



TOWN OF FAIRFAX

STAFF REPORT

August 6, 2014

TO: Mayor and Town Council

FROM: Garrett Toy, Town Manager

SUBJECT: Adoption of Ordinance No. 781, an Interim Urgency Zoning Ordinance of the Town Council of the Town of Fairfax Prohibiting Approvals of Formula Businesses and Formula Restaurants within the Highway Commercial (CH) Zoning District during the Pendency of the Town's Adoption of Permanent Zoning Regulations and Declaring the Urgency Thereof

RECOMMENDATION

- 1) Open/close public hearing
- 2) Adopt Ordinance No. 781, an Interim Urgency Zoning Ordinance of the Town Council of the Town of Fairfax Prohibiting Approvals of Formula Businesses and Formula Restaurants within the Highway Commercial (CH) Zoning District during the Pendency of the Town's Adoption of Permanent Zoning Regulations and Declaring the Urgency Thereof

DISCUSSION

With the pending repeal of Ordinance No. 778, properties that were rezoned Highway Commercial (CH) to Central Commercial (CC) will revert back to their previous zoning of CH. The impetus for the Town Council to facilitate the conversion of CH zoned properties to CC was in response to the lack of controls for formula-based businesses (i.e., chain stores) in the CH zone. This issue arose as part of the Council's consideration of a use permit for a gas station with national branding.

The reversion to CH zoned properties will eliminate the controls over formula-based businesses wanting to locate in the CH zone. While staff intends to take a proposed zoning ordinance to amend the CH zone to create controls for formula based businesses to the Planning Commission in August and, ultimately, to the Council for consideration, it will take time to work through the process. As a result, this moratorium is an interim measure meant to dovetail with the future zoning amendment. This urgency ordinance will impose a 45-day moratorium on the approval of any subdivisions, use permits, variances, building permits, sign permits, or any other applicable entitlement for use which is required in order to comply with the Town's zoning ordinance or any other discretionary Town permit or approval for the construction, expansion, replacement, modification or alteration of any facilities for use as a "formula business" or "formula restaurant" located within the Highway Commercial (CH) zoning district.

For purposes of the Interim Urgency Ordinance, the following definitions shall apply:

Formula business. Any business that is required by a corporate headquarters or franchise or other arrangement to maintain any of the following: standardized services, decor, uniforms, architecture, signs or other similar features. This shall include but not be limited to any retail sales, service, visitor accommodation, wholesale or industrial operations that was not in business within the CH zone prior to April 1, 2000.

Formula restaurant. Any restaurant devoted to the preparation and offering of food and beverage for sale to the public for consumption either on or off premises and which is required

by contractual or other arrangement to offer any of the following: standardized menus, ingredients, food preparation, decor, uniforms, architecture or similar standardized features that was not in business within the CH zone prior to April 1, 2000.

As a moratorium, the ordinance considered by Council this evening will initially be effective for only 45 days, though it may be extended, if necessary. Staff is moving with all diligence to have the zoning amendment arrive at Planning Commission and Council for its review and adoption as soon as practicable. Once the zoning amendment is complete, there will be no further need for the moratorium and it will be allowed to expire.

FISCAL IMPACT

None

ATTACHMENT

Interim Urgency Ordinance No. 781

ORDINANCE NO. 781

AN INTERIM URGENCY ZONING ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF FAIRFAX PROHIBITING APPROVALS OF FORMULA BUSINESSES AND FORMULA RESTAURANTS WITHIN THE HIGHWAY COMMERCIAL (CH) ZONING DISTRICT DURING THE PENDENCY OF THE TOWN'S ADOPTION OF PERMANENT ZONING REGULATIONS AND DECLARING THE URGENCY THEREOF

WHEREAS, the Town's foremost written expression of its sense of self and vision for its future is its General Plan, which celebrates "the uniqueness of Fairfax: the Town's robust, village-like character, as seen in the small businesses, quaint neighborhoods and busy streets where many residents bicycle and walk;" (General Plan, pp. LU-2) and

WHEREAS, the General Plan seeks to preserve and enhance the community's small-town and historic character (Land Use Element Goal LU-7; Town Center Element Goal TC-2); and

WHEREAS, because biking and walking are an integral part of a complete circulation network that provides affordable, healthful and ecological means of transportation, bicycle and pedestrian oriented development should be encouraged in the Town Center Planning Area (Circulation Goals C-5 and C-6, Circulation Element Policy C-5.8, and Town Center Element Policy TC-3.2.1); and

WHEREAS, the General Plan expresses the policy that new and/or renewed development in the Town Center Planning Area shall preserve and enhance the village character and pedestrian scale of the downtown area and large, highly visible parking lots characteristic of strip shopping centers are inconsistent with village character (Town Center Policy TC-1.1.1); and

WHEREAS, the General Plan further requires that new and/or renewed development in the Town Center Area shall preserve and enhance the mix of land uses, architectural styles and ornamentation, materials, colors and texture (Land Use Policy LU-7.1.2; see also, Town Center Policy TC-2.1.1); and

WHEREAS, the vitality and diversity of the Town's economy is based in part on the owner-operator character of the town's businesses, and the Town Center Element of the General Plan sets the policy of promoting locally-owned businesses (Town Center Policy TC-3.2.8); and

WHEREAS, the Council believes that the historic and village character of Fairfax is made manifest by, among other things, its merchants' offerings of goods, services, and dining opportunities that are tailored to the distinctive character and local interests of Fairfax residents and visitors and are not necessarily reproducible or found in the context of formula businesses and/or restaurants; and

WHEREAS, the Council further believes that Fairfax enjoys as many visitors as it does in large part due to the unique nature of its retailers and restaurateurs, many of whom own their own businesses; and

WHEREAS, an increase of formula retail businesses and restaurants in the CH Zone could hamper the Town's goal of a diverse local economy; and

WHEREAS, the Council intends to take a variety of actions to implement the General Plan principles set out above, including the adoption of a formula business ordinance within the Highway Commercial (CH) zoning district; and

WHEREAS, the contemplated formula business ordinance will monitor and regulate new and expanded formula retail businesses and restaurants in order to protect the Town's diverse local economy, and to enhance bicycle and pedestrian oriented development, while ensuring that out-of-state formula businesses are not unfairly discriminated against in violation of federal Dormant Commerce Clause jurisprudence; and

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

SECTION 1: Adoption as Urgency Interim Zoning Ordinance. This interim ordinance is adopted as an urgency interim zoning ordinance pursuant to the provisions of Government Code Section 65858(a), and shall be effective immediately upon its adoption. Based upon the findings set forth in Section 5 of this interim ordinance, the Town Council finds and determines that the adoption of this interim ordinance as an urgency ordinance is necessary for the immediate preservation of the public peace, health or safety.

SECTION 2: Moratorium Established. The following provisions are hereby adopted as interim zoning standards pertaining to the review or approval of any entitlements or the issuance of any permits or licenses pursuant to the Fairfax Municipal Code for any Formula Business or Formula Restaurant (as defined herein) located within the Highway Commercial (CH) zoning district. The approval of any entitlements or the issuance of any permit or license in conflict with these provisions is expressly prohibited:

- A. Restricted Activities. Notwithstanding any other ordinance or provision of the Fairfax Town Code, no application for any subdivision, use permit, variance, design review, sign application, building permit, or any other entitlement for use which is required in order to comply with the Town's zoning ordinances, or any other discretionary Town permit or approval for the construction, expansion, replacement, modification or alteration of any facilities for a Formula Business or Formula Restaurant on any property located within the Highway Commercial (CH) zoning district shall be approved during the term of this interim ordinance.
- B. Definitions. For the purposes of this Ordinance, the following terms shall be defined as set forth below:

- i. FORMULA BUSINESS. Any business that is required by a corporate headquarters or franchise or other arrangement to maintain any of the following: standardized services, decor, uniforms, architecture, signs or other similar features. This shall include but not be limited to any retail sales, service, visitor accommodation, wholesale or industrial operations that was not in business within the Fairfax CC zone prior to April 1, 2000.
- ii. FORMULA RESTAURANT. Any restaurant devoted to the preparation and offering of food and beverage for sale to the public for consumption either on or off premises and which is required by contractual or other arrangement to offer any of the following: standardized menus, ingredients, food preparation, decor, uniforms, architecture or similar standardized features that was not in business within the Fairfax CC zone prior to April 1, 2000.

SECTION 3. Moratorium Term. This interim ordinance shall take effect immediately upon adoption, and this interim ordinance shall expire, and the moratorium established hereby shall terminate, forty-five (45) days after the date of its adoption, unless extended by the Town Council at a noticed public hearing pursuant to California Government Code Section 65858.

SECTION 4: Urgency Findings. The Town Council finds and determines that the immediate preservation of the public health, safety and welfare requires that this ordinance be enacted as an urgency ordinance pursuant to Government Code Section 65858. The Town is currently in the process of adopting a formula business ordinance within the Highway Commercial (CH) zoning district, but the action will take a minimum of 45 days to complete. Furthermore, the General Plan envisions re-zoning all properties zoned Highway Commercial (CH) Zone to the Central Commercial (CC) Zone. As set forth above, a Formula Business Ordinance applies in the CC Zone, the purpose of which is to monitor and regulate formula businesses and restaurants in order to promote the Town's goal of a diverse local economy as well as to enhance the village character and pedestrian scale of the downtown area. Without this urgency ordinance, approval of new or expanded formula businesses and formula restaurants within the existing Highway Commercial zoning district may be sought that would conflict with the use regulations or development standards ultimately adopted with respect to such properties upon their rezoning to Central Commercial. Therefore, this Ordinance is necessary for the immediate preservation of the public peace, health, safety and welfare and its urgency is hereby declared.

SECTION 5: Severability. If any section, subsection, sentence, clause, or phrase of this ordinance is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of the ordinance. The Town Council hereby declares that it would have passed this ordinance and each

section, subsection, sentence, clause, and phrase thereof, irrespective of the fact that anyone or more sections, subsections, sentences, clauses, or phrases be declared invalid or unconstitutional.

The foregoing ordinance was duly adopted at a regular meeting of the Town Council of the Town of Fairfax, held in said Town on the 6th day of August, 2014, by the following vote, to wit:

AYES:

NOES:

ABSENT:

DAVID WEINSOFF, Mayor

Attest:

Michele Gardner, Town Clerk