ORDINANCE NO. 845


WHEREAS, the Town of Fairfax contains numerous heavily vegetated, steeply sloped hillside areas that are entirely or partially within landslide hazard zones, and serve as watershed areas; and

WHEREAS, the Hill Area Residential Development (HRD) Permit is a procedural tool used by the Town to ensure that potential environmental effects associated with residential development in the hillsides are addressed early in the planning phase by requiring in depth geotechnical surveys and soils reports, hydrology surveys and reports, preliminary drainage plans, and tree removal and protection plans that otherwise may be required during later phases of a project; and

WHEREAS, the HRD Permit process is not a requirement in all residential zoning districts in Town; and

WHEREAS, Senate Bill 35 (the Housing Accountability Act), limits the Town's ability to require in depth technical studies and information until the building permit phase; and

WHEREAS, incorporating the HRD Permit process into all residential zoning districts in the Town would ensure that all residential development projects in the hillside areas are subject to the same requirements, which are necessary in the planning phase for the Town to adequately evaluate residential hillside development and ensure that it is safe, compatible with other hillside development, and minimizes potential environmental effects; and

WHEREAS, the Planning Commission conducted duly noticed public hearings on August 15, September 19, and October 17, 2019 to consider the draft ordinance; and

WHEREAS, adoption of this Ordinance is consistent with and will further the following Fairfax General Plan goals, objectives, policies, and programs the Town's General Plan, as follows:

1) Land Use Element Goal LU-1: Preserve scenic and natural resources;
2) Land Use Element Objective LU-1.2: Limit development on hillside and ridgeline parcels to preserve and enhance the scenic qualities of the Town;

3) Land Use Element Policy LU-1.2.2: New or renewed development in Visually Significant Areas shall be designed and sited to have the least visual impact as seen from the majority of the Town;

4) Land Use Element Policy LU-4.1.4: New and renewed development shall be designed to minimize runoff in a manner that does not cause undue hardship on neighboring properties;

5) Land Use Element Goal LU-5: Manage future growth while preserving the area's natural resources;

6) Land Use Goal LU-7: Preserve community and neighborhood character;

7) Land Use Objective LU-7.1: Preserve and enhance the community's small-town scale and character;

8) Land Use Element Policy LU-7.1.6: New and renewed residential development outside of the Town Center Area should be compatible with, and subordinate to, the topography, wildlife corridors and habitat, natural vegetation pattern, hydrology, and geotechnical characteristics of the area;

9) Land Use Element Objective LU-7.2: Preserve, maintain, and enhance in a sustainable manner, the existing character, scale, and quality of life in Fairfax's residential neighborhoods;

10) Land Use Element Policy LU-7.2.1: New and renewed development shall be compatible with the general character and scale of structures in the vicinity;

11) Land Use Element Policy LU-7.2.2: To the extent feasible natural features including the existing grade, mature trees, and vegetation shall be preserved for new and renewed development;

12) Open Space Element Objective: OS-3.2 Preserve the visual appeal of the natural landscape in the Fairfax Planning Area;

13) Open Space Policy OS-3.2.2: Discourage development of any man-made structure on the ridgelines and within the ridge zones within the Fairfax Planning Area;

14) Open Space Element Policy OS-3.2.3: Prevent development from blocking or impairing existing views of Visually Significant Areas identified in Figure OS-1;
15) Open Space Element Program OS-3.2.3.1: Review development applications to ensure that views of Visually Significant Areas are not negatively impacted;
16) Conservation Element Objective CON-5.1: Conserve soils and minimize erosion;
17) Safety Element Goal S-1: Minimize risks due to geologic hazards;
18) Safety Element Objective S-1.1: Protect life and property from risks associated with seismic activity and geologic conditions;
19) Safety Element Policy S-1.1.1: Development and land use decisions will be made using the best available geotechnical information;
20) Safety Element Program S-1.1.1.1: Require geotechnical analyses for all new development and substantial improvement proposals;
21) Safety Element Policy S-2.1.1: Development and land use decisions will be made using the best available hydrological and flood hazard information;
22) Safety Element Policy S-2.1.4: Ensure that new developments or substantial improvements are designed to reduce or eliminate future flood damage; and
23) Safety Element Program S-2.1.4.1: Require that lots and rights-of-way are laid out for the provision of approved sewer and drainage facilities, providing on-site detention facilities whenever practicable. Design criteria for hillside development should be calculated based on saturated soils.

WHEREAS, the Town Council conducted a duly noticed public hearing on January 15, 2020 to consider the draft ordinance, heard the presentation of a staff report, and received public comment on the matter;

NOW, THEREFORE, the Town Council of the Town of Fairfax does ordain as follows:

SECTION 1: Section 17.072.020 ("APPLICABILITY") of the Fairfax Municipal Code, Chapter 17.072 ("Hill Area Residential Development Overlay Zone") is revised to read as follows:

"$ 17.072.020. APPLICABILITY.

Properties zoned RS-6, RS-7.5, RD 5.5-7, RM, RM-S, PDD, SF-RMP, UR-7, or UR-10, fall into the HRD overlay zone if they have any of the following characteristics:

(A) The slope of the property is in one of the following categories as shown on the General Plan Safety Element Figure S-3: Areas Susceptible to Landslides and/or the
California Division of Mines and Geology Map, "Interpretation of the Relative Stability of Upland Slopes in the Upper Ross Valley and the Western Part of San Rafael Area Marin County, California," Rice, Salem J., Smith, Theodore C. and Strand, Rudolph G., 1976 and development of the lot requires movement of more than the corresponding amount of excavation and/or fill or replacement of earth with foundation materials:

(1) Zero to five percent slope: 200 cubic yards.

(2) Five to 15 percent slope: 200 cubic yards.

(3) Fifteen to 30 percent slope: 100 cubic yards.

(4) Thirty-one percent slope: 50 cubic yards.

(B) The property falls within a "Mostly Landslides" or "Multiple Landslides" landslide hazard zone as shown on Figure S-3: Areas Susceptible to Landslides and/or the California Division of Mines and Geology Map, "Interpretation of the Relative Stability of Upland Slopes in the Upper Ross Valley and the Western Part of San Rafael Area Marin County, California," Rice, Salem J., Smith, Theodore C. and Strand, Rudolph G., 1976;

(C) Access to the property is via a private or public undeveloped roadway; (an undeveloped roadway is an unpaved or paper road which must be improved.)

SECTION 2: Section 17.090.010 ("Generally") of Chapter 17.090 ("RM-S Multiple-family Residential – Senior – Residential Zone") of the Fairfax Municipal Code is revised as follows:

"§ 17.090.010 GENERALLY.

(A) The RM-S residential zone is intended to create use and development standards for senior residential housing in a way that preserves and enhances its surroundings; recognizes the requirements of state and federal housing laws (including the Federal Fair Housing Act [42 U.S.C. §§ 3601-3631], the California Fair Employment and Housing Act [Cal. Gov't Code §§ 12900-12995], and the California Unruh Civil Rights Act [Cal. Civil Code §§ 51-53]); and to encourage the development of senior housing. No premises in the RM-S senior residential zone may be used for any purpose or in any manner, except as set forth in this chapter.

(B) All structures, physical improvements and modifications involving soil or drainage modifications that fall into any of the categories listed in Town Code 17.072.020 are subject to the Hill Area Residential Development permit requirements."

SECTION 3: The following shall be inserted in Chapter 17.112 ("PDD Planned Development District Zone") of the Fairfax Municipal Code at the end Section 17.112.020 ("General Requirements for a Planned Development") as follows:
“(F) Any project proposed on a property zoned PDD or proposed for rezoning to PDD, where any portion of the project site meets one or more of the categories contained in the Hill Area Residential Development Overlay Zone applicability Town Code Section § 17.072.020, (A)(1) through (4), (B) and (C), shall also be subject to obtaining a Hill Area residential Development Permit from the Planning Commission. The Hill Area Residential Development Permit application shall be processed concurrently with the Planned Development District application and any associated applications. Required HRD development permit application submittal information shall be provided at the time of the initial PDD application submittal.”

SECTION 4: Section 17.116.020 (“Division of Property”) of Chapter 17.116 (“SF-RMP Single-family Residential Master Planned District”) of the Fairfax Municipal Code is revised as follows:

“17.116.020 GENERALLY.

(A) No real property zoned SF-RMP shall be divided so as to create a parcel of less than ten contiguous acres unless and until the subdivision is permitted under a planned development which has been approved pursuant to this chapter.

(B) All structures, physical improvements and modifications involving soil or drainage modifications that fall into any of the categories listed in Town Code 17.072.020 are subject to the Hill Area Residential Development permit requirements.”

SECTION 5: The following shall be inserted in Chapter 17.124 (“UR Upland Residential Zone”) of the Fairfax Municipal Code at the end Section 17.124.010 (“Generally”) as follows:

“17.124.010 GENERALLY.

(A) No real property zoned SF-RMP shall be divided so as to create a parcel of less than ten contiguous acres unless and until the subdivision is permitted under a planned development which has been approved pursuant to this chapter.

(B) All structures, physical improvements and modifications involving soil or drainage modifications that fall into any of the categories listed in Town Code 17.072.020 are subject to the Hill Area Residential Development permit requirements.

(C) All structures, physical improvements and exterior physical modification of a building are subject to design review.

(D) All structures, physical improvements and modifications involving soil or drainage modifications that fall into any of the categories listed in Town Code 17.072.020 are subject to the Hill Area Residential Development permit requirements.”
SECTION 6. CEQA. 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 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 on the environment, or a reasonably foreseeable indirect physical change in the environment; and

SECTION 7. 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


The foregoing Ordinance was introduced at a regular meeting of the Town Council of the Town of Fairfax on the 15th day of January 2020, and duly adopted at the next regular meeting of the Town Council on the 5th day of February 2020, by the following vote, to wit:

AYES: ACKERMAN, COLER, GODDARD, HELLMAN, REED
NOES: None
ABSENT: None
ABSTAIN: None

[Signature]
RENEE GODDARD, Mayor

ATTEST: Michele Gardner, Town Clerk