoking, hippie town. Families come in with kids and want to change the vibe.

Ms. Valerie Hood did not understand what was going on- Fairfax has been referred to as "Mayberry on acid." Parents need to take better care of their kids.

Mr. Rick Hamer, Fairfax, reminded everyone that the moratorium expires soon. He urged the Council to move forward tonight.

A resident stated some of the drugs confiscated at schools were obtained at State approved dispensaries. She supported the State buffer zones.

Mayor Coler closed the Public Hearing.

Mayor Coler stated she denied Councilmember Goddard's recent request for teleconference participation for the following reasons: 1) There have been articles in the Independent Journal expressing concern regarding directors of a local entity participating in meetings remotely; 2) She did not want to bring in more controversy regarding transparency; 3) Councilmember Goddard made her comments about the issues very clear.

Councilmember Lacques read a statement from Councilmember Goddard expressing her views on the ordinance: 1) She supported a 600-foot buffer zone from schools and youth centers and 300-feet from tutoring centers, and day-care pre-schools; 2) Traffic and parking should be considered in any decision.

Councilmember Lacques stated he did not think buffers were critical and disagreed that the presence of these businesses would have a detrimental effect. He supported a 300-foot uniform buffer zones around for schools, day care centers, youth centers, and tutoring centers. This would open up several blocks to a cannabis business.

Councilmember Ackerman supported Attachment F.

Councilmember Reed supported the ordinance as written and also supported effective “sting operations” so kids do not get deliveries.

Mayor Coler referred to the definition of a “tutoring center” (3 students for 37 weeks a year) and noted three students is a small number. She recommended the number be changed to ten students. The Council supported this change. Mayor Coler stated she is not supportive of the changes in the buffer zones.

Mayor Coler referred to delivery businesses and asked the Council about the proposal for a 250-foot buffer from schools and youth centers and if they would like to add pre-schools and day care centers.

Councilmember Ackerman stated the buffer should apply to pre-schools but not day-care centers. Town Attorney Coleson stated the definition of “day care centers” includes pre-schools.

Councilmember Lacques stated the buffer should include schools and youth centers.

Councilmembers Reed, Ackerman, and Mayor Coler supported Attachment D as presented in the PowerPoint (250-foot buffers from schools and youth centers for delivery service).

M/S, Lacques/Reed, to Introduce by title only an Ordinance Amending Chapter 17.110 and Repealing Article III (“Medical Marijuana Cultivation”) of Chapter 17.138 to adopt Zoning Standards and Restrictions for Commercial Cannabis Uses and Cannabis Cultivation for Personal Use with the change in the definition of a “tutoring center” (number of clients from 3 to 10) as suggested by Mayor Coler.

AYES: Ackerman, Lacques, Reed

NOES: Mayor Coler

ABSENT: Goddard

M/S, Lacques/Reed, motion to Introduce by title only an Ordinance Amending Chapter 5.56 to Regulate Commercial Cannabis Businesses within the Town of Fairfax.

AYES: Ackerman, Lacques, Reed, Mayor Coler

ABSENT: Goddard

Mayor Coler stated the scoring criteria were ready to go and they always have the option of revisiting this in the future.

Councilmembers Reed, Ackerman, and Lacques supported the proposed scoring criteria.

M/S, Lacques/Reed, motion to adopt the scoring criteria for cannabis business applicants as proposed.

AYES: Ackerman, Lacques, Reed, Mayor Coler

ABSENT: Goddard

The Council took a 10-minute break at 9:15 p.m.

11. Second reading and adoption of 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) Within the Town on private property and within the Town’s public right-of-way; CEQA Exempt per Section 15305, and Section 15303- Town Manager

Town Manager Toy presented the staff report.

Mayor Coler opened the Public Hearing.

Mr. Richard Applebaum, representing 5G Free Marin, stated the proposed ordinance was an improvement. His group asked for some time to review the changes and the ability to recommend changes in the future.

Ms. Janet Fitzgerald, Fairfax, agreed with Mr. Applebaum. She stated schools should be notified about the locations of facilities.

Mr. Frank Egger, representing Save Fairfax, stated the public was not able to see the final ordinance until August 3rd. He urged caution and suggested some changes to the ordinance.

Ms. Valerie Hood, representing Fairfax Tomorrow, stated 5G cell towers were not safe. The proposed ordinance is an improvement but was not good at all. It creates "sacrifice zones" and invites the telecommunications companies to come into Town.

Ms. Jess Lerner agreed with the comments that have been made. The ordinance could be stronger.

Mr. Mark Bell, Dominga Avenue, asked if the buffer zone was 50-feet. It should be increased.

Mr. Ryan Green asked if the Council would be comfortable with one of these units in his or her backyard.

Mayor Coler closed the Public Hearing.

Town Manager Toy clarified the buffer zone issue.

Councilmember Lacques stated he was satisfied they have done a good job crafting an ordinance that works for Fairfax.

Councilmembers Ackerman, Reed, and Mayor Coler supported the proposed ordinance.

M/S, Lacques/Reed, motion to read by title only and adopt 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) within the Town on private property and within the Town's public right-of-way with the changes set forth in Supplement 11 B.

AYES: Ackerman, Lacques, Reed, Mayor Coler

ABSENT: Goddard

Mayor Coler stated she would like to hear item #20 prior to #19.

M/S, Ackerman/Lacques, motion to hear item #20 prior to item #19.

AYES: Ackerman, Lacques, Reed, Mayor Coler

ABSENT: Goddard

Regular Agenda

20. Introduce and read by title only an ordinance Amending Chapter 8.44 of the Fairfax Municipal Code, Title 8, Entitled "Clean Indoor and Outdoor Health Protection- Smoking Regulations" to prohibit the sale of menthol-flavored tobacco products; CEQA Categorically Exempt, CEQA Guidelines Sections 15060(c)(2), 15060(c)(3)- Town Manager

Town Manager Toy presented the staff report and the supplement. He answered questions from the Council.

Mayor Coler opened the meeting to public comments.

Mr. Christian Menan stated he works with the Smoke Free Marin Coalition and supports the ordinance. He also added that "People of Color" are specifically targeted for Menthol products.

Ms. Pamela Granger, Co-Chair of the Smoke Free Marin Coalition, discussed the ban on flavored tobacco products and nefarious marketing by the tobacco companies.

Mr. Bob Curry, Tobacco Related Disease Control Program, thanked the Council for its leadership. He gave an update of the activities that have occurred subsequent to the recent Grand Jury Report.

An individual stated the Ross Valley School District applied for a grant for tobacco education.

Mr. Frank Egger, Meadow Way, asked if the ordinance controlled the use, along with the sale, of this tobacco product. He asked if someone could vape in a public area.

Mayor Coler closed the meeting to public comments.

Mayor Coler discussed the following changes: 1) The second "Section 3" should be renumbered Section 4 (Section 4 becomes Section 5, etc.); 2) Under Tobacco Products, item #2, the term "electronic cigarettes" shall be renamed "electronic smoking device or paraphernalia"; 3) Section 5, #1 should read: "The sale or distribution by a tobacco retailer of any flavored tobacco products is prohibited". The word "unless" and the two exceptions should be deleted.

M/S, Lacques/Reed, Motion to Introduce and read by title only an ordinance Amending Chapter 8.44 of the Fairfax Municipal Code, Title 8, Entitled "Clean Indoor and Outdoor Health Protection- Smoking Regulations" to prohibit the sale of menthol-flavored tobacco products with the changes in the supplement and the revisions suggested by Mayor Coler.

AYES: Ackerman, Lacques, Reed, Mayor Coler

ABSENT: Goddard

Public Hearing

19. Introduce and read by title only an ordinance to establish time limits for incomplete applications and project entitlement approvals by adding Sections 17.020.130, ("Time Limits; Extension") for Conditional Use Permits, 17.040.100 ("Incomplete Discretionary Permit Applications"), and 17.040.110 ("Permit Time Limits and Extensions") and Amending Sections 17.028.090 ("Lapse; Renewal; Terms") for Variances and 17.060.90 ("Time Limits; Extension") for Ridgeline Development, and Consolidating and Revising Sections 17.072.140 and 17.072.150 ('Expiration' and 'Extension') for the Hill Area Residential Development Overlay Zone; CEQA exempt per CEQA Guidelines Sections 15060(c)(2), 15061(b)(3), and 15305- Planning Director

Planning Director Berto presented the staff report. He answered questions from the Council.

Mayor Coler opened the Public Hearing.

Mr. Rick Hamer described how the ordinance was approved by the Planning Commission and stated there were some flaws in the ordinance.

Mayor Coler closed the Public Hearing.

Mayor Coler asked for clarification on the retroactive nature of the time limits. Planning Director Berto stated the term "retroactive" applies to applications that are currently beyond the time limit. They would be allowed to apply for an additional extension. Town Attorney Coleson stated the Council could give direction on how they want this implemented.

Councilmember Lacques stated they should clarify this language since it is changing the due process rights of existing applicants. The purpose is "fish or cut bait" and represents good public policy. He was not sure the time limits were appropriate for enforcement cases.

Mayor Coler agreed there should be clarifying language with respect to applications currently in process. She supported 90 days with an additional 90 days for enforcement cases. She asked staff to reach out to local architects, the Marin Builders Exchange, etc. to get some feedback.

21. Discuss the resident's petition submitted per Town Code, for Town to sue Resources for Community Development for breach of contract- Town Manager

Mayor Coler recused herself from this item since she lives with 500 feet of the subject property. She turned the gavel over to Councilmember Reed and left the Council Chambers.

Town Manager Toy presented the staff report.

Councilmember Reed opened the meeting to public comments.

Ms. Miriam Weinstein stated a representative of RCD promised to donate 18 acres to the Town. They reneged on the deal a year later. The Town should get an injunction which would give them more time to pursue a lawsuit.

Mr. Rick Hamer stated the Town accepted the right-of-way around the property so the resident's assertion seems plausible. This issue should be looked at more carefully since it is not straightforward.

Ms. Susan McConolough stated this was a "quality of life" issue.

Councilmember Reed closed the meeting to public comments.

Councilmember Lacques stated he could not support a lawsuit since a "charitable pledge" was not a contract. He noted he approved the project on its own merit and not because of the possibility of a donation of land.

Councilmembers Ackerman and Reed agreed.

Council Reports and Comments

Councilmember Reed reported Councilmembers written reports and comments were contained in the packet.

Town Manager's Report

There was no report.

Future Agenda Item

Councilmember Ackerman asked if the Council should discuss whether or not to develop a policy that would allow a Councilmember to call into a meeting during his or her absence. Town Manager Toy stated this could be a topic discussed during the Council Retreat. Councilmember Reed stated he would like to discuss this issue.

Councilmember Lacques stated he would like to agendize the following issue: 1) Including the PDD Zoning in the Hillside Area Overlay Zone.

M/S, Reed/Lacques, Motion to adjourn the meeting at 11:40 p.m. in memory of Ms. Dolores Helen (Ghiringhelli) Forni, Ms. Rita Vanni, author Toni Morrison and the victims of the Gilroy, Dayton, Ohio and El Paso, Texas shootings.

Respectfully submitted,
Toni DeFrancis, Recording Secretary