



TOWN OF FAIRFAX

STAFF REPORT

March 2, 2016

TO: Mayor and Town Council

FROM: Jim Moore, Director of Planning and Building Services
Garrett Toy, Town Manager *GT*

SUBJECT: Introduction and first reading by title only of an Ordinance of the Town of Fairfax Amending Town Code Chapter 17.132, Water Conservation, Reducing the Effective Flush Volumes for Newly Installed Toilets and for Toilets on Properties Involved in Sales or Transfers from 1.6 to 1.28 Gallons

RECOMMENDATION

Introduce and waive first reading and read by title only Ordinance No. 796, an Ordinance of the Town Council of the Town of Fairfax amending Town Code Chapter 17.132, Water Conservation, Reducing the Effective Flush Volumes for Newly Installed Toilets and for Toilets on Properties Involved in Sales or Transfers from 1.6 to 1.28 gallons.

BACKGROUND

Both the Marin Municipal Water District (MMWD) Code section 13.02.021(3) B.4 and the California Plumbing Code (CPC) Chapter 4, Section 403.2.1, require toilets that flush with 1.28 gallons or less. This represents a 20% savings from the Town's current maximum of 1.6 gallons (per Chapter 17.132).

The Town's resale inspection report currently indicates homes must have toilets that do not exceed 1.6 gallons per flush ("gpf"). In general, most homes meet that requirement. However, if this ordinance is adopted, staff anticipates most homes will not meet the 1.28 gpf requirement and most likely will require resale re-inspections to confirm the standard is met. The provision that toilets must meet the 1.6 gpf standard prior to sale or transfer of property was added in 2001 to the Town Code.

On October 15, 2015, the Planning Commission adopted Resolution No. 15-34 after holding a duly-noticed public hearing, recommending the Town Council adopt the Amendments to Town Code Chapter 17.132, Water Conservation.

DISCUSSION

On November 4, 2015, at a duly-noticed public hearing, the Town Council introduced Ordinance No. 796. The second reading and adoption of the Ordinance was scheduled for the December 2, 2015 Council meeting, but was pulled from the agenda in order to address concerns raised by the Marin Association of Realtors (MAR). The ordinance came back for the second reading at the Council's February 2, 2016 meeting. After discussion, the Council directed staff to revise the ordinance to further address MAR's concerns. Specifically, the Council requested that language

be added to state that the requirement is not a condition of the sale or transfer of property. At the meeting it was suggested that the Town of Tiburon has a similar provision. A review of Tiburon's ordinance indicates it does not have such a provision, but rather states the failure to meet the requirement does not invalidate a sale or transfer of property. Fairfax has a similar provision in its current Town Code. The revised Ordinance No. 796 includes the new language on page 1 under Section 2.

Staff has discussed this revision with MAR and it indicates the revision does not adequately address its concerns (see attached letter).

At the February Council meeting, staff also reported that MMWD's current policy is to require the replacement of a toilet that does not meet the 1.28 gpf requirements whenever a plumbing permit is pulled. In essence, MMWD has placed the burden on municipalities to enforce this standard. As a matter of practice, staff does require all plumbing permits that move, add, or replace their toilets (e.g., bathroom remodel) to meet the current 1.28 gpf standard. Otherwise, for any type of building permit (which includes plumbing) not associated with adding, moving, or replacing toilets, we require property owners to self-certify (on a form) that they are meeting the California Plumbing Code (CPC) requirements for water-conserving fixtures (e.g., toilets) and fittings. This approach is similar to how other communities address the requirement.

One option for the Council to consider to address MAR's concern is to only change the 1.6 gpf to 1.28 gpf requirement for Section 17.132.030 and not for Section 17.132.040 which affects the resale inspection report standard. The recommended action would become as follows:

"Introduce and waive first reading and read by title only Ordinance No. 796, an Ordinance of the Town of Fairfax amending Town Code Chapter 17.132, Water Conservation, reducing the effective flush volumes for newly installed toilets from 1.6 to 1.28 gallons"

In any case, should the Ordinance be introduced tonight, the ordinance would come back for a second reading and possible adoption at the Council's April meeting.

CEQA REVIEW

The adoption of Ordinance No. 796 is exempt from the California Environmental Quality Act per 14 C.C.R. § 15061(b)(3), and 14 C.C.R. § 15308.

FISCAL IMPACT

None

ATTACHMENTS

Ordinance No. 796 with redline changes
February 25, 2016 letter from Marina Association of Realtors

ORDINANCE NO. 796

**AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF FAIRFAX AMENDING
FAIRFAX TOWN CODE CHAPTER 17.132, WATER CONSERVATION:
REDUCING THE EFFECTIVE FLUSH VOLUMES FOR NEWLY INSTALLED TOILETS
AND
FOR TOILETS ON PROPERTIES INVOLVED IN SALE OR TRANSFERS
FROM 1.6 TO 1.28 GALLONS**

WHEREAS, the Town Council wishes to implement certain water conservation policies set by the Fairfax 2010-2030 General Plan; and

WHEREAS, the Marin Municipal Water District (MMWD) Code section 13.02.021(3) B.4 and the California Plumbing Code (CPC) Chapter 4, Section 403.2.1, both now require toilets that flush with 1.28 gallons or less; and

WHEREAS, the Town Council desires to amend the Town's Code to reflect these changes, a 20% savings from the Town's current maximum of 1.6 gallons (per Town Code § 17.132.040);

WHEREAS, this Ordinance is exempt from further review under the California Environmental Quality Act ('CEQA,' as codified at Public Resources Code §§ 15000, et seq., and as further governed by the CEQA Guidelines, found at 14 California Code of Regulations §§ 21000, et seq.) per 14 C.C.R. § 15061(b)(3), as it can be seen with certainty that adoption of this Ordinance has no possibility of having a significant effect on the environment, and 14 C.C.R. § 15308, as adoption of this Ordinance is an action taken by the Town of Fairfax, in its capacity as a regulatory agency, for the protection of natural resources.

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

SECTION 1: Section 17.132.030 of the Fairfax Town Code is hereby amended to read as follows:

“Whenever a toilet (water closet) is replaced, added, or moved under a plumbing permit issued by the town, the rated water usage on the new toilet shall not exceed 1.28 gallons per flush or as required by the CPC as amended and adopted by the Town Council.”

SECTION 2: Section 17.132.040 of the Town Code is hereby amended to read as follows:

“All structures in Fairfax, in all zoning districts, shall have all of their toilets (water closets) whose rated water usage exceeds 1.28 gallons per flush, replaced with water conserving toilets not exceeding 1.28 gallons per flush, or as required by the CPC as amended and adopted by the Town Council, no later than 60 days after prior to the sale or transfer of the property. The requirement to replace non-compliant toilets with water conserving toilets shall not delay the sale or transfer of property.”

SECTION 3: 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 2nd day of March 2016, and duly adopted at the next regular meeting of the Town Council on the __ day of _____ 2016, by the following vote, to wit:

AYES:
NOES:
ABSENT:
ABSTAIN:

Renée Goddard, Mayor

Attest:

Michele Gardner, Town Clerk

Date

MARIN
association of
REALTORS®

February 25, 2016

Honorable Renee Goddard, Mayor
Town of Fairfax
142 Bolinas Rd.
Fairfax, CA 94930

RE: TOILET RETROFIT AT POINT-OF-SALE

Dear Mayor Goddard:

On behalf of the 1,400 members of the Marin Association of REALTORS® (MAR), I am writing today to express our **OPPOSITION** to the Town's continued pursuit of adding a toilet retrofit requirement at point-of-sale. We are already on record supporting staff recommendation to "only change the 1.6 gpf to 1.28 gpf requirement of Section 17.132.030 and not for Section 17.132.040 which affects the resale inspection report standard." Moreover, MAR views the requirements of the Marin Municipal Water District (MMWD) and the California Plumbing Code (CPC) as sufficient in addressing this issue.

Placing an unfunded mandate on the residents of Fairfax is the least effective way to address this issue. Rather, the Town should educate its residents on the need for 1.28 gpf toilets, and offer grants to make the switch. We submit that if the Town is truly concerned about changing out toilets (many of which may have just been changed out to the 1.6 gpf) then a proactive education campaign is more appropriate than waiting for someone to sell their home. This will certainly take less time than the 49 years it would take for the housing stock to turnover in Fairfax.

The Council may even take this idea one step further by creating a "Welcome Package" for new citizens. Introduce yourselves to a new citizen with the offer of a grant to replace their toilet - not a Notice of Repair which, Madam Mayor, I think you can agree, is the least friendly way to welcome someone to Fairfax.

MAR is ready, willing, and able to be your partner in educating the new homeowners of Fairfax about the grant program.

ATTACHMENT 2

In closing, we urge the Council to rely on the standards set forth by the entities that directly oversee water conservation to inform future decisions. We ask that the onerous requirements proposed be abandoned and a proactive, commonsense approach be taken to address the issue.

Sincerely,

A handwritten signature in black ink, appearing to be 'AF', written in a cursive style.

Andy Fegley
Chief Executive Officer