



TOWN OF FAIRFAX

STAFF REPORT

September 3, 2014

TO: Mayor and Town Council

FROM: Garrett Toy, Town Manager *GT*

SUBJECT: Adoption of a report describing the measures taken to alleviate the condition which led to the adoption of Ordinance No. 781, and adoption of Ordinance No. 782, an Ordinance of the Town Council of the Town of Fairfax Enacted Pursuant to California Government Code Section 65858 Extending the Interim Urgency Zoning Ordinance 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 For Such Uses and Declaring the Urgency Thereof

RECOMMENDATION

- 1) Open/close public hearing
- 2) Adopt a report of the Town Council describing the measures taken to alleviate the condition which led to the adoption of Ordinance No. 781
- 3) Adopt Ordinance No. 782, an Ordinance of the Town Council of the Town of Fairfax Enacted Pursuant to California Government Code Section 65858 Extending the Interim Urgency Zoning Ordinance 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 for Such Uses and Declaring the Urgency Thereof

DISCUSSION

On August 6, 2014, the Council adopted Urgency Interim Ordinance No. 781 imposing 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.

This moratorium is an interim measure meant to dovetail with the proposed zoning ordinance to amend the CH zone to create controls for formula based businesses. Unlike the CC zoning district, the CH currently has no such formula business regulations. The Council's adoption of Ordinance No. 780, which repealed Ordinance No. 778, means that there are a number of properties in town that will still be zoned CH when the initial moratorium expires.

The moratorium adopted by the Council on August 6, 2104 is initially effective for 45 days. However the Council may extend the term, if necessary. While staff is moving with all diligence to have the zoning amendment considered by the Planning Commission (PC) on September 18th and, Council for its review and adoption as soon as practicable after PC review, it will not be adopted prior to the expiration of the initial moratorium term.

The initial 45-day moratorium expires September 20th, prior to the date by which the Council can consider an ordinance to amend the CH zoning district to provide for formula-based business controls. To prevent the possible application of a formula business/restaurant prior to the adoption of the zoning amendment, the Council will need to extend the moratorium. In addition, Government Code Section 65858(d) requires the Town to prepare, ten (10) days prior to the expiration of the interim ordinance, a written report describing the measures taken to alleviate the condition which led to the adoption of the ordinance. This report is required to be issued by the Town Council and has been prepared for the Council's adoption. The "measures taken" are the preparation and scheduling of the zoning amendment for Planning Commission consideration in September, as well as public meetings to facilitate discussion of the issue.

The moratorium will expire upon the earlier of either (a) upon the effective date of the permanent zoning regulations governing formula-based businesses and restaurants in the CH zone, or (b) automatically ten months and fifteen days from passage of the extension, which will provide the Council a cushion should the amendment to the CH zoning code be delayed.

FISCAL IMPACT

None

ATTACHMENTS:

Report on measures taken to alleviate conditions leading to adoption of Urgency Ordinance No. 781
Ordinance No. 782

Report of the Fairfax Town Council on Formula Businesses and Formula Restaurants in the Highway Commercial Zoning District

The Fairfax Town Council issues this report pursuant to Government Code Section 65858(d).

Interim urgency ordinance. On August 6, 2014, the Fairfax Town Council adopted Interim Urgency 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'), which ordinance is scheduled to expire on September 20, 2014. On September 3, 2014, the Town Council will consider the extension of Interim Urgency Ordinance No. 781.

Measures to date. The Town Council hereby finds that the following measures have been taken to alleviate the conditions which led to the adoption of Interim Urgency Ordinance No. 781:

Community outreach. To date, the Council has discussed and considered the issue at its February 13 and March 5, 2104 meetings as well as staff has at times discussed the issue at numerous public meetings to consider the impacts of the repeal of Ordinance 778 and the adoption of Ordinance No. 780.

Planning and legal review. Staff has been working with the Town Attorney's office to define and address the land use planning and legal issues associated with formula businesses and restaurants, and to prepare a draft zoning amendment for the regulation of formula businesses and formula restaurants in the Highway Commercial (CH) zone in keeping with the vision set forth by the Fairfax General Plan.

Future actions. The Town Council has been advised that Town staff intends to bring a proposed zoning amendment regarding formula businesses in the CH zone to the Planning Commission for its review on September 18, 2014. As soon as practicable thereafter, staff would bring the proposed zoning ordinance to the Town Council for review and adoption.

**This report was issued September 3, 2014 at
a regular meeting of the Fairfax Town Council.**

ORDINANCE NO. 782

**AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF FAIRFAX
ENACTED PURSUANT TO CALIFORNIA GOVERNMENT CODE SECTION 65858
EXTENDING THE INTERIM URGENCY ZONING ORDINANCE 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 FOR SUCH USES AND DECLARING THE URGENCY THEREOF**

WHEREAS, on August 6, 2014, the Town Council of the Town of Fairfax adopted Interim Urgency 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') in accordance with Government Code Section 65858; and

WHEREAS, the Town Council incorporates by reference and re-adopts the recitals made in Ordinance No. 781 regarding the contemplated Formula Business Ordinance as if fully set forth herein; and

WHEREAS, a Formula Business Ordinance applies in the Central Commercial (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; and

WHEREAS, the Highway Commercial (CH) zoning district currently has no such Formula Business Ordinance in place; and

WHEREAS, due to the adoption of Ordinance No. 780, repealing Ordinance No. 778, the Town still has numerous properties zoned Highway Commercial (CH), and thus are not subject to any controls over formula businesses and restaurants; and

WHEREAS, Town staff has been diligently sponsoring public meetings on this issue and preparing permanent regulations for formula businesses and formula restaurants for review and action upon by the Town Planning Commission and Town Council; and

WHEREAS, due to hearing and other legal requirements under the State Planning and Zoning law, the Town requires additional time to adopt permanent regulations for formula businesses and formula restaurants in the CH zoning district.

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

SECTION 1. Ordinance Number 781 Extended. Pursuant to Government Code Section 65858(a), Town of Fairfax Ordinance No. 781 is hereby extended for a period of ten (10) months and fifteen (15) days to and including August 6, 2015. This Ordinance shall expire and terminate at midnight on August 6, 2015, or alternatively, upon the effective date of the permanent zoning regulations governing formula businesses and formula restaurants in the CH zoning district, unless further extended by the Town Council pursuant to Government Code Section 65858 after a regularly noticed public hearing.

SECTION 2. Legislative 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 extension of an urgency ordinance pursuant to Government Code Section 65858. Properties in the Highway Commercial (CH) zoning district lack any controls over formula businesses and restaurants. The Town is currently in the process of preparing a formula business ordinance for the CH 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 the extension of this urgency ordinance, approval of new or expanded formula businesses and formula restaurants within the CH zoning district may be sought that would conflict with the use regulations or development standards ultimately adopted. Therefore, this Ordinance is necessary for the immediate preservation of the public peace, health, safety and welfare and its urgency is hereby declared.

The Town Council further finds that the Town requires additional time to study formula businesses and restaurants and to adopt a regulatory scheme for such businesses in the CH zoning district.

Based on the foregoing, the Town finds that there is a current and immediate threat to the public health, safety, or welfare from formula businesses and formula restaurants seeking to locate in the CH zoning district. Further, this Council hereby finds the approval of additional subdivisions, use permits, variances, building permits, or any other applicable entitlement for use which is required in order to comply with a zoning ordinance would result in that threat to public health, safety, or welfare. Accordingly, this Ordinance is hereby declared to be an urgency measure necessary for the immediate protection of the public health, safety, and welfare.

SECTION 3. CEQA. The Town of Fairfax finds that there is no possibility that the adoption and implementation of this Ordinance will have a significant effect on the environment. Thus, it is exempt from review under the California Environmental Quality Act ('CEQA,' as codified at Public Resources Code § 21000, et seq., and as further governed by the CEQA Guidelines found at 14 C.C.R. § 15000, et seq.) per 14 C.C.R. § 15061(b)(3), which applies where it can be seen

with certainty that there is no possibility that the activity in question may have a significant effect on the environment.

SECTION 4. Severability. If any section, subsection, subdivision, sentence, clause, phrase, or portion of this Ordinance 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 remaining portions of this Ordinance. The Town Council hereby declares that it would have adopted this Ordinance, and each 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 5. Certification; Publication. The Town Clerk shall certify to the adoption of this Ordinance and cause the same to be published in accordance with State law.

The foregoing ordinance was duly adopted at a regular meeting of the Fairfax Town Council, held in said Town on the 3rd day of September, 2014, by the following vote, to wit:

AYES:
NOES:
ABSENT:

David Weinsoff, Mayor

Attest:

Michele Gardner, Town Clerk

Date