



TOWN OF FAIRFAX

STAFF REPORT

December 7, 2022

TO: Mayor and Town Council

FROM: Heather Abrams, Town Manager
David Woltering, Interim Planning & Building Services Director

SUBJECT: Adopt Ordinance Amending the Town's Zoning Code to Prohibit New Gas Filling (Service) Stations and Prohibit Expansion of Fossil Fuel Infrastructure for Existing Gas Filling (Service) Stations

RECOMMENDATION

Waive second reading, read by title only and adopt "Ordinance Amending Sections 17.008.020, 'Definitions,' and 17.096.050, 'Conditional Uses and Structures,' and Adding a New Section 17.016.080, 'Regulation of Non-Conforming Filling (Service) Station Uses and Structures,' to Title 17 of the Fairfax Municipal Code, and finding the action exempt from CEQA."

BACKGROUND

The Town Council introduced the attached Ordinance at a duly noticed public hearing on November 16, 2022 after making two changes which are underlined in the attached ordinance (see pages 1 and 4). This is the second reading and adoption of the ordinance as amended. If adopted, the ordinance would take effect in 30 days.

The Town Council has expressed concern with the over-saturation of gasoline service station uses in the Town, given the existing gasoline service stations in the wider region, and a desire to move away from the use of fossil fuels to power residents' vehicles. It is Council's belief, based on review of the available evidence, that the Town's current zoning regulations do not adequately address oversaturation, use compatibility, and other potential impacts related to gas station land uses. By consensus, the Council directed that the Planning Commission return a recommendation on regulating future gas station uses within the Town. Taking action to reduce reliance on fossil fuels will help the Town meet its goal, as expressed in the Climate Action Plan 2030, of a "fossil fuel phase-out" by upgrading and replacing carbon-intensive, fossil fuel-based infrastructure in the transportation sector. Previously, in 2021, the Town Council adopted the goal to "[e]xplore the prohibition on new gas stations."

Over the past few years, cities including Petaluma, Jurupa Valley, Santa Rosa and Rancho Cucamonga have taken steps to limit or outright prohibit new or expanded gas station land uses within their boundaries, and the city of Los Angeles seems poised to follow. This proposed Ordinance seeks to follow those cities' leads by doing the following:

- Prohibiting development of new gas stations in all zoning districts;

- Establishing regulations for existing and currently proposed gas stations as “nonconforming uses”;
- Update the Zoning Code definition of “filling (service) station” to clarify that such stations involve fossil fuels, and add a definition for “zero-emission vehicle.”

DISCUSSION

Gasoline filling (service) stations meet the needs of residents, employees, and visitors by providing automotive services at convenient locations near freeway on/off-ramps, on major thoroughfares, and within reasonable distances from homes and businesses. Presently, service stations are only authorized as a conditional use in the Highway Commercial (“CH”) zone within the Town. (FMC § 17.096.050(B)(5).) There are currently two active service stations in the Town.

On January 26, 2018, Governor Edmund G. Brown, Jr. issued Executive Order B-48-18¹ identifying the transportation sector as being responsible for emitting 50 percent of California’s total greenhouse gas emissions (GHG) and 80 percent of the smog-forming oxides of nitrogen. Executive Order B-48-18 directed all state entities to work with local governments and the private sector to ensure at least 5 million zero-emission vehicles on California roads by 2030, and the creation of 250,000 zero emission vehicle charging stations to support such vehicles. On September 23, 2020, Governor Gavin Newsom issued Executive Order N-79-20, setting 2035 as the year when all new passenger cars and trucks sold in California must be zero-emission.²

The Council has expressed that it believes that the number of service stations currently existing in the Town are sufficient to meet the needs of its residents, and that it has concerns relating to the short and long-term social and environmental impacts of continued reliance on fossil fuels by allowing additional gas stations to transact business in Town limits. To accelerate the shift from fossil fuels to electric vehicles on a local level, the Town can adopt regulations to prohibit new fossil fuel-based gas stations and prohibit expansion of fossil fuel infrastructure at existing gas stations.

The Zoning Code current allows new service stations with a Conditional Use Permit in the Highway Commercial zone. The attached proposed Ordinance provides recommended text amendments to Sections 17.008.020 (“Definitions”) and 17.096.050 (“Conditional Uses and Structures”). The change to Section 17.008.020 will add a definition for zero-emission vehicles and amend the definition of gas filling (service) stations to reference fossil fuels. The change to Section 17.096.050 will remove the reference to service stations as an allowable use (with a use permit) within the Highway Commercial zone. By removing this reference to service stations being allowed uses (with a use permit), new service stations will be prohibited pursuant to Section 17.096.020, which says that no premises in the CH zone may be used for any purpose or in any manner except as set forth in Chapter 17.096.

¹ <https://www.library.ca.gov/wp-content/uploads/GovernmentPublications/executive-order-proclamation/39-B-48-18.pdf>

² <https://www.gov.ca.gov/wp-content/uploads/2020/09/9.23.20-EO-N-79-20-Climate.pdf>

no reasonable possibility that the activity will have a significant effect on the environment due to unusual circumstances. (CEQA Guidelines section 15300.2.)

At the time of future development proposals, additional environmental analysis may be required to analyze the potential environmental impacts associated with specific development projects and uses proposed at specific locations.

ATTACHMENT

Ordinance Amending Sections 17.008.020, "Definitions," and 17.096.050, "Conditional Uses and Structures," and Adding a New Section 17.016.080, "Regulation of Non-Conforming Filling (Service) Station Uses and Structures," to Title 17 of the Fairfax Municipal Code, and Finding the Action Exempt from CEQA.

ORDINANCE NO. _____

**AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF FAIRFAX
AMENDING SECTIONS 17.008.020, “DEFINITIONS,” AND 17.096.050,
“CONDITIONAL USES AND STRUCTURES,” AND ADDING A NEW SECTION
17.016.080, “REGULATION OF NON-CONFORMING FILLING (SERVICE) STATION
USES AND STRUCTURES,” TO TITLE 17 OF THE FAIRFAX MUNICIPAL CODE,
AND FINDING THE ACTION EXEMPT FROM CEQA**

WHEREAS, in 2021 the Town’s Climate Action Committee adopted the Climate Action Plan 2030, which includes a goal of “fossil fuel phase-out” through upgrading and replacing carbon-intensive, fossil fuel-based infrastructure in the transportation sector; and

WHEREAS, there are two gas filling (service) stations currently operating in Town limits, and the Town anticipates requests in the future for development of new gas filling (service) stations; and

WHEREAS, the Town’s Zoning Code presently allows new gas filling (service) stations with a Conditional Use Permit in the Highway Commercial Zone; and

WHEREAS, over the past few years, a number of California cities, including Petaluma, Santa Rosa, and Rancho Cucamonga, have taken action to limit or prohibit new development of new gas stations and expansion of existing gas station uses; and

WHEREAS, the United States Environmental Protection Agency (EPA) has classified gas stations and fuel storage locations as uses that may result in a brownfield site, which are defined as properties whose expansion, redevelopment, or reuse may be complicated by the presence or potential presence of a hazardous substance, pollutant, or contaminant; and

WHEREAS, common contaminants found at gas station sites include gasoline, diesel, petroleum oil, volatile organic compounds and solvents, polycyclic aromatic hydrocarbons, and lead; and

WHEREAS, exposure to these types of contaminants can threaten the public health, safety, and welfare of neighboring communities; and

WHEREAS, underground tanks at gas station sites used for the storage of petroleum products are potential sources of contamination of soil, surface water, and aquifers, and can pose other dangers to public health and the environment; and

WHEREAS, on September 23, 2020, Governor Gavin Newsom issued Executive Order N-79-20, setting 2035 as the year when all new passenger cars and trucks sold in California must be zero-emission; and

WHEREAS, the Town has adopted a Climate Action Plan targeted at achieving carbon neutrality by the year 2030, and part of the strategy in implementing the Plan involves shifting away from individually-owned fossil fuel vehicles and replacing carbon-intensive infrastructure in that space with electric and other regenerative power sources; and

WHEREAS, to accelerate the shift from fossil fuels to electric vehicles on a local level, the Town can adopt regulations to prohibit new fossil fuel-based gas stations and expansion of fossil fuel infrastructure at existing gas stations; and

WHEREAS, the Town Council wishes to adopt the recommendation of the Planning Commission to take the first step toward meeting state and local climate-neutrality goals by adopting regulations to prohibit development of new gasoline service stations in Town limits, and expansion of fossil fuel infrastructure for existing service station uses; and

WHEREAS, prior to this meeting, staff gave notice of this public hearing of the Town Council as required under the law.

NOW, THEREFORE, THE TOWN COUNCIL OF THE TOWN OF FAIRFAX DOES ORDAIN AS FOLLOWS:

SECTION 1. Section 17.008.020 of Title 17 of the Fairfax Municipal Code, entitled “Definitions,” is hereby amended in part to read as follows (deletions shown in ~~strikethrough~~ and additions shown in underline)::

“ § 17.008.020 DEFINITIONS.

FILLING (SERVICE) STATION. A retail business selling gasoline and/or other motor vehicle fuels derived from fossil fuels (e.g., petroleum, coal, natural gas) and related products, and which may include facilities for washing, polishing, greasing, waxing or tire repairing. No vulcanizing or tire recapping or major mechanical repairs shall, however, be included in the operation of a filling station.

...

ZERO EMISSION VEHICLE. A vehicle that does not emit exhaust gas or other pollutants from the onboard source of power under any and all possible operational modes and conditions.

ZERO EMISSION VEHICLE – CHARGING STATION. An accessory use consisting of one or more electric vehicle charging spaces served by an electric vehicle charger or other charging equipment. This includes any level of electric vehicle supply equipment station that is designed and built-in compliance with Article 625 of the California Electrical Code and delivers electricity from a source outside an electric vehicle into a plug-in electric vehicle.”

SECTION 2. Section 17.096.050 of Title 17 of the Fairfax Municipal Code, entitled “Conditional Uses and Structures,” is hereby amended in part to read as follows (deletions shown in ~~strike through~~ and additions shown in underline):

“ § 17.096.050 CONDITIONAL USES AND STRUCTURES.

(A) The following uses may not be established, expanded, substantially modified or changed to another conditional use in the CH zone.

(B) A use permit must be obtained for:

...

~~(5) Filling (service) stations~~

...”

SECTION 3. Section 17.016.080 of Title 17 of the Fairfax Municipal Code, entitled “Regulation of Non-Conforming Filling (Service) Station Uses and Structures,” is hereby added to read in its entirety as follows:

“ § 17.016.080 REGULATION OF NON-CONFORMING FILLING (SERVICE) STATION USES AND STRUCTURES

(A) The purpose of this section is to provide for the continued operation of filling (service) station uses as legal non-conforming uses, and describe when they may be deemed abandoned; allow for alterations or enlargement of such uses when the alteration would provide greater protection for the environment, safeguard public health and safety, or facilitate the increased use of zero emission vehicles; and prohibit filling (service) station operators from increasing the storage and dispensing capacity of gasoline and other fossil fuels.

(B) This section applies to:

(1) All lawfully developed and operating filling (service) station uses in existence prior to January 1, 2023; and

(2) All filling (service) station uses not yet developed and/or operating g but subject to an approved and unexpired land use permit.

(C) Except as provided below, filling (service) station uses and structures related thereto shall not be enlarged, extended, reconstructed or moved to a different portion of the lot or parcel of land occupied by such use. As determined by the Planning and Building Services Director, examples of features subject to this provision include, but are not limited to, those related to the sale, storage, conveyance, and dispensing of gasoline and any other fossil fuel (e.g., storage tanks, pumps, dispensers).

(D) Filling (service) station uses may be modified to conform to current stormwater quality control regulations or remediate contamination of the soil or groundwater.

(E) As determined by the Public Works Director or designee, the pedestrian and vehicular circulation features (e.g., curbing, sidewalks, traffic control devices) of a filling (service) station use may be modified to improve public safety.

(F) Filling (service) station uses may be modified to accommodate battery charging station(s) for zero emission vehicles, subject to compliance with Section 15.04.065 of this Code.

(G) Filling (service) station uses may be modified to accommodate commercial uses that are not related to fossil fuel sales and that are otherwise provided for in the regulations applicable to the Highway Commercial zoning district.

(H) A filling (service) station use shall not be re-established if such use has been discontinued for a continuous period of 180 days or more, or has been changed to, or replaced by, a conforming use. If the use has discontinued for reasons of construction under a valid building permit, or to comply with State and Federal requirements, or for tank replacement in the same or another location on the existing site, the Public Works Director may extend the 180-day timeframe when presented with documentation demonstrating construction has been pursued diligently and timely.”

SECTION 4. Compliance with CEQA. This Ordinance was assessed in accordance with the authority and criteria contained in the California Environmental Quality Act (CEQA), the State CEQA Guidelines, and the environmental regulations of the Town. The Town Council finds and determines that the adoption of this Ordinance is exempt from CEQA in accordance with Sections 15307 and 15308 because this Ordinance constitutes action taken by a regulatory agency to protect natural resources and the environment. The Ordinance will establish a limit to infrastructure that directly supports or perpetuates the use of fossil fuels for vehicles. Consistent with the Town Council’s adopted Climate Action Plan, this step is necessary to advance the goal of carbon neutrality by 2030. Pursuant to the “common sense” exemption under CEQA Guidelines section 15061(b)(3), there is no possibility that this Ordinance might have a significant effect on the environment. This Ordinance will prohibit new gas stations and the expansion of fossil fuel infrastructure at existing gas stations, in turn, preventing future groundwater or surface water contamination, leaks from underground tanks, or improper disposal of gasoline. The Town has further determined that no exceptions to the exemptions apply and there is no reasonable possibility that the activity will have a significant effect on the environment due to unusual circumstances (CEQA Guidelines section 15300.2). At the time of future development proposals, additional environmental analysis may be required to analyze the potential environmental impacts associated with specific development projects and uses proposed at specific locations.

SECTION 5. Severability. If any section, subsection, subdivision, sentence, clause, phrase, or portion of this Ordinance, or the application thereof to any person or

place, is for any reason held to be invalid or unconstitutional by a court of competent jurisdiction, such decision shall not affect the validity of the remainder of this Ordinance. The Town Council hereby declares that it would have adopted this Ordinance, and each and every section, subsection, subdivision, sentence, clause, phrase, or portion thereof, irrespective of the fact that any one or more sections, subsections, subdivisions, sentences, clauses, phrases, or portions thereof be declared invalid or unconstitutional.

SECTION 6. Effective Date and Posting. This Ordinance shall take effect thirty (30) days after its adoption. 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; and 3. Bulletin Board, Fairfax Women’s Club Building, located at 46 Park Road.

The foregoing Ordinance was introduced at a regular meeting of the Town Council on the 16th day of November, 2022, and duly adopted at the next regular meeting of the Town Council on the 7th day of December 2022, by the following vote, to wit:

AYES:
NOES:
ABSENT:
ABSTAIN:

Mayor

Attest:

Michele Gardner, Town Clerk

Date

Upon adoption of the proposed Ordinance, existing service stations will become legal conforming uses. Under the Town's current nonconforming use regulations (Chapter 17.016), and once the proposed Ordinance takes effect, this means that service stations may not be moved, altered, or enlarged unless required by law or to eliminate the nonconforming use altogether. And, if use of a gas station under an existing CUP is discontinued for a period of at least 12 months, the use will be considered terminated and will no longer be legal nonconforming (i.e., the gas station would lose its right to continue to operate as such and would not be able to obtain a new permit under the Town's new zoning rules). The proposed ordinance reduces the threshold period from 12 months to 180 days, with opportunities for extensions under certain circumstances. Staff are suggesting one update to Chapter 17.016, however, to authorize an existing gas station to apply to the Planning Commission for a permit to modify the nonconforming gas station use to accommodate the addition of charging stations for zero emission vehicles.

The Planning Commission considered this item at a public hearing held on October 27, 2022, and at the conclusion of the public hearing, adopted a resolution recommending the Town Council adopt the Ordinance in substantially the form attached hereto.

FISCAL IMPACT

This Ordinance is a Town initiative, and all associated staff and processing costs will be covered under the General Fund.

CEQA

Amending the Zoning Code to prohibit new gas stations and prohibit expansion of fossil fuel infrastructure for existing gas stations is exempt from the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines Sections 15307 and 15308 because this ordinance constitutes action taken by a regulatory agency to protect natural resources and the environment. The proposed Ordinance would establish a limit to infrastructure that directly supports or perpetuates the use of fossil fuels for vehicles, which is the largest source of greenhouse gas emissions for the City of Santa Rosa. Consistent with the Town Council's adopted Climate Action Plan, this step is necessary to advance the goal of a community that is substantially less dependent on fossil fuels and avoids exporting environmental damage and GHG emissions to other parts of the Bay Area, nation, or world. Further, to the extent the proposed Zoning Code amendments contemplate the ability of a current gas station to apply for a permit to make additions to the nonconforming facility consisting of charging stations for zero emission vehicles, any such future applications will require the applicant and Town to undertake additional environmental analysis at the time of such application to analyze any potential environmental impacts associated with the proposal.

In addition, the proposed Ordinance is exempt from CEQA pursuant to the "common sense" exemption under CEQA Guidelines section 15061(b)(3), because there is no possibility that the Ordinance might have a significant effect on the environment. This ordinance will prohibit new gas stations and the expansion of fossil fuel infrastructure at existing gas stations, in turn, preventing future groundwater or surface water contamination, leaks from underground tanks, or improper disposal of gasoline. The Town has further determined that no exceptions to the exemptions apply and there is