

DRAFT Fairfax Town Council Minutes
Regular Meeting
Fairfax Women's Club
Wednesday, July 17, 2019

The Regular meeting was preceded by a Closed Session from 6:00 p.m. to 7:00 p.m.

Conference with Legal Counsel- Anticipated Litigation
Government Code Section 54956.9(d)(4)

Mayor Coler called the Regular meeting to order at 7:00 p.m.

Call to Order/Roll Call:

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
Heather Lee, Assistant Town Attorney
Gail Karish, BBK Attorneys
Michael Vivrette, Finance Director
Ben Berto, Planning Director
Hannah Politzer, Deputy Town Clerk

Announcement of Closed Session Action

Mayor Coler announced the Council gave direction to the Town Attorney.

Approval of Meeting Agenda and Affidavit of Posting

M/S, Goddard/Reed, Motion to approve the affidavit of posting and the agenda as submitted.
AYES: Ackerman, Goddard, Lacques, Reed, Mayor Coler

Presentations

Proclamation in Memory of Peter Arrigoni- Mayor Coler

Mayor Coler presented the Proclamation to Ms. Patricia Arrigoni. She stated a plaque in memory of Mr. Arrigoni, former Fairfax Mayor and Marin County Board of Supervisor, would be placed in the Pavilion.

Proclamation in Memory of William Sagar- Mayor Coler

Mayor Coler presented the Proclamation to Mr. Brian Sagar in memory of Mr. William Sagar, one of the founding members of the Fairfax Historical Society

Announcements

Mayor Coler made the announcements as they appeared on the agenda. Boardmember Goddard announced the Fairfax Theater Company's rendition of "Ali Baba" is playing at the Fairfax Pavilion.

Open Time

Mr. Larry Davidson, Meadow Way, expressed his frustration at the continuing deterioration of the Meadow Way Bridge decking and the ill-advised City installed traffic runners. This is a dangerous situation.

Dr. Jody Timms, Fairfax representative to the Commission on Aging, gave an update on the Commission's activities including a presentation on Disaster Preparedness and the preparation of a flyer with emergency tips for seniors. The Commission does not meet in August but will have a presentation in September on the Health Insurance Counseling and Advocacy Program (HICAP). The Age Friendly Fairfax monthly forums are moving to the second Friday of the month, however, they are taking July and August off.

Ms. Cindy Swift, Cascades, announced a fundraiser for Fire Safe Marin at Iron Springs next Tuesday from 4:00 p.m. to 10:00 p.m.

Mr. Peter Arnold, Meadow Way, agreed with Mr. Davidson's comments about the Meadow Way Bridge.

Mr. Frank Egger, Meadow Way, stated temporary signs that are of a political nature but are not campaign signs are protected by the First Amendment. He stated the Meadow Way Bridge could be rebuilt as a pre-fabricated, steel, drop-in bridge that could be installed for less than \$1 million.

Wendy, Fairfax, stated she was looking for a place to live in Fairfax. There is a housing crisis.

Town Manager Toy reported on the temporary repairs of the Meadow Way Bridge and the Cal-Trans inspection report.

Consent Calendar

1. Accept Financial Statements and Disbursement Reports May 2019- Finance Director
2. Approve minutes for the May 10, 2019 and June 5, 2019 Town Council meetings- Town Clerk
3. Reappoint five members to the Climate Action Committee and adopt a Resolution to stagger the terms of the members- Town Clerk
4. Receive written report on Councilmember's assignments, committees, and activities in June- Town Clerk
5. Adopt a Resolution Approving Job Classifications for the Recreation and Community Services Manager, the Volunteer and Events Coordinator, and the Marketing Communications Specialist- Town Manager
6. Adopt a Resolution establishing wages for the new job classifications for Recreation and Community Services staff- Town Manager

7. Approve response to Marin Civil Grand Jury Report *Wildfire Preparedness: A New Approach- Town Manager*
8. Approve response to Marin Civil Grand Jury Report: *Vaping: An Under-the-Radar Epidemic- Town Manager*
9. Approve Town sponsorship for Streets for People Event on Sunday, October 13, 2019- Town Manager
10. Adopt a Resolution granting consent to the absence of the Town Clerk from the state for a period in excess of sixty days- Town Manager
11. Approve the addition of an ADA space in Mono Avenue parking lot- Town Manager
12. Adopt a Resolution Adopting the Operating and Capital Improvement Budgets for Fiscal Year July 1, 2019 through June 30, 2020 and Providing for the Appropriation of Expenditures in Said Budgets and Repealing All Resolutions in Conflict Herewith- Town Manager, Finance Director
13. Adopt a Resolution Making Certain Findings and Determinations in Compliance with Section XIII B of the California Constitution (Gann Initiative) and Setting the Appropriation Limit for Fiscal Year 2019/20- Finance Director
14. Authorize the Town Manager to contract with Youth2Work in an amount not to exceed \$40,000 for Chipper Day services- Town Manager

Mayor Coler reported there were suggested edits to items #7 and #8.

Councilmember Goddard asked for clarification of item #14.

Councilmember Ackerman had a question about item #5.

Mayor Coler had a comment on item #12.

Mayor Coler had a question about item #11.

Mr. Frank Egger noted fourteen of the eighteen items on the agenda were on the Consent Calendar. He would like to comment on # 8 and #10. Mayor Coler answered his question with respect to item #8 and stated item #10 would be placed at the end of the agenda.

Mr. Rick Hamer, Fairfax, had a comment about item #7.

M/S, Goddard/Reed, Motion to approve the Consent Calendar with the edits recommended by staff and the removal of item #10 for discussion.

AYES: Ackerman, Goddard, Lacques, Reed, Mayor Coler

Public Hearings

15. 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 Berto

Planning Director Berto presented the staff report and gave a PowerPoint presentation. He answered questions from the Council regarding scoring criteria and the size of signage.

Mayor Coler opened the Public Hearing.

Mr. Mike Zelesky, representing the Tutoring Center, stated teenagers can be influenced by cannabis due to their age. He asked for 250-foot buffer zones around tutoring centers, youth centers, and day-care centers.

Ms. Michelle Dumott, Manor Road, agreed with Mr. Zelesky and stated balance and fairness was the key. Tutoring centers are youth centers.

Mr. Chris Lang, Canyon Road, stated the approach to safety is over-blown- teenagers already have really good weed. He is in favor of a laissez-fair approach.

Ms. Chris Lyon, Meerna Avenue, stated tutoring centers should be treated like schools and day-care centers and there should be a buffer zone.

Mr. Will Farris, Sir Drake High School, stated the vast majority of teens smoke weed. The concern should be the distribution of illegal cannabis and non-cannabis substances.

Sophia stated she is a tutor at TLC and kids do hang out at tutoring centers. It is similar to a youth center. This dispute is a zoning issue and traffic and parking should be considered.

A resident stated teenagers are not stupid and it is their prerogative whether or not to smoke weed. Education was important.

Mr. Monte Stephens, Porteous Avenue, stated there should be some consistency and the plan has a lot of flaws. Parking needs to be considered. The argument that a dispensary near a tutoring center will not encourage kids is wrong. He urged the Council to find alternate locations.

Ms. Caroline Stevens, Porteous Avenue, asked about the definition of a "school" and a "tutoring center". They are educational centers.

Mr. David Spanato, West Marin Little League Boardmember, stated many of the families who have kids playing Little League support the 600-foot buffer from Contratti Ball Field. He thought there should also be a buffer from the Tutoring Center. He was concerned about the potency of cannabis being sold today.

Mr. Elliott Shinehouse stated he was involved with Fairfax Cares and stated the buffer zone constitutes a de facto ban on commercial cannabis in Fairfax.

Ms. Monica Poli stated she sits on the Suicide Prevention Plan Committee which advocates for youth and is involved in understanding the impacts of marijuana. The Willow Avenue/Sir Francis Drake Boulevard intersection is very congested and not conducive to a delivery business.

Ms. Bonnie Gillespie, Director of the Tutoring and Learning Center (TLC), supported a buffer zone for tutoring centers. They are sensitive receptors and a place where youth gather.

Ms. Patrice Bryan, Fairfax, asked why no action has been taken by the Council.

Ms. Mimi Newton, Mono Avenue, stated she is speaking as a resident of Fairfax and not as a Planning Commissioner. She asked the Council to be consistent about the nature of adult businesses in Fairfax. She was not in favor of buffer zones.

Mr. Greg Hall, Fairfax, read some of the comments made by the Council at the last meeting.

Ms. Janet Mercer, San Anselmo, stated the part of Sir Francis Drake Boulevard where the Tutoring Center is located is very congested and is not an ideal location for this type of business. It is also a bus stop for White Hill Middle School and San Dominico students. A tutoring center is a youth center.

Mr. Ryan Green stated they need to focus on youth in general and not "younger" vs. "older" kids for all the buffer zones. He is worried about the lack of updated information on cannabis and the impact of advertising.

Mr. Art Chartock, owner of 1620 Sir Francis Drake, stated he and his partner approve the use of this building for cannabis delivery and sale.

Jade stated the traffic on that block of Sir Francis Drake Boulevard was already dangerous. She opposed the idea of a dispensary across the street from the Tutoring Center.

Ms. Deb Nelson, Spruce Road, stated the fact that they are having trouble finding suitable locations for a dispensary should give the Town pause. The rights of children should be protected.

A 20-year Fairfax resident stated the Town could get creative with respect to the parking issue through the use of incentive programs.

Ms. Jasmine Garrety, Fairfax, stated delivery buffers were important and day care centers and youth centers should be part of the buffer zone.

Ms. Ivy Levine, Fairfax, agreed that there should be a buffer zone around a tutoring center.

Mr. Shy Levine discussed the problem with toxic e-waste.

Ms. Kelsey Fernandez discussed unintended consequences including impaired driving.

Cathy, Fairfax, stated Fairfax Cares is a non-profit that is intended to help the community and make cannabis safe.

A resident stated she wants to protect people from buying contaminated product that is sold by corporations.

Mr. Don Carney, Mountain View, asked about the State definition of a "youth center". He stated the default should be to protect the kids.

Mayor Coler closed the Public Hearing.

Councilmember Goddard proposed a 300-foot buffer around day cares centers, pre-schools, and tutoring centers and a 600-foot buffer around schools and youth centers. This would increase the number of potential sites. The two businesses should not be close to each other (clustered).

Councilmembers Ackerman and Reed stated they supported Councilmember Goddard's proposal. Councilmember Ackerman did not think "clustering" was an issue.

Councilmember Lacques stated he would like to apply a 300-foot buffer to schools, day care centers, youth centers, and tutoring centers. This would provide more workable areas to have these businesses. He wanted a 600-foot distance between the two retail businesses. The signage section of the ordinance should be more robust.

Mayor Coler stated she did not support a buffer zone around tutoring centers. She was not comfortable introducing the ordinance tonight and would like street names on the maps and further discussion about "clustering".

Councilmembers Goddard, Lacques, and Reed wanted to move forward and introduce the ordinance tonight. Councilmember Lacques stated they could adopt the definition of "tutoring center" that was stricken from last month's iteration. Mayor Coler stated they need to change the definition of a school if they adopt Councilmember Goddard's proposal. Councilmember Ackerman stated he wanted to hear more public testimony if they went with Councilmember Lacques proposal.

Councilmembers Ackerman and Reed stated they did not support Councilmember Lacques' proposal.

Councilmember Goddard withdrew her proposal about "clustering".

Town Manager Toy stated staff needs more clarity about the buffer zones with respect to delivery businesses. Mayor Coler stated this has not changed (250-foot buffer zone).

Councilmember Ackerman stated they need a definition for a "little kid's school" and "big kid's school". Town Attorney Coleson stated elementary or primary schools are kindergarten through 5th grade. A pre-school is kindergarten and younger.

Councilmember Lacques asked staff to prepare maps that depict the proposals. He would like to look at the different buffer zone possibilities. Councilmembers Reed and Ackerman agreed.

Mayor Coler referred to page 3 of Chapter 17 A (2), and stated the language should make it clear that two locations are allowed.

M/S, Lacques/Reed, Motion to continue this item to next month with instruction for staff to layout buffer zone maps for all the various proposals discussed tonight and prepare language consistent with redefining schools consistent with what has been discussed.

AYES: Ackerman, Lacques, Reed

NOES: Goddard, Mayor Coler

Town Manager Toy stated staff would come back with buffer maps and an ordinance based on what the majority seemed to support. He reminded the Council that the moratorium expires on October 31st.

M/S, Goddard/Reed, motion to continue item #18 to the September meeting.

AYES: Ackerman, Goddard, Lacques, Reed, Mayor Coler

The Council took a 10-minute break at 10:00 p.m.

16. Adopt a Resolution Establishing Bank St. Undergrounding Utility District No. 7 Located Along Elsie/Bank Street from Bolinas Road to Mono Avenue and Along Mono Avenue From Bank Street to Bolinas Road- Town Manager

Town Manager Toy presented the staff report and noted there was a revised resolution on the dais. He answered questions from the Council.

Mayor Coler opened the meeting to public comments.

Mr. Frank Egger, Meadow Way, stated years ago the downtown area was full of telephone poles and wires. Undergrounding makes a huge difference in the look of the downtown. He encouraged the Council to adopt the resolution.

Mayor Coler closed the meeting to public comments.

M/S, Ackerman/Goddard, motion to adopt the revised Resolution Establishing Bank St. Undergrounding Utility District No. 7 Located Along Elsie/Bank Street from Bolinas Road to Mono Avenue and Along Mono Avenue From Bank Street to Bolinas Road.

AYES: Ackerman, Goddard, Lacques, Reed, Mayor Coler

Regular Agenda

17. 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 communications facilities (e.g., 5-G) within the Town on private property and within the Town's public right-of-way; CEQA exempt Section 15060(c)(2), Section 15378, Section 15061(b)(3), Section 15303, and Section 15303- Town Manager

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

Attorney Karish gave an update on the recent appeals to the 9th and 10th Circuit Courts. Both appeals were denied. She answered questions from the Council.

Mayor Coler opened the meeting to public comments.

Mr. David McDonald, Fairfax, discussed claims from Verizon about 5G and a magazine called WDDTY. He asked the Council to keep in mind who is behind the technology.

Ms. Jess Lerner, representing 5G Free Marin, distributed letters and suggested ordinance language to the Town Clerk. Major loopholes must be closed and key sections need to be strengthened.

Ms. Ruth Wiseman, Kentfield, had one specific request- that if or when permits are issued they be subject to review or revocation in the event that the permit was granted under any law that has since been vacated.

Ms. Roberta Anthes, Fairfax, asked for the following final tweaks on the ordinance to make it the best it can be: 1) ADA should be added to the Compliance with Laws Section; 2) Add a "Void and Vacated" Section; 3) Add provisions to the permitting language requiring Use Permits and Building Permits; 4) Require notice and a hearing with respect to Eligible Facilities Request Section.

Mr. Richard Applebaum supported the comments made by Ms. Anthes and Ms. Lerner.

A resident stated there was an international effort to ban this technology. There is scientific research that indicates it is deleterious to the human body. She talked about an illegal accounting scheme to replace wired networks with wireless and make rate payers for it.

Ms. Rachel Gaunt, Mill Valley, agreed with the comments made by Ms. Anthes and Ms. Lerner.

Ms. Kate Hudson, Mill Valley, stated this is a "David vs. Goliath" situation and she asked the Council to be steadfast and have courage.

Ms. Valerie Hood, Fairfax, stated she was afraid some residents will not be able to avoid being damaged by 5G. She asked the Council to consider setting up a physician's task force to work with people who come down with health issues.

Ms. Janet Fitzgerald, Cascades, stated the process is complicated because it has been hijacked by a very powerful lobby. She agreed with the suggestion made by Ms. Hood.

Ms. Mallory Geidheim stated she was against 5G- it has no benefit to residents.

Mr. Frank Egger, representing Save Fairfax, stated there should be no 5G rollout until AT&T, Verizon, and Sprint can guarantee that it is safe for everyone in Town. Fairfax should protect resident's privacy, data, and health.

Mayor Coler closed the meeting to public comments.

M/S, Lacques/Reed, motion to suspend the 11:30 p.m. rule.

AYES: Ackerman, Goddard, Lacques, Reed, Mayor Coler

The Council had questions about the annual recertification process, requirements to comply with all laws at all times, public notification with respect to the eligible facilities request, extending the public notification to 500 feet, extending the buffers from residences to 75 feet, provisions requiring Use Permits and Building Permits, and identification placards on poles.

Town Manager Toy stated the Council would like to see the following revisions to the Ordinance: 1) Add the following language to Section 19.04.140, "Compliance with Laws", "...including but not limited to compliance with the Americans with Disabilities Act"; 2) Add the following paragraph to Section 19.04.180(i), "Where such annual recertification has not been timely submitted, where equipment no longer in use has not been removed within the required 60 day period, no further application for that small cell wireless installation will be accepted by the Town until such time as the annual recertification has been submitted and all fees and fines paid".; 3) Add a #7 to the Eligible Facilities Request Section that would read: "Proof that the applicant has provided public notification at its own cost via mail to all property owners within a radius of 300 feet from the proposed facility and information regarding the application shall be displayed on the outside of the envelope".;4) the Council indicated that would like the Town Manager to require as part of the conditions of approval, if permitted by state/federal way, an an identification sign on a pole that has a 5G facility. Council agreed with staff that we can do that administratively and it would not be included in the ordinance at this time.

M/S, Goodard/Reed, motion to Introduce and read by title only 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 communications facilities (e.g., 5-G) within the Town on private property and within the Town's public right-of-way with the amendments cited by Town Manager Toy.

AYES: Ackerman, Goddard, Lacques, Reed, Mayor Coler

18. Discuss an ordinance to regulate single use food service ware- Town Manager

Mayor Coler stated this item was continued to the September meeting.

10. Adopt a Resolution granting consent to the absence of the Town Clerk from the state for a period in excess of sixty days

Town Manager Toy presented the staff report.

Mayor Coler opened the meeting to public comments.

Mr. Frank Egger, Meadow Way, stated there is no elected position called "Deputy Town Clerk" and he questioned whether or not the Town Clerk could run for re-election while out of the country. Town Attorney Coleson stated Government Code Section 1062(b) allows the Council to approve an absence of more than 60 days.

Mayor Coler closed the meeting to public comments.

M/S, Goddard/Ackerman, motion to Adopt a Resolution granting consent to the absence of the Town Clerk from the state for a period in excess of sixty days

AYES: Ackerman, Goddard, Lacques, Reed, Mayor Coler

Council Reports and Comments

Mayor Coler stated the Council submitted written reports to staff that were included in the packet.

Town Manager's Report

Town Manager Toy stated there were no reports.

M/S, Coler/Reed, Motion to adjourn the meeting at 12:15 a.m. in memory of Mr. Gary Duncan, Mr. Michelangelo Manheimer, and former Planning Commissioner Laine Elizabeth Sprague and Bodhi, her beautiful blue-eyed Catahoula dog.

Respectfully submitted,

Toni DeFrancis,
Recording Secretary