



TOWN OF FAIRFAX

STAFF REPORT

April 1, 2015

TO: Mayor and Town Council

FROM: Garrett Toy, Town Manager *GT*

SUBJECT: Introduction and first reading by title only of an ordinance amending Chapter 17.036 of the Town Code, to update the procedure for directed referrals by the Town Council

RECOMMENDATION

Introduce and waive first reading and read by title only Ordinance No. ____, An Ordinance of the Town Council of the Town of Fairfax amending Chapter 17.036, to update the procedure for directed referrals by the Town Council.

DISCUSSION

The Town's Zoning Code, under Sections 17.036.090 through 17.036.130, establishes a process which permits the Town Council to assume jurisdiction on applications where action has been taken and is normally final at a lesser level of authority. This process is known as a "directed referral."

The proposed amendment primarily removes the requirement that a Councilmember identify the basis for the referral. This revision is recommended to remove any appearance of bias by the Councilmember in bringing the matter to the entire Council for consideration.

ATTACHMENTS

Proposed ordinance
Redline

ORDINANCE NO. ____

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF FAIRFAX
AMENDING TOWN CODE CHAPTER 17.036, TO UPDATE THE PROCEDURE FOR
DIRECTED REFERRALS BY THE TOWN COUNCIL

The Town Council of the Town of Fairfax does ordain as follows:

SECTION 1: Fairfax Town Code, Section 17.036.090, shall be revised to read as follows:

“§ 17.036.090 DIRECTED REFERRALS; PURPOSE.

(A) Sections 17.036.090 through 17.036.130 are established to permit the Town Council to assume jurisdiction on applications where action has been taken and is normally final at a lesser level of authority.

(B) These sections are intended to be used as an additional safeguard to avoid results inconsistent with the purposes of Title 17.”

SECTION 2: Fairfax Town Code, Section 17.036.100, shall be revised to read as follows:

“§ 17.036.100 DIRECTED REFERRALS; PROCEDURE.

In exercising the authority granted by §§ 17.036.090 through 17.036.130, a written directive, signed by at least one Council member, must be submitted to the Town Manager. The form shall be prescribed by the Town Clerk. No fee shall be required.”

SECTION 3: Fairfax Town Code, Section 17.036.120, shall be revised to read as follows:

“§ 17.036.120 DIRECTED REFERRALS; BASIS.

In directing that an action be referred to the Town Council, there shall be a presumption applied that the reason for the directive is that the action has significant and material effects on the quality of life within the Town. No inference of bias shall be presumed due to such a request for review being made by one or more Council members.”

SECTION 4: Fairfax Town Code, Section 17.036.130, shall be revised to read as follows:

“§ 17.036.130 DIRECTED REFERRALS; ACTION BY COUNCIL.

(A) Any action brought before the Town Council by the directed referral process is before the Council in a state of full review. The Council shall conduct a de novo hearing on the pending application. All alternatives available to the primary authority also are available to the Council such that approval, approval with conditions or denial action may be taken by the Council.

(B) Except as otherwise provided by law, a tie-vote of the Town Council shall be deemed a denial of the pending application.

SECTION 5: 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 any one or more sections, subsections, sentences, clauses, or phrases be declared invalid or unconstitutional.

SECTION 6: CEQA. Pursuant to 14 California Code of Regulations § 15061(b)(3), this Ordinance is categorically exempt from the California Environmental Quality Act because the Town Council of the Town of Fairfax finds that there is no possibility that the implementation of this Ordinance will have significant effects on the environment.

SECTION 7: This Ordinance shall be effective 30 days following its adoption by the Town Council. 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; 3. Bulletin Board, Fairfax Women's Club building.

The foregoing Ordinance was introduced at a regular meeting of the Town Council on the 1st day of April 2015, and duly adopted at the next regular meeting of the Town Council on the __ day of _____ 2015, by the following vote, to wit:

AYES:
NOES:
ABSENT:

Barbara Coler, Mayor

Attest:

Michele Gardner, Town Clerk

Date

PROPOSED UPDATES TO THE TOWN'S DIRECTED REFERRAL PROCEDURE

§ 17.036.090 DIRECTED REFERRALS; PURPOSE.

(A) Sections 17.036.090 through 17.036.130 are established to permit the Town Council to assume jurisdiction on applications where action has been taken and is normally final at a lesser level of authority.

(B) These sections are intended to be used as an additional safeguard to avoid results inconsistent with the purposes of Title 17. ~~in those instances where one or more Council member(s) find(s):~~

~~—(1) An action may have occurred in conflict with established Council policy; and/or~~

~~—(2) An action may have the potential for significant impact on a neighborhood and/or the community.~~

§ 17.036.100 DIRECTED REFERRALS; PROCEDURE.

In exercising the authority granted by §§ 17.036.090 through 17.036.130, a written directive, signed by at least one Council member, must be submitted to the Town Manager. The form shall be prescribed by the Town Clerk. No fee shall be required.

§ 17.036.110 DIRECTED REFERRALS; TIME LIMIT.

Directed referral action must be exercised within the established time limits for appeals for a particular action or, in the case where no time limit for appeal is specified, within ten working days of the action being referred.

§ 17.036.120 DIRECTED REFERRALS; BASIS.

In directing that an action be referred to the Town Council, there shall be a presumption applied that the reason for the directive is that the action has significant and material effects on the quality of life within the Town. No inference of bias shall be presumed due to such a request for review being made by one or more Council members.~~the directive, delivered to the Town Manager, must specify the basis for the referral.~~

§ 17.036.130 DIRECTED REFERRALS; ACTION BY COUNCIL.

(A) Any action brought before the Town Council by the directed referral process is before the Council in a state of full review. The Council may conduct a de novo hearing on the pending application ~~and, notwithstanding the provisions of § 17.036.120, the Council shall not be limited to a consideration of the grounds set forth in the directed referral.~~ All alternatives open to the primary authority are also opened to the Council such that approval, approval with conditions or denial action may be taken by the Council.

(B) Except as otherwise provided by law, a tie-vote of the Town Council; ~~which is not followed by a continuance of the matter for further consideration,~~ shall be deemed a denial of the pending application.

§ 17.036.140 DIRECTED REFERRAL TO TAKE PRECEDENCE OVER APPEAL.

Where an action is appealed and a directed review is called, the directed review procedure shall take precedence and the appeal shall be void; i.e., where a plan review action is appealed and a directed review is called the directed review shall be heard by the Town Council.