

ORDINANCE NO. 883

**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 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 stations; and

WHEREAS, the Town’s Zoning Code presently allows new gas 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 used for the storage of hazardous substances and wastes 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 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; 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 ~~strike through~~ 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 Filling (Service) Station Uses and Structures,” is hereby added to read in its entirety as follows:

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

(A) The purpose of this section is to provide for the continued operation of existing filling (service) station uses, and to 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 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).

(1) Filling (service) station uses shall be modified to conform to current stormwater quality control regulations, or remediate or mitigate contamination of the soil, air, or groundwater, or to conform to current regulations, including amended regulations, of a regulatory agency with jurisdiction over soil, air, groundwater, or stormwater, provided the owner or operator complies with all applicable procedures and permit requirements of the Town Code.

(2) 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.

(3) 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.

(4) 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 and provided the owner or operator complies with all applicable procedures and permit requirements of the Town Code.

(5) 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, the Public Works Director may extend the 180-day timeframe when presented with documentation demonstrating construction has been pursued diligently and timely.

(6) A filling (service) station may conduct building and site design modifications or renovations intended to improve or maintain the appearance of the station or the parcel on which it is constructed. Such modifications may include, but not be limited to, modifications or renovations of building façade, signs, landscaping and hardscape, provided the owner or operator complies with all applicable procedures and permit requirements of the Town Code.

(7) A filling (service) station shall be modified as required by law to comply with building safety requirements such as seismic retrofitting, access for persons with disabilities, and similar modifications protecting public health, safety or welfare, provided the owner or operator complies with all applicable procedures and permit requirements of the Town Code.

(8) A filling (service) station may undergo normal maintenance, replacement and repairs, including, but not limited to, painting, re-roofing, sign replacement, fossil fuel dispensing equipment upgrades and similar modifications, provided the owner or operator complies with all applicable procedures and permit requirements of the Town Code.

(9) A filling (service) station that is damaged or destroyed by any means may be restored or reconstructed as it existed immediately prior to the damage or destruction, provided the owner or operator complies with all applicable procedures and permit requirements of the Town Code and such restoration or reconstruction is completed, as confirmed with a final building inspection, within two (2) years of the date of damage or destruction. Failure to complete such restoration or reconstruction within the two (2) year timeframe shall constitute abandonment of the use.”

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.

