



TOWN OF FAIRFAX

STAFF REPORT

February 1, 2017

TO: Honorable Mayor and Town Council

FROM: Garrett Toy, Town Manager *GT*
Janet Coleson, Town Attorney

SUBJECT: Consideration of an Ordinance revising the Planned Development District Ordinance (Town Code Chapter 17.112) to amend the process for three (3) sites identified in the adopted Housing Element

RECOMMENDATION

- 1) Conduct a public hearing
- 2) Introduce and waive the first reading of the Ordinance amending Fairfax Town Code Chapter 17.112

OVERVIEW

The Town zoning ordinance addresses the process by which Planned Development Districts ('PDDs') are formed (Fairfax Town Code Chapter 17.112). The PDD ordinance has its origins in the Town Code in place prior to 1973 and has been amended in bits and pieces since that time. The proposed ordinance amendment before the Council tonight looks to revise the process that certain sites (i.e., opportunity sites identified in the adopted in the 2015 Housing Element) would use to receive approval to be rezoned to PDD and to update the ordinance generally as it applies to any applicant. No action taken by the Council tonight can or will result in the rezoning of any site in town; the proposed ordinance only addresses the process by which sites can seek to be rezoned to PDD.

BACKGROUND

In order to be rezoned to PDD in Fairfax, an applicant currently faces a three-step process, whereby approval must be obtained for a preliminary development plan (which greenlights conceptual use and intensity), a master development plan (which refines the project vision by fleshing out and refining the project's uses and development standards), and a precise development plan (which regulates development of project phases). This multi-step process, which involves multiple appearances before the Planning Commission and Town Council, can be onerous, particularly for developers of affordable housing.

The Town has identified particular sites in town that could be rezoned to PDD and could accommodate affordable housing in its 2015 Housing Element Update. (Specifically, these are identified as Opportunity Sites No. 1, 2, and 4 and are referred to as 'Qualifying Sites' in the ordinance.) In order to lessen the burden of rezoning these Qualifying Sites to PDD and to facilitate the development of affordable housing on them, the Town's General Plan includes information for these sites that addresses the matters that would otherwise be covered by a preliminary development plan (by dictating permitted and/or prohibited uses and applicable

densities). It also includes direction to 'amend[] the PDD zone standards for specified opportunity sites' by, among other things, reducing the minimum acreage necessary to qualify for PDD zoning and addressing uses for these sites. (See Program H-4.1.1.5 in the 2015 Housing Element Update.)

On January 19, 2017, the Planning Commission conducted a public hearing at which it considered proposed revisions to the Town's PDD ordinance. After receiving a presentation from the staff and hearing from the public, the Planning Commission opted not to recommend the form of ordinance attached to the draft Resolution that accompanied their packet. Rather, they chose to carefully review and consider the entire PDD ordinance and make updates throughout the ordinance that they found necessary to implement the General Plan streamlining mandates identified above, as well as address existing errors or outdated requirements in the ordinance generally.

The Planning Commission's January 19th staff report is included as Attachment A in order to provide Council with further context and information on the history of this ordinance revision.

Generally, the proposed ordinance before the Council tonight would:

- Only allow a streamlined review process for Qualifying Sites, which are those Opportunity Sites in the Housing Element that are directed to be rezoned to PDD in the Housing Element. Specifically, these Qualifying Sites are: 1) 2626 Sir Francis Drake (Christ Lutheran Church site)- 2 acre site for the 100% affordable senior housing project, 2) 10 Olema Road- 1.24 acres, and 3) School Street Plaza- a one (1) acre portion of the site.
- Implement Housing Element Program 2.1.1.1, which allows for the development of this PDD at a site that is less than five acres (which is the minimum otherwise required for development of a PDD by the existing Code language).
- Allow for the Town Council to set development standards particular to the PDD at issue, rather than simply imposing the standards applicable to the zoning district most similar in nature to the project.
- Acknowledge that the density of a given PDD may be set by the general plan (not set by the Planning Commission).
- Streamline the application submission and review process for Qualifying Sites, such that the three-step preliminary development plan, master development plan, and precise development plan process is replaced by the submission of an application that is heard by the Planning Commission and decided by the Town Council. This is a process followed in many other communities and still provides the public with the opportunity to participate in the public hearings held to consider the project.
- Make clean up changes to the ordinance that the Planning Commission felt were useful and/or necessary by virtue of changes in law or staff practice. These changes are explained in the comments found in the redlined version of the proposed ordinance

attached as Attachment B.

Amending the PDD provisions to include a streamlined process for Qualifying Sites will not result in PDD rezoning for any particular project, including the proposed Victory Village project. That project will still have to go through the PDD and rezoning process, and seek to have its own unique PDD ordinance approved and adopted.

In addition, the amendments in the proposed ordinance do not relieve Qualifying Sites of providing the substantive information required of any other PDD-rezoning applicant. It simply compresses the review and consideration of applications for Qualifying Sites, thus giving the public and decision-makers a clear view of the entirety of the proposed project from the date of the application's initial submission, instead of in phases over the course of a three-step review process currently in place.

CEQA

The ordinance revision to Chapter 17.112 is not a project requiring review under CEQA. CEQA requires environmental review only of 'projects' as defined in CEQA, and CEQA Guidelines § 15378 provides that 'projects' are only those actions which have the 'potential for resulting in either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment.' Since, pursuant to § 15378(b)(2), the ordinance revision consists of procedural changes which will not have any potential for resulting in physical direct change in the environment or a reasonably foreseeable indirect physical change in the environment, the ordinance revision is not a 'project' subject to CEQA review. Any project proposing to use the revised ordinance procedures will be subject to its own review under CEQA. (*See Northwood Homes Inc. v. Town of Moraga* (1989) 216 Cal.App.3d 1197.)

FISCAL IMPACT

The proposed ordinance contemplates that applicants who seek to rezone a Qualifying Site to PDD will not be required to seek or pay the fee associated with review and processing of a preliminary development plan. Applicants will still be expected to pay a fee for the concurrent review of their proposed master development plan and precise development plan.

ATTACHMENTS

- A – January 19, 2017, Planning Commission packet
- B - Redlined version of PDD code with Attorney comments
- C - Draft Ordinance No. _____

**TOWN OF FAIRFAX
STAFF REPORT
Department of Planning and Building Services**

TO: Fairfax Planning Commission
DATE: January 19, 2017
FROM: Garrett Toy, Town Manager
Linda Neal, Principal Planner
LOCATION: Town wide
ZONING: All parcels identified as Housing Opportunity sites in the Housing Element and slated to be rezoned to PDD
ACTION: Recommend the Town Council Approve a Zoning Ordinance Text Amendment
APPLICANT: Town of Fairfax
CEQA STATUS: Addendum to Mitigated Negative Declaration (approved and adopted by Town Council Resolution No. 15-13 on May 27, 2015). Alternatively, the ordinance does not rise to the level of a 'project' as defined under CEQA, per CEQA Guidelines § 15378

OVERVIEW

The Town zoning ordinance includes a chapter devoted to the formation of Planned Development Districts (Fairfax Town Code 17.112). The process to create a new Planned Development District ('PDD') currently requires multiple visits to the Planning Commission and Town Council. In order to incentivize the production of certain types of affordable housing, the Town has adopted, in its General Plan, direction mandating that the PDD process be simplified for a very small subset of housing developments (currently, three sites). Staff has prepared an amendment to the existing PDD ordinance that would only apply to the three (3) specified opportunity project sites identified in the General Plan for affordable and/or workforce housing and presents it to the Planning Commission for its review and consideration. Staff asks the Commission to recommend that the Town Council adopt the ordinance amendment.

BACKGROUND

At its last meeting in December 2016, the Planning Commission held a public hearing to consider the Victory Village project, which proposes to build some 54 units of affordable senior housing at 2626 Sir Francis Drake Boulevard, a location that has been identified as Opportunity Site #1 in the Town's Housing Element. The Victory Village project includes the implementation of certain actions that have long been planned in Town land use planning documents, including the revision of the Town's Planned Development District ordinance to streamline the PDD process for certain housing sites.

At the December 2016 meeting, some members of the public expressed concern at the notion of the Victory Village project being considered in conjunction with the proposed changes to the PDD ordinance. Some Commissioners likewise had questions regarding the timing of bringing both actions forward simultaneously. Though this is legally acceptable, Town staff has heard the public's concerns and has thus elected to bring this PDD ordinance amendment to the Planning

Commission for its review and consideration in advance of consideration of the Victory Village project.

CONTEXT

Fairfax, like countless other communities across the nation, has a zoning ordinance that divides the town into different zoning districts and sets different permissible uses and development standards for each district. In many communities, including Fairfax, zoning districts are established that reflect a principal use for a given zone – e.g., residential, industrial, commercial – and are then refined to conditionally allow compatible but fundamentally different uses. For example, the RS-6 zone permits single family residences as a principal use and private stables and corrals as conditionally permitted uses.

Planned development districts are different than other zoning districts. The term refers to both the zoning classification ('PDD,' rather than, say 'RS-6'), as well as a method of development. Planned development districts, as a zoning classification, often allow a variety of uses, such as residential and commercial, for example, to co-exist within a single zoning district. While all projects seeking to develop as a PDD go through the PDD process, each project will ultimately have its own unique PDD zoning ordinance crafted to establish its permitted uses and development standards. Thus, while all parcels zoned RS-6 are governed by the same permitted uses and development standards, each separate PDD will have its own unique PDD ordinance setting forth its project-specific uses and development standards. This allows for the development of project-specific zoning regulations that reflect the balance struck between the mix of uses within the PDD, as well as the PDD's relationship to its neighbors and its place within the community.

Currently, any project seeking to develop as a PDD in Fairfax must develop a preliminary development plan, a master development plan, and a precise development plan. The master development plan is reviewed by the Planning Commission and recommended for approval to the Town Council, which has final approval authority. Then, within a year of approval of the master development plan, the applicant must submit a precise development plan to the Planning Commission, who then reviews and approves the master development plan to the Town Council for each unit or increment of the PDD.

The item before the Planning Commission tonight is a proposed amendment to the PDD ordinance that would allow a streamlined approval process only for those PDDs that are (1) identified as Opportunity Sites within the Housing Element, and that (2) are also slated for rezoning to PDD. Of the hundreds of parcels within the town of Fairfax, the sites that would qualify for this streamlined PDD process currently consist of three sites: 2626 Sir Francis Drake, 10 Olema, and the School Street plaza, per the 2015 Housing Element Update. It should be noted that the Town is also considering splitting the School Street site into PDD zoning on the back one acre where the 9 units could be accommodated and approximately .8 acres of CC zoning fronting Broadway.

HISTORY

In 2008, the Fairfax Town Council established the Affordable Housing Committee to advise the Town Council on matters relating to affordable housing in Fairfax. The committee, made up of four community members and two members of the Town Council, was tasked with identifying suitable sites in Town for development. The Opportunity Sites outlined in the "Housing Opportunities" section of the 2015 Housing Element are the areas the Town designated as capable of hosting affordable housing. Three of these opportunity sites are slated to be rezoned

to PDDs to allow for their development in ways that are not accommodated by Fairfax's existing zoning regulations.

Several General Plan Land Use Element and Housing Element policies and programs address the development of the opportunity sites, including:

- *Policy LU-8.1.1: The Town of Fairfax shall facilitate the development of key housing opportunity sites to provide for the development of affordable housing as identified in the Housing Element.*
- *Program LU-8.1.1.3: Change the zoning designation for [Opportunity Site #2] 10 Olema (the former Mandarin Gardens restaurant site) from Limited Commercial to Planned Development District.*
- *Program LU-8.1.1.4: Change the zoning designation for [Opportunity Site #1] 2626 Sir Francis Drake (Christ Lutheran Church) from Residential UR-7 to Planned Development District.*
- *Program LU-8.1.1.5: Change the zoning designation for [Opportunity Site #4] the School Street Plaza area from Limited Commercial to Planned Development District; thereby making it possible to accommodate a mix of uses, including housing and/or a new school at the site.*
- *Program H-2.1.1.1: Rezone two acres of the Christ Lutheran Church property (upon approval of subdivision of the site) at 2626 Sir Francis Drake Boulevard from UR 7 du/acre (UR-7) to PDD and thereby make it possible to accommodate a minimum of 40 units and a maximum of 41 units of senior housing. The maximum does not apply to any units granted under the State Density Bonus Law. Program H-4.1.1.5 proposes to revise the PDD district standards to require residential-only development at this Opportunity Site at a minimum of 20 units per acre and to put specific development standards in place. No discretionary review besides confirming compliance with objective design standards will be allowed on the site following rezoning. In addition, the standards will be revised to reduce the minimum acreage for this PDD parcel from 5 acres to 1 acre. If the rezoning and General Plan Amendment happens as a result of a submittal of a development application for the Christ Lutheran Church site the Town will cover the costs of the rezone and General Plan Amendment.*
- *Program H-2.1.1.2: Rezone 10 Olema Road, the old "Mandarin Garden" restaurant site, from CL to PDD and thereby make it possible to accommodate a minimum of 22 units and a maximum of 23 units of workforce housing. The maximum does not apply to any units granted under the State Density Bonus Law. Program H-4.1.1.5 proposes to revise the PDD district standards to require residential only development in the PDD zone on two specific Opportunity Sites (e.g., this Site and two acres of the Christ Lutheran Church Site at 2626 Sir Francis Drake Boulevard only) at a minimum of 20 units per acre and to put specific development standards in place. No discretionary review besides confirming compliance with objective design standards will be allowed on the site following rezoning. In addition, the standards will be revised to reduce the minimum acreage for a PDD parcel from 5 acres to 1 acre.*
- *Program H-4.1.1.1: Rezone School Street Plaza from CL to PDD, thereby making it possible to accommodate a minimum of 9 units with a maximum of 10 units of housing. The maximum does not apply to any units granted under the State Density Bonus Law. Please note: The Town is also considering splitting the site into PDD zoning on the back one acre where the 9 units could be accommodated and approximately .8 acres of CC zoning fronting Broadway.*

- *Program H-4.1.1.5: Amend the PDD Zone Standards for Specified Opportunity Sites. Amend Chapter 17.112 of the Fairfax Town Code to:*
 - *Reduce the minimum acreage for a PDD from 5 acres to 1 acre for the Lutheran Church and 10 Olema Road opportunity sites.*
 - *Specify that the 10 Olema Road opportunity site and a maximum of 2 acres on the Christ Lutheran Church opportunity site shall be reserved for residential development only at a minimum of 20 units and a maximum of 21 units per acre. The maximum does not apply to any units granted under the State Density Bonus Law. This change may also require revisions to other sections of Chapter 17.112 including the purpose and residential density policy sections.*

Collectively, these policies and programs provide direction to make modifications to the PDD zoning ordinance found at Chapter 17.112 of the Town Code. The proposed changes would only apply to the housing opportunity sites that are slated to be rezoned PDD, and thus affect only a tiny fraction of the parcels in town.

Generally, the proposed ordinance changes would:

- Only apply to requested PDDs that are also identified as Opportunity Sites in the Housing Element.
- Implement Housing Element Program 2.1.1.1, which allows for the development of this PDD at a site that is less than five acres (which is the minimum otherwise required for development of a PDD by the existing Code language).
- Allow for the Town to set development standards particular to the PDD at issue, rather than simply imposing the standards applicable to the zoning district most similar in nature to the project.
- Acknowledge that the density of a given PDD will be set by the general plan (not set by the Planning Commission).
- Streamline the application submission and review process, such that the three-step preliminary development plan, master development plan, and precise development plan process is replaced by the submission of an application that is heard by the Planning Commission and decided by the Town Council. This is a process followed in many other communities and still provides the public with the opportunity to participate in the public hearings held to consider the project.

Amending the PDD provisions to include a streamlined process for these sites will not result in a PDD approval for any particular project, including the proposed Victory Village project. That project will still have to go through the PDD process and seek to have its own unique PDD ordinance approved and adopted.

CEQA

By adoption of Resolution No. 15-13 on May 27, 2015, the Town Council approved and adopted an addendum to the Mitigated Negative Declaration that was adopted in conjunction with the 2012 adoption of the General Plan, which was completed in compliance with the California Environmental Quality Act ('CEQA,' 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.). The addendum fully analyzed any environmental impacts of this proposed zoning ordinance amendment. Alternatively, the ordinance revision to Chapter 17.112 is not a project requiring review under CEQA. CEQA requires environmental review only of 'projects' as defined in CEQA, and CEQA Guidelines § 15378 provides that 'projects' are only those actions which have the 'potential for resulting in either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment.' Since, pursuant to § 15378(b)(2) the ordinance revision consists only of the implementation of policies and procedures already adopted in the General Plan and will not result in any direct or indirect physical change in the environment, the ordinance revision is not a 'project' subject to CEQA review. (See *Northwood Homes Inc. v. Town of Moraga* (1989) 216 Cal.App.3d 1197.)

RECOMMENDATION

1. Open the Public Hearing and take testimony.
2. Close the Public Hearing.
3. Adopt Resolution No. 17-01 recommending the Town Council adopt an Ordinance of the Town Council of the Town of Fairfax Amending Fairfax Code Chapter 17.112.

ATTACHMENTS

1. Planning Commission Resolution No. 17-01 Recommending Town Council Adoption of Ordinance No. _____, Amending the Fairfax Town Code Chapter 17.112.

RESOLUTION NO. 17-_____

**A RESOLUTION OF THE PLANNING COMMISSION OF THE TOWN OF FAIRFAX
RECOMMENDING THE TOWN COUNCIL ADOPT ORDINANCE NO. _____
AMENDING FAIRFAX TOWN CODE CHAPTER 17.112
(‘PLANNED DEVELOPMENT DISTRICT ZONE’)**

WHEREAS, on April 4, 2012, the Town Council of the Town of Fairfax adopted the 2010-2030 Fairfax General Plan (the ‘General Plan’); and

WHEREAS, the Land Use Element of the General Plan provides the following direction:

- Program LU-8.1.1.3: “[c]hange the zoning designation for [Opportunity Site #2] 10 Olema (the former Mandarin Gardens restaurant site) from Limited Commercial to Planned Development District.”
- Program LU-8.1.1.4: “[c]hange the zoning designation for [Opportunity Site #1] 2626 Sir Francis Drake (Christ Lutheran Church) from Residential UR-7 to Planned Development District.”
- Program LU-8.1.1.5: “[c]hange the zoning designation for [Opportunity Site #4] the School Street Plaza area from Limited Commercial to Planned Development District; thereby making it possible to accommodate a mix of uses, including housing and/or a new school at the site.”

WHEREAS, in May 2015, the Town Council of the Town of Fairfax adopted an updated Housing Element to the General Plan, which Housing Element provides the following direction:

- Program H-2.1.1.1: “[r]ezone two acres of the Christ Lutheran Church property (upon approval of subdivision of the site) at 2626 Sir Francis Drake Boulevard from UR 7 du/acre (UR-7) to PDD and thereby make it possible to accommodate a minimum of 40 units and a maximum of 41 units of senior housing. The maximum does not apply to any units granted under the State Density Bonus Law. Program H-4.1.1.5 proposes to revise the PDD district standards to require residential-only development at this Opportunity Site at a minimum of 20 units per acre and to put specific development standards in place. No discretionary review besides confirming compliance with objective design standards will be allowed on the site following rezoning. In addition, the standards will be revised to reduce the minimum acreage for this PDD parcel from 5 acres to 1 acre. If the rezoning and General Plan Amendment happens as a result of a

submission of a development application for the Christ Lutheran Church site the Town will cover the costs of the rezone and General Plan Amendment.

- Program H-2.1.1.2: “[r]ezone 10 Olema Road, the old “Mandarin Garden” restaurant site, from CL to PDD and thereby make it possible to accommodate a minimum of 22 units and a maximum of 23 units of workforce housing. The maximum does not apply to any units granted under the State Density Bonus Law. Program H-4.1.1.5 proposes to revise the PDD district standards to require residential only development in the PDD zone on two specific Opportunity Sites (e.g., this Site and two acres of the Christ Lutheran Church Site at 2626 Sir Francis Drake Boulevard only) at a minimum of 20 units per acre and to put specific development standards in place. No discretionary review besides confirming compliance with objective design standards will be allowed on the site following rezoning. In addition, the standards will be revised to reduce the minimum acreage for a PDD parcel from 5 acres to 1 acre.”
- Program H-4.1.1.1: “[r]ezone School Street Plaza from CL to PDD, thereby making it possible to accommodate a minimum of 9 units with a maximum of 10 units of housing. The maximum does not apply to any units granted under the State Density Bonus Law. Please note: The Town is also considering splitting the site into PDD zoning on the back one acre where the 9 units could be accommodated and approximately .8 acres of CC zoning fronting Broadway.”
- Program H-4.1.1.5: “[a]mend the PDD Zone Standards for Specified Opportunity Sites. Amend Chapter 17.112 of the Fairfax Town Code to:
 - Reduce the minimum acreage for a PDD from 5 acres to 1 acre for the Lutheran Church and 10 Olema Road opportunity sites.
 - Specify that the 10 Olema Road opportunity site and a maximum of 2 acres on the Christ Lutheran Church opportunity site shall be reserved for residential development only at a minimum of 20 units and a maximum of 21 units per acre. The maximum does not apply to any units granted under the State Density Bonus Law. This change may also require revisions to other sections of Chapter 17.112 including the purpose and residential density policy sections.

WHEREAS, California Government Code Section 65860(c) requires towns and cities to amend their zoning ordinances to conform to their respective general plans; and

WHEREAS, the Planning Department has prepared a proposed ordinance (attached hereto and incorporated herein as **Exhibit 1**) to amend the Town’s zoning ordinance, which is found at Title 17 of the Fairfax Town Code, in order to implement

the General Plan directives set forth above, as well as to make modifications to Chapter 17.112; and

WHEREAS, the ordinance revision set forth herein is not a project requiring review under CEQA. CEQA requires environmental review only of 'projects' as defined in CEQA, and CEQA Guidelines § 15378 provides that 'projects' are only those actions which have the 'potential for resulting in either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment.' Since, pursuant to § 15378(b)(2), the ordinance revision consists of procedural changes which will not have any potential for resulting in physical direct change in the environment or a reasonably foreseeable indirect physical change in the environment, the ordinance revision is not a 'project' subject to CEQA review. Any project proposing to use the revised ordinance procedures will be subject to its own review under CEQA. (*See Northwood Homes Inc. v. Town of Moraga* (1989) 216 Cal.App.3d 1197); and

WHEREAS, the Planning Commission has conducted a duly-noticed public hearing to consider the draft ordinance, hear the presentation of a staff report, and receive public comment on the matter.

NOW, THEREFORE, BE IT RESOLVED by the Planning Commission of the Town of Fairfax as follows:

SECTION 1. The recitals set forth above are adopted as further findings of the Planning Commission.

SECTION 2. The Planning Commission has reviewed the draft ordinance attached hereto as **Exhibit 1** and finds that it is consistent with the Town General Plan policies and programs set forth above, as it amends the Planned Development District ordinance to allow a PDD approval process for housing opportunity sites of less than five acres, implements the densities of these sites as they are established in the General Plan, otherwise streamlines the PDD approval process for housing opportunity sites in order to remove governmental constraints to their development, and makes such other amendments as are necessary to update the ordinance generally, which updates are consistent with the General Plan.

SECTION 3. The Planning Commission hereby recommends that the Town Council adopt **Exhibit 1** hereto in order to amend Chapter 17.112 of the Fairfax Town Code ('Planned Development District Zone').

The forgoing Resolution was duly passed and adopted at a regular meeting of the Planning Commission of the Town of Fairfax held in said Town on the ____th day of _____ 2017 by the following vote, to wit:

AYES:
NOES:

ABSENT:
ABSTAIN:

_____, Chair

Attest:

Linda Neal, Secretary

Exhibit 1

Draft Ordinance No. _____

ORDINANCE NO. _____

**AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF FAIRFAX
AMENDING FAIRFAX TOWN CODE CHAPTER 17.112**

WHEREAS, the Town of Fairfax has duly adopted a town zoning ordinance, found at Title 17 of the Fairfax Town Code; and

WHEREAS, among other things, Title 17 of the Fairfax Town Code identifies the zoning designations applicable to parcels within the Town and sets forth the standards and processes applicable to the development of parcels within the Planned Development district; and

WHEREAS, all towns and cities within the State of California are required by law to adopt a general plan; and

WHEREAS, in 2012, the Town of Fairfax adopted the 2010-2030 Fairfax General Plan (the 'General Plan'), which has been updated through the adoption of the 2015-2023 Housing Element Update (the 'Housing Element'); and

WHEREAS, Program LU-8.1.1.3 of the Land Use Element directs the Town to "[c]hange the zoning designation for [Opportunity Site #2] 10 Olema (the former Mandarin Gardens restaurant site) from Limited Commercial to Planned Development District," and

WHEREAS, Program LU-8.1.1.4 of the Land Use Element directs the Town to "[c]hange the zoning designation for [Opportunity Site #1] 2626 Sir Francis Drake (Christ Lutheran Church) from Residential UR-7 to Planned Development District;" and

WHEREAS, Program LU-8.1.1.5 of the Land Use Element directs the Town to "[c]hange the zoning designation for [Opportunity Site #4] the School Street Plaza area from Limited Commercial to Planned Development District; thereby making it possible to accommodate a mix of uses, including housing and/or a new school at the site;" and

WHEREAS, Program H-2.1.1.1 of the Housing Element directs:

Rezone two acres of the Christ Lutheran Church property (upon approval of subdivision of the site) at 2626 Sir Francis Drake Boulevard from UR 7 du/acre (UR-7) to PDD and thereby make it possible to accommodate a minimum of 40 units and a maximum of 41 units of senior housing. The maximum does not apply to any units granted under the State Density Bonus Law. Program H-4.1.1.5 proposes to revise the PDD district standards to require residential-only development at this Opportunity Site at a minimum of 20 units per acre and to put specific development standards in place. No discretionary review besides confirming

compliance with objective design standards will be allowed on the site following rezoning. In addition, the standards will be revised to reduce the minimum acreage for this PDD parcel from 5 acres to 1 acre. If the rezoning and General Plan Amendment happens as a result of a submittal of a development application for the Christ Lutheran Church site the Town will cover the costs of the rezone and General Plan Amendment.

WHEREAS, Program H-2.1.1.2 of the Housing Element directs:

Rezone 10 Olema Road, the old "Mandarin Garden" restaurant site, from CL to PDD and thereby make it possible to accommodate a minimum of 22 units and a maximum of 23 units of workforce housing. The maximum does not apply to any units granted under the State Density Bonus Law. Program H-4.1.1.5 proposes to revise the PDD district standards to require residential only development in the PDD zone on two specific Opportunity Sites (e.g., this Site and two acres of the Christ Lutheran Church Site at 2626 Sir Francis Drake Boulevard only) at a minimum of 20 units per acre and to put specific development standards in place. No discretionary review besides confirming compliance with objective design standards will be allowed on the site following rezoning. In addition, the standards will be revised to reduce the minimum acreage for a PDD parcel from 5 acres to 1 acre.

WHEREAS, Program H-4.1.1.1 of the Housing Element directs:

Rezone School Street Plaza from CL to PDD, thereby making it possible to accommodate a minimum of 9 units with a maximum of 10 units of housing. The maximum does not apply to any units granted under the State Density Bonus Law. Please note: The Town is also considering splitting the site into PDD zoning on the back one acre where the 9 units could be accommodated and approximately .8 acres of CC zoning fronting Broadway.

WHEREAS, Program H-4.1.1.5 of the Housing Element directs:

Amend the PDD Zone Standards for Specified Opportunity Sites. Amend Chapter 17.112 of the Fairfax Town Code to:

- Reduce the minimum acreage for a PDD from 5 acres to 1 acre for the Lutheran Church and 10 Olema Road opportunity sites.
- Specify that the 10 Olema Road opportunity site and a maximum of 2 acres on the Christ Lutheran Church opportunity site shall be reserved for residential development only at a minimum of 20 units and a maximum of 21 units per acre. The maximum does not apply to any units granted under the State Density Bonus Law. This change may

also require revisions to other sections of Chapter 17.112 including the purpose and residential density policy sections.

WHEREAS, the Housing Element was subject to review under the California Environmental Quality Act ("CEQA") (Pub. Res. Code, § 21000 et seq.) and the State CEQA Guidelines (Cal. Code Regs, tit. 14 § 15000 et seq.), through the preparation and adoption of an addendum to the Mitigated Negative Declaration that was adopted in conjunction with the 2012 adoption of the General Plan (Town Council Resolution No. 15-13); and

WHEREAS, California Government Code Section 65860(c) requires towns and cities to amend their zoning ordinances to conform to their respective general plans; and

WHEREAS, the Planning Department has prepared this amendment to the Town's zoning ordinance, found at Title 17 of the Fairfax Town Code, in order to implement the General Plan dictates set forth above; and

WHEREAS, on January 19, 2017, the Planning Commission held a duly noticed public hearing to receive public input on and consider the Project, including the zoning ordinance amendments set forth herein, and all persons wishing to testify were heard; and

WHEREAS, by adoption of Resolution No. ____, the Planning Commission recommended the Town Council approve the zoning ordinance amendments set forth herein; and

WHEREAS, all other legal prerequisites to the adoption of this Ordinance have occurred.

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

SECTION 1. Fairfax Town Code Title 17 ('Zoning'), Chapter 112 ('PDD Planned Development District Zone'), Section 165 ('Planned Developments on Opportunity Sites'), is hereby added to provide as follows:

"§ 17.112.165 PLANNED DEVELOPMENTS ON OPPORTUNITY SITES.

(A) Notwithstanding Sections 17.112.020-17.112.160, any site identified as an Opportunity Site and directed to be zoned PDD by the Housing Element of the Town of Fairfax ("Qualifying Sites") shall be subject to the approval processes and substantive standards of this Section 17.112.165.

(B) General Requirements. Any Qualifying Site may be rezoned PDD, provided it is at least one acre in size, and developed as a Planned Development pursuant to this Section 17.112.165.

(C) General Standards. The following provisions shall apply in a planned development district on a Qualifying Site, together with all other applicable provisions of the town zoning and subdivision ordinances. Where conflict in regulation occurs, the regulations specified in this chapter or on a development plan approved pursuant to this chapter shall apply:

- (1) A planned development district shall be established by an ordinance adopted by the Town Council after a recommendation by the Planning Commission, as set forth herein. Whenever a planned development district has been established, its boundary shall be indicated on the Zoning Map of the town.
- (2) Standards for area, coverage, light and air orientation, site planning, density, yard requirements, open spaces, parking and screening shall be governed by the standards of the residential, commercial or industrial zoning district(s) most similar in nature and function to the proposed planned development district (PDD) use(s), with such deviations as may be approved by the Town Council. All standards adopted shall conform to the Fairfax General Plan.
- (3) All electrical and telephone facilities, fire alarm conduits, street light wiring and other wiring conduits or facilities shall be placed underground by the developer. Electric and telephone facilities shall be installed in accordance with standard specifications of the serving utilities.
- (4) Principally permitted, conditionally permitted, and accessory uses allowed at Qualifying Sites subject to this Section 17.112.165 shall conform to any specific requirements set forth in the General Plan for the Opportunity Site and must be compatible with the site and surrounding uses.
 - (a) Within any planned development district, no proposed use or structure that constitutes a formula business or formula restaurant, as those terms are defined in § 17.040.210, shall be approved or allowed to operate without first obtaining a use permit in compliance with Article II of Chapter 17.040.
- (5) Standards for public improvements shall be governed by applicable ordinances and laws of the town.

(D) Density. Density shall be as established by the General Plan.

(E) Application.

- (1) An applicant seeking approval of a planned development plan shall submit an application which shall be subject to review by the Planning Commission.

- (a) Upon receipt of the planned development plan in proper form, the Planning Commission, after giving notice pursuant to the provisions of § 17.004.070 of this title, shall hold a public hearing thereon. After the hearing, and after examining the plan for conformity to all applicable criteria and standards, the Planning Commission may recommend approval subject to specified modifications and conditions.
 - (b) Before recommending approval, the Planning Commission shall make the findings set forth in § 17.112.090 of this chapter.
 - (c) If the Planning Commission finds the proposed plan of development does not meet all applicable criteria and standards, it shall recommend denial of the application, giving its reasons therefor. The Planning Commission may permit the applicant to revise and resubmit the plan within 60 days following its action recommending denial.
- (2) The Town Council shall, after giving of public notice and the holding of a hearing as provided in § 17.112.080 of this chapter, approve or deny the planned development plan.
- (a) Approval of the planned development plan shall be by ordinance.
 - (b) Before approving any proposed planned development plan, the Town Council shall make the findings set forth in § 17.112.090 of this chapter. If the Town Council finds the proposed plan of development does not meet all applicable criteria and standards, it shall deny the application, giving its reasons therefor.
 - (c) Approval of the planned development plan shall include, but not be limited to the following stipulations.
 - (1) The development, maintenance and use of the property included in the planned development plan shall be carried on in conformance with the approved plan drawings and documents; the developer shall substantially adhere to the state of development schedule submitted as part of the planned development plan.
 - (2) Approval of the planned development plan shall not be interpreted as waiving compliance with other provisions of this code.
 - (3) The approved plan development plan drawings and documents shall be filed in the office of the Town Clerk after written authorization for the filing has been secured from the owner or owners of the lands in question and prior to the second reading of the ordinance establishing the planned development district. The authorization shall be construed to constitute

the owner's acceptance of the provisions set forth in the planned development plan ordinance.

- (4) No land shall be used or developed, and no building shall be constructed, maintained or used other than for the purpose specified on the approved master development plan drawings and documents, as filed.

SECTION 2. The Director of Planning and Building Services is hereby directed to make changes to the Zoning Map of the Town of Fairfax as amended by this ordinance and as demonstrated in Exhibit 'A' attached hereto and incorporated herein.

SECTION 3. Compliance with the California Environmental Quality Act. By adoption of Resolution No. 15-13 on May 27, 2015, the Town Council approved and adopted an addendum to the Mitigated Negative Declaration that was adopted in conjunction with the 2012 adoption of the General Plan, which was completed in compliance with the California Environmental Quality Act ('CEQA,' 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.). The addendum fully analyzed any environmental impacts of this proposed zoning ordinance amendment. Alternatively, the ordinance revision to Chapter 17.112 is not a project requiring review under CEQA. CEQA requires environmental review only of 'projects' as defined in CEQA, and CEQA Guidelines § 15378 provides that 'projects' are only those actions which have the 'potential for resulting in either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment.' Since, pursuant to § 15378(b)(2) the ordinance revision consists only of the implementation of policies and procedures already adopted in the General Plan and will not result in any direct or indirect physical change in the environment, the ordinance revision is not a 'project' subject to CEQA review. (See *Northwood Homes Inc. v. Town of Moraga* (1989) 216 Cal.App.3d 1197.)

SECTION 4. 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, provided, however, that if any decision of a court of competent jurisdiction invalidates the increase of the water service charges set forth in this Ordinance, then the water service charges in effect on the date of adoption shall continue in existence.

SECTION 5. 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; and 3. Bulletin Board, Fairfax Women's Club Building, located at 46 Park.

The foregoing Ordinance was introduced at a regular meeting of the Town Council on the ___ day of _____, 2017, and duly adopted at the next regular meeting of the Town Council on the ___ day of _____, 2017, by the following vote, to wit:

AYES:
NOES:
ABSENT:
ABSTAIN:

_____, Mayor

Attest:

Michele Gardner, Town Clerk

Date

CHAPTER 17.112: PDD PLANNED DEVELOPMENT DISTRICT ZONE

Section

- [17.112.010](#) Purpose
- [17.112.020](#) General requirements for a planned development
- [17.112.030](#) General standards and requirements
- [17.112.040](#) Residential density policy
- [17.112.050](#) Preliminary development plan
- [17.112.060](#) Master development plan
- [17.112.070](#) Master development plan; Town Engineer's review
- [17.112.080](#) Master development plan; final Planning Commission action
- [17.112.090](#) Master development plan; approval criteria, standards and procedures
- [17.112.100](#) Master development plan; Town Council action
- [17.112.110](#) Master development plan; modification of plan
- [17.112.120](#) Precise development plan; application
- [17.112.130](#) Precise development plan; open space dedication and maintenance
- [17.112.140](#) Precise development plan; performance bond
- [17.112.150](#) Final subdivision map
- [17.112.160](#) Term of approvals
- [17.112.165](#) Qualifying sites
- [17.112.170](#) Appeals
- [17.112.180](#) Traffic impact permit

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§ 17.112.010 PURPOSE.

(A) The purposes of the PDD planned development district include the following:

- (1) To encourage development of parcels sufficiently large as to permit comprehensive site planning and building design;
- (2) To provide a more flexible regulatory procedure by which the basic public purposes of this title may be accomplished;
- (3) To encourage variation in siting of buildings and the appropriate mixing of several land uses, activities and dwelling types;
- (4) To enhance the appearance and livability of the community through encouragement of creative approaches to the use of land and the design of facilities;
- (5) To conserve natural features; and
- (6) To promise and create public and private open space as an integral part of land development design.

(7) To streamline the review and processing of applications for Opportunity Sites within the General Plan that are directed to be rezoned to PDD by the General Plan ("Qualifying Sites").

(B) These purposes are to be ensured through the preparation and submission of comprehensive development plans showing proper site layout, design character and integration with the surroundings; and through the Planning Commission's careful review of the plans.
(Prior Code, § 17.58.010) (Ord. 352, passed - -1973)

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§ 17.112.020 GENERAL REQUIREMENTS FOR A PLANNED DEVELOPMENT.

(A) Unless otherwise dictated by the General Plan, five acres or more may be considered a planned development for purposes of this chapter, provided the property is owned, or its development controlled, by a single individual or legally constituted corporation or partnership.

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CHAPTER 17.112: PDD PLANNED DEVELOPMENT DISTRICT ZONE

(B) In the case of property in various ownerships, all parties owning and controlling property in the area to be developed shall become parties to a legal agreement binding them to abide by the planned development plan, as approved, with the agreement to run with the land as a condition of future use, sale or lease.

(C) The development shall be initiated and completed by the applicant, or joint applicants, or the Town, as the case may be.

(D) ~~The applicant~~ shall complete the development and shall use and maintain it, in strict accordance with the development plan as approved by the Planning Commission and Town Council.

(E) (1) All the provisions of this title are supplementary to all subdivision regulations of the town.

(2) An application for approval of a tentative subdivision map of lands zoned PDD shall not be accepted, except in conjunction with the concurrent filing of a precise development plan under § 17.112.120, or as set forth in § 17.112.165, as applicable.

(3) No tentative subdivision map shall be approved prior to the approval of a precise development plan for the property covered by the tentative map. The tentative map and precise development plan applications shall be processed concurrently, or as set forth in § 17.112.165, as applicable.

(Prior Code, § 17.58.020) (Ord. 352, passed - -1973; Am. Ord. 605, passed - -1991)

§ 17.112.030 GENERAL STANDARDS AND REQUIREMENTS.

(A) The following provisions shall apply in a planned development district, together with all other applicable provisions of the town zoning and subdivision ordinances. Where conflict in regulation occurs, the regulations specified in this chapter or on a development plan approved pursuant to this chapter shall apply:

(1) No planned development district shall include less than five acres of contiguous land unless:

(a) the Planning Commission and Town Council find that property of less than five acres is suitable as a planned development district by virtue of its unique historical character, topography, landscaping features or other special characteristics as may be determined by the Planning Commission, or

(b) the proposed planned development is a Qualifying Site.

(2) A planned development district shall be established by an ordinance adopted by the Town Council after a recommendation by the Planning Commission, in accordance with §§ 17.004.030 through 17.004.120 of this title. Whenever a planned development district has been established, its boundary shall be indicated on the zoning maps of the town.

(3) Where contiguous properties proposed for a planned development in accordance with the provisions of this chapter are under separate ownership, written consent of all participating property owners shall be filed with the Planning Director before any application for a planned development can be accepted by the town.

(4) Standards for area, coverage, light and air orientation, site planning, density, yard requirements, open spaces, parking and screening shall be governed by the standards of the residential, commercial or industrial zoning district(s) most similar in nature and function to the proposed planned development district (PDD) use(s), with such deviations as may be approved by the Town Council. All standards adopted shall conform to the Fairfax General Plan.

(5) All electrical and telephone facilities, fire alarm conduits, street light wiring and other wiring conduits or facilities shall be placed underground by the developer. Electric and

Deleted: (1) Unless otherwise provided in the approval of the Planning Commission, the developer may divide and transfer units of the development.

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Commented [2]: Planning Commission recommends making this change in light of the fact that it is the Town Council that has the authority to approve such deviations, through their adoption of a PDD ordinance.

Deleted: or by standards which the Planning Commission shall by resolution from time to time adopt

CHAPTER 17.112: PDD PLANNED DEVELOPMENT DISTRICT ZONE

telephone facilities shall be installed in accordance with standard specifications of the serving utilities.

(6) Within any planned development district, no proposed use or structure that constitutes a formula business or formula restaurant, as those terms are defined in § 17.040.210, shall be approved or allowed to operate without first obtaining a use permit in compliance with Article II of Chapter 17.040.

(B) Standards for public improvements shall be governed by applicable ordinances and laws of the town.

(C) Exceptions to standards adopted by the Planning Commission may be granted by the Planning Commission and Town Council only in cases where these bodies find that the exceptions encourage a more desirable environment and are warranted in terms of the total proposed development or a unit thereof.

(Prior Code, § 17.58.030) (Ord. 352, passed - -1973; Am. Ord. 493, passed - -1982; Am. Ord. 787, passed 3-4-2015)

§ 17.112.040 RESIDENTIAL DENSITY POLICY.

(A) *Conformance to the general plan.* All projects must conform to the adopted General Plan or to any accepted specific plan applicable to the area under consideration.

(B) *Density limitations.* A density shall be set which is consistent with limitations imposed by site conditions including natural resources, topographic and geological conditions and by the level of public services and road conditions that can reasonably be provided. For Qualifying Sites, density shall be as set forth in the General Plan.

(C) *Planning Commission determination.* The Planning Commission shall consider the following criteria in setting density.

(1) Extent of lands which are hazardous to life and property due to soils, geological, seismic or hydrological factors unless the hazards can be mitigated by minor modifications to existing land forms and vegetation. These determinations must be based on the analysis of a licensed engineering geologist and/or civil engineer specializing in soils problems and hydrologist;

(2) The number of safe building sites which exist on the property;

(3) The cumulative impact of the development on existing circulation and drainage systems.

(D) *Gross acreage calculation.*

(1) Density shall be set for gross acreage. Hazardous lands may be excluded from the building area, but will be included in the calculation of gross density per acre.

(2) In cases where a portion of the property falls within two different categories in the General Plan, the Planning Commission shall determine an aggregate density based on the percentage of gross acreage in each category.

(Prior Code, § 17.58.040) (Ord. 352, passed - -1973; Am. Ord. 493, passed - -1982)

§ 17.112.050 PRELIMINARY DEVELOPMENT PLAN.

(A) (1) Approval, in principle, of the preliminary development plan shall be limited to the general acceptability and intensity of land use proposed and their interrelationship and shall not be construed to endorse precise location of uses, configuration of parcels or engineering feasibility.

(2) A preliminary development plan and text shall be prepared by or under the direction of a licensed architect or a licensed building engineer, a registered landscape architect or, in the case of an area in excess of 20 acres, by a team including a licensed architect or licensed building engineer, a registered landscape architect and a qualified urban planner. (A qualified urban

Commented [3]: Recognition that for these sites, the density has already been established and the PC has no further authority to modify that.

Commented [4]: This opening phrase is unclear as to whether it is acceptable for a preliminary development plan to be prepared solely by a registered landscape architect. The Planning Commission did not address this issue, but the Council may wish to consider it.

CHAPTER 17.112: PDD PLANNED DEVELOPMENT DISTRICT ZONE

planner shall be defined as a planner holding an associate or full membership in the American Institute of Planners or a planner authorized by the state's Planning Advisory Committee to work on comprehensive general plan programs in the state of California.)

(3) It shall include the following information presented in a general schematic fashion: a preliminary development plan of the entire proposed development showing land uses and general configuration of parcels or lots, traffic circulation, streets, driveways, sidewalks and pedestrianways and off-street parking.

(B) The applicant shall, at the time of filing the preliminary development plan, pay a filing fee in accordance with a schedule of fees adopted by resolution of the Town Council. ~~(C) No Qualifying Site shall be required to seek or receive approval of a preliminary development plan prior to submitting an application for a master development plan or pay any filing fee associated with a preliminary development plan.~~ (Prior Code, § 17.58.050) (Ord. 352, passed - -1973; Am. Ord. 443, passed - -1978)

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Commented [5]: The preliminary development plan serves as a vehicle to approve, in concept, the 'general acceptability and intensity of land uses' of a proposed project. To the extent these issues are already dictated by the General Plan, such a preliminary step is unnecessary for Qualifying Sites. To the extent these details are not addressed for Qualifying Sites in the General Plan, applicants are still required to provide the proposed uses and intensity with their combined master development plan/precise development plan (see 17.112.060(B) below).

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§ 17.112.060 MASTER DEVELOPMENT PLAN.

(A) (1) Within one year of the approval of the preliminary development plan by the Planning Commission, or extension by the Planning Commission, the applicant shall submit ~~the requisite number of copies of a proposed master development plan, conforming in all major respects with the approved preliminary development plan.~~

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(2) The preliminary development plan shall expire and be of no further effect or benefit if a master development plan is not submitted within the one-year period or if an extension is not approved. ~~(3) For any Qualifying Site, applicant may submit a proposed master development plan without first seeking approval of a preliminary development plan, per § 17.112.050(C) above.~~

Commented [6]: This is redundant of 17.112.050(C) above but the PC wanted it to be clear to applicants without having to read every other section of the ordinance.

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(B) The ~~proposed master development plan~~ shall include all elements included in the preliminary development plan ~~(or which would have been required to have been included in the preliminary development plan, in the case of Qualifying Sites where no preliminary development plan was submitted),~~ plus the following.

Commented [7]: Here is where we capture the proposed uses and intensities mentioned in 17.112.050(C) above.

(1) Survey of the property showing existing features including trees, structures, streets, easements, utility lines, land uses, existing zoning and existing ownerships; (The information also to be provided for the surrounding area within 100 feet of the proposed development.)

(2) Master plans for street improvements, water, sewerage, flood control, draining facilities and public utilities;

(3) Site, building and landscaping plans and elevations in a detail sufficient to fully illustrate the proposal;

(4) Grading plans;

(5) Character, general design and location of signs, street lighting and street furniture;

(6) Description of design principles for buildings and streetscapes;

(7) Tabulation of land uses;

(8) Tabulation of number of dwelling units by type for each increment of the total master plan and the estimated population per increment;

(9) Proposed standards for height, open space, building, intensity and public improvements; and

(10) Engineering and economic feasibility studies as necessary.

Commented [8]: (1) We would prefer to use our own forms for this purpose. (2) Even if we did want applicant's proposed agreements, at the submittal stage, it is a little early in the process to ask applicant to submit documents which may need substantial revision as the project is processed and project changes are/might be made.

Deleted: (C) Copies of legal documents required by the Planning Commission for dedication or reservation for group or private open space, or for the creation of a non-profit homes association shall also be submitted.

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~~(C) The applicant shall submit evidence that he or she has sufficient control over the land to execute the proposed plan.~~

CHAPTER 17.112: PDD PLANNED DEVELOPMENT DISTRICT ZONE

(D) The proposed master development plan shall be prepared by or under the direction of a licensed architect, and a registered landscape architect, or in the case of an area in excess of 20 acres, by a team including an architect, landscape architect, qualified urban planner and registered civil engineer or licensed land surveyor.

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(E) The applicant shall, at the time of filing the master development plan, pay a filing fee in accordance with a schedule of fees adopted by resolution of the Town Council.
(Prior Code, § 17.58.060) (Ord. 352, passed - -1973; Am. Ord. 443, passed - -1978)

Commented [9]: The Planning Commission recommends that Qualifying Site applicants only be required to pay a single fee for the review of a PDD rezone request. This may necessitate promulgating a new fee for the master fees and charges schedule that represents the concurrent review of a preliminary development plan, master development plan, and precise plan.

§ 17.112.070 MASTER DEVELOPMENT PLAN; TOWN ENGINEER'S REVIEW.

Upon receipt of the proposed master development plan by the Town, staff shall forward the development plan and original application to the Town Engineer for review, coordination with other affected town departments and public agencies, and approval of public improvements including streets, sewers and drainage.

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(Prior Code, § 17.58.070) (Ord. 352, passed - -1973)

Commented [10]: It does not make sense to route a proposal to PC prior to review by the Town Engineer. Staff can route the application to the TE prior to PC consideration, as we would do with any other application.

§ 17.112.080 MASTER DEVELOPMENT PLAN; FINAL PLANNING COMMISSION ACTION.

Upon receipt of the master development plan in proper form, the Planning Commission, after giving notice pursuant to the provisions of § 17.004.070 of this title, shall hold a public hearing thereon. After the hearing, and after examining the plan for conformity to the preliminary development plan, where required, and all applicable criteria and standards, the Planning Commission may recommend approval subject to specified modifications and conditions. When the Planning Commission finds the proposed plan of development does not conform to the preliminary development plan, where required, or does not meet all applicable criteria and standards, it shall recommend denial of the application, giving its reasons therefor. The Planning Commission may permit the applicant to revise and resubmit the plan within 60 days following its action recommending denial.

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(Prior Code, § 17.58.080) (Ord. 352, passed - -1973; Am. Ord. 628, passed - -1994)

Deleted: (B) The Planning Commission shall not act finally on an application until it has first received a report from the Town Engineer, which report shall be returned to the Planning Commission within 30 days.

Commented [11]: Applicants for Qualifying Sites will not have submitted a prelim development plan.

§ 17.112.090 MASTER DEVELOPMENT PLAN; APPROVAL CRITERIA, STANDARDS AND PROCEDURES.

Before recommending approval, the Planning Commission shall find that the proposed development conforms to the following criteria and to such other criteria as may be applicable to planned developments within the area in which the proposed development is located:

(A) The location and design of the proposed development shall be consistent with the goals and policies of the Fairfax General Plan and with any other applicable plans or policies adopted by the Town Council.

(B) The proposed location shall allow the development to be well integrated with its surroundings.

(C) All vehicular traffic generated by the development must be accommodated safely and without causing undue congestion upon adjoining streets.

(D) The proposed location and design shall allow residents and business establishments to be adequately serviced by existing or proposed public facilities and services. Where permitted by law, the Planning Commission may require that suitable areas for schools, parks and playgrounds, pedestrianways or public open spaces be dedicated for public use, or reserved by deed covenant for the common use of all residents, establishments or operations in the development.

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Commented [12]: Just clarifies that there are legal considerations bearing on our ability to require such dedications.

CHAPTER 17.112: PDD PLANNED DEVELOPMENT DISTRICT ZONE

(E) The overall design of the proposed planned development shall produce an attractive healthful, efficient and stable environment for living, shopping or working.

(F) The uses proposed shall have a beneficial effect not obtainable under existing zoning regulations. Any departure from existing ordinance requirements shall be warranted by the design and the amenities incorporated in the development plan in accord with adopted policy of the Planning Commission and Town Council.

(Prior Code, § 17.58.090) (Ord. 352, passed - -1973)

Deleted: (F) The development shall be well integrated with its settings, shall not require excessive earth-moving or grading, or destruction of desirable natural features, nor be visually obstructive or disharmonious with surrounding areas and facilities, and shall not substantially harm major views from adjacent properties.

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Deleted: (H) Demonstration shall be made that each individual unit of development, and the total development, can exist as an independent unit capable of creating an environment of sustained desirability and stability.

§ 17.112.100 MASTER DEVELOPMENT PLAN; TOWN COUNCIL ACTION.

(A) (1) The Town Council shall, after giving of public notice and the holding of a hearing as provided in § 17.112.080 of this chapter, approve or deny the proposed master development plan.

(2) In overruling a Planning Commission recommendation for denial, the Town Council shall make the findings listed in § 17.112.090.

(B) Approval of the master development plan shall be by ordinance.

(C) Approval of the master plan shall include, but not be limited to the following stipulations.

(1) The development, maintenance and use of the property included in the master development plan shall be carried on in conformance with the approved plan drawings and documents.

(2) Approval of the master development plan shall not be interpreted as waiving compliance with other provisions of this code.

(3) An agreement by the owner or owners agreeing to be bound by the conditions and regulations imposed by the Town Council shall be deposited with the Town Clerk prior to final adoption of the ordinance, to be held and recorded by the Town Clerk only after the effective date of the ordinance.

(4) No land shall be used or developed, and no building shall be constructed, maintained or used other than for the purpose specified on the approved master development plan drawings and documents, as approved.

(Prior Code, § 17.58.100) (Ord. 352, passed - -1973; Am. Ord. 493, passed - -1982)

Deleted: ; the developer shall substantially adhere to the state of development schedule submitted as part of the master development plan

Deleted: (a) The approved master development plan drawings and documents shall be filed in the office of the Town Clerk after written authorization for the filing has been secured from the owner or owners of the lands in question and prior to the second reading of the ordinance establishing the planned development district. The authorization shall be construed to constitute the owner's acceptance of the provisions set forth in the master development plan ordinance.

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§ 17.112.110 MASTER DEVELOPMENT PLAN; MODIFICATION OF PLAN.

(A) Minor changes to an approved master development plan may be approved by the Planning Commission, provided the change is consistent with the purposes and character of the master development plan. The changes shall not change the densities heretofore established, nor the boundaries of the subject property, nor any use as shown on the approved master development plan, nor the location or amounts of land devoted to specific land uses. All modifications or amendments to an approved plan other than minor changes shall be processed as an original application and shall be subject to all applicable substantive and procedural requirements of the planned development procedure; provided that, the filing fee therefor shall be one-half the fee charged for filing an original application.

(B) This 17.112.110 shall not apply to applications for Qualifying Sites which are concurrently considering proposed master development plans and precise development plans.

(Prior Code, § 17.58.110) (Ord. 352, passed - -1973)

Commented [19]: The review process contemplated in subsection A makes sense if there is a long lag time between consideration of a proposed master development plan and a precise development plan. However, it becomes inapplicable if those two plans are being considered concurrently, as would be the case for Qualifying Sites.

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§ 17.112.120 PRECISE DEVELOPMENT PLAN; APPLICATION.

(A) (1) Within one year following approval of the master development plan, or concurrently with the submission of a proposed master development plan for a Qualifying Site, the applicant

Commented [20]: This allows Qualifying Site applicants to concurrently submit proposed master development plans and precise development plans, thus streamlining their application review process.

CHAPTER 17.112: PDD PLANNED DEVELOPMENT DISTRICT ZONE

shall submit to the Planning Commission an application for approval of a precise development plan.

(2) Precise plan approval, valid for one year, shall be secured as delineated on the master development plan.

(3) No development, improvement or building construction within any phase of the planned development area covered by the master development plan shall be commenced until the Planning Commission has approved a precise development plan for that phase.

(4) Precise plans shall set forth in detail specific features of each increment of development.

(5) They shall conform to the master development plan, and be prepared by a team including a licensed architect or a licensed building designer and registered landscape architect, and a registered civil engineer or licensed land surveyor, and shall consist of:

(a) A topographic map of sufficient detail to show all cut and fill banks, precise drainage and flood control and boundary survey data;

(b) Detailed site plan, showing buildings, area utilization and traffic and pedestrian circulation; location, widths, grades and types of improvements proposed for all streets, parking areas, driveways, walkways, trails, utilities and other public improvements; building heights and dimensions of space between buildings and distances from property lines and rights-of-way;

(c) A precise landscaping plan;

(d) A map showing division of the land for the sale of individual property, if any;

(e) Location and dimensions of public or semipublic areas, including, but not limited to schools, parks, playgrounds and parking areas,

(f) A statement setting forth a program for installation and continued maintenance of parking areas, lighting, courts, public and private grounds, landscaping, streets, utilities, parks, playgrounds or public or semi-public community buildings and facilities; and

(g) Information necessary for evaluation and assignment of fire zone designations, including type of construction, where found necessary by the Planning Commission.

(B) Within 45 days following receipt of the application for precise development plan approval, and after public hearing noticed in the manner set forth in § 17.004.070 of this title, the Planning Commission shall approve or disapprove of the proposed precise development plan and shall notify the applicant of its action. Appeal may be made to the Town Council by the applicant in accordance with Chapter 17.036 of this title.

(C) The applicant shall, at the time of filing the precise plan, pay a filing fee in accordance with a schedule of fees adopted by resolution of the Town Council. Qualifying Sites that seek concurrent review of proposed master development plans and precise development plans shall pay a fee as established by the Town Council.

(Prior Code, § 17.58.120) (Ord. 352, passed - -1973; Am. Ord. 443, passed - -1978; Am. Ord. 493, passed - -1982; Am. Ord. 628, passed - -1994)

§ 17.112.130 PRECISE DEVELOPMENT PLAN; OPEN SPACE DEDICATION AND MAINTENANCE.

(A) To the extent permitted by law, the Planning Commission may as a condition of approval require that suitable areas for schools, parks and playgrounds be set aside, unproved, and dedicated for public use, or be reserved for the owners, residents and establishments in the development by deed restrictions.

(B) (1) Whenever group or common open space is provided, whether required or not, the Planning Commission may, to the extent permitted by law, require that an incorporated nonprofit

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Commented [21]: We already have an appeals process. No need to reinvent a new one for this process.

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Commented [22]: The Planning Commission had recommended adding this sentence to provide that applicants for Qualifying Sites would pay a single review fee for the concurrent review of proposed master development plans and precise development plans. Upon review, the existing language of (C) covers that, so long as the Council adopts a filing fee for such concurrent review.

Commented [23]: The Planning Commission recommends adding this qualifier to acknowledge that the town's authority to require such dedications may be limited by other applicable laws.

Commented [24]: Should probably read 'unimproved'

Deleted: as a condition of approval,

CHAPTER 17.112: PDD PLANNED DEVELOPMENT DISTRICT ZONE

homeowners' association be established prior to any sale of land or facilities for the purpose of maintaining the open space.

(2) The association may also undertake other legal and proper functions. Agreements and covenants running with the land shall include provisions for automatic membership and charges to be levied for carrying out of the specified functions and administrative expenses.

(3) The association shall be responsible for levying, collecting and disbursing funds and for enforcement of the agreements.

(4) The agreements and covenants shall operate for a minimum of 20 years with a provision for automatic extension, except upon a majority vote for termination, upon which occasion the mutually owned properties will automatically go to public ownership.

(5) The town shall be a party of interest in any such development and may by mandatory injunction enforce the provisions in this section.

(C) Where permitted by law and to assure that open space shall be available for the entire developed planned development district, public sites and development rights to required open spaces shall be dedicated in advance of development. Where required, dedication of public sites and development rights to required open spaces for the entire district shall be made before the building permit is issued.

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Deleted: In any event, whether a subdivision map is required or not.

(D) Other dedications for street, utility, flood control, rights-of-way and/or easements and other public purposes, may also be required before the issuance of the first building permit. (Prior Code, § 17.58.130) (Ord. 352, passed - -1973)

§ 17.112.140 PRECISE DEVELOPMENT PLAN; PERFORMANCE BOND.

(A) As a condition precedent to approval of any precise development plan, the Town Council shall require the applicant to furnish a completion bond, or the cash equivalent, or other evidence of financial assurance, in an amount deemed sufficient by the Town to cover the cost of public improvements, common areas, incidental expenses, and to cover replacement and repair of existing streets and other improvements damaged in the development of the unit. The Town may determine sufficiency of the proposed amount of the performance bond or other assurance on the basis of materials submitted by the applicant.

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(B) All public improvements shall be constructed in accordance with the standard specifications of the town. (Prior Code, § 17.58.140) (Ord. 352, passed - -1973)

§ 17.112.150 FINAL SUBDIVISION MAP.

(A) (1) No precise development plan or tentative map shall be approved under this chapter until the planned development district zoning has become effective, except in the case of applications submitted for Qualifying Sites, which may receive approval a of precise development plan concurrently with approval of a new planned development district zone.

(2) Disapproval of any precise development plan shall also constitute disapproval of any application for a tentative subdivision map for the property covered by the precise development plan for failure to conform to the applicable zoning requirements.

(B) No building permit shall be issued until a final subdivision map, if required, has been recorded for the area covered by the precise development plan, or any approved stage thereof, in compliance with the town's subdivision regulations. (Prior Code, § 17.58.150) (Ord. 352, passed - -1973; Am. Ord. 605, passed - -1991)

§ 17.112.160 TERM OF APPROVALS.

CHAPTER 17.112: PDD PLANNED DEVELOPMENT DISTRICT ZONE

(A) ~~Except as otherwise provided in §17.112.165 with regard to Qualifying Sites, if the applicant fails to submit a precise development plan for a first increment within one year of approval of the master development plan by the Town Council, or fails to record a final subdivision map to effectuate an approved precise development plan and/or fails to initiate development within two years after the precise plan approval, then approval of a master development plan by the Planning Commission and Town Council shall be rendered null and void.~~

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(B) ~~The time limits may be extended upon mutual agreement by the Town Council and the applicant.~~
(Prior Code, § 17.58.160) (Ord. 352, passed - -1973; Am. Ord. 493, passed - -1982; Am. Ord. 605, passed - -1991)

Deleted: The failure shall be grounds for reversion to acreage of any recorded final subdivision map.

§ 17.112.165 QUALIFYING SITES.

~~(A) Notwithstanding any other provision of this Chapter, any applicant seeking the rezoning of a Qualifying Site to PDD may request the concurrent review of a proposed master development plan and precise development plan, and shall not be required to seek or receive a preliminary development plan as a condition precedent thereto.~~

Commented [25]: This new section is intended to clearly state the streamlined process that applies to Qualifying Sites, without excusing them from compliance with the substantive requirements of this chapter.

~~(B) Notwithstanding any requirement for separate hearings before the Planning Commission and Town Council, Qualifying Sites shall be eligible to have both proposed master development plans and precise development plans considered at a consolidated public hearing before each body.~~

Deleted: ¶

~~(C) It is the intention of the Town of Fairfax to streamline the review of rezoning applications for Qualifying Sites. The provisions of this chapter shall be interpreted in accordance with this policy.~~

§ 17.112.170 APPEALS.

(A) Within ten days following the date of a decision by the Planning Commission upon an application for approval of a precise development plan, or for approval of any modification or amendment of any authorized plan, or any condition imposed therein, an appeal may be taken to the Town Council by ~~any interested party.~~

Commented [26]: This would allow for the submission of an appeal by someone other than just the owner or applicant and thus conform to 17.036.020, which allows for appeals by 'any person aggrieved.'

(B) ~~Any appeal of a decision of the Planning Commission made pursuant to this Chapter 17.112 shall conform to the requirements of Chapter 17.036.~~ The Town Council may approve, modify or reverse a Planning Commission decision on appeal. The decision of the Council shall be final. (Prior Code, § 17.58.170) (Ord. 352, passed - -1973)

Deleted: the applicant or the owner

Commented [27]: We already have an appeals process; it should apply to this process as it applies to other zoning appeals.

§ 17.112.180 TRAFFIC IMPACT PERMIT.

The provisions of the traffic impact permit, Chapter 17.056 of this title, are applicable to properties in the PDD zoning district.

(Prior Code, § 17.58.180) (Ord. 352, passed - -1973; Am. Ord. 553, passed - -1986)

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Deleted: 1) An appeal shall be made upon the form prescribed and shall be filed with the Town Clerk. The appeal shall state specifically wherein it is claimed there was an error or abuse of discretion by the Planning Commission, or wherein the decision is not supported by the evidence in the record.¶

(2) Upon receipt of the appeal, the Town Council shall set the time for consideration thereof. The Town Clerk shall notify the Secretary of the Planning Commission of the receipt of the appeal and of the time and place set for consideration thereby by the Council; and the town clerk shall, not less than five days prior to the date set for the hearing upon the appeal, give written notice to the applicant and to the adverse party or parties, or to the attorney, spokesperson or representative of the party or parties, of the time and place of the hearing on the appeal.¶

(3)

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ORDINANCE NO. _____

**AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF FAIRFAX
AMENDING FAIRFAX TOWN CODE CHAPTER 17.112**

WHEREAS, the Town of Fairfax has duly adopted a town zoning ordinance, found at Title 17 of the Fairfax Town Code; and

WHEREAS, among other things, Title 17 of the Fairfax Town Code identifies the zoning designations applicable to parcels within the Town and sets forth the standards and processes applicable to the development of parcels within the Planned Development district; and

WHEREAS, all towns and cities within the State of California are required by law to adopt a general plan; and

WHEREAS, in 2012, the Town of Fairfax adopted the 2010-2030 Fairfax General Plan (the 'General Plan'), which has been updated through the adoption of the 2015-2023 Housing Element Update (the 'Housing Element'); and

WHEREAS, Program LU-8.1.1.3 of the Land Use Element directs the Town to "[c]hange the zoning designation for [Opportunity Site #2] 10 Olema (the former Mandarin Gardens restaurant site) from Limited Commercial to Planned Development District," and

WHEREAS, Program LU-8.1.1.4 of the Land Use Element directs the Town to "[c]hange the zoning designation for [Opportunity Site #1] 2626 Sir Francis Drake (Christ Lutheran Church) from Residential UR-7 to Planned Development District;" and

WHEREAS, Program LU-8.1.1.5 of the Land Use Element directs the Town to "[c]hange the zoning designation for [Opportunity Site #4] the School Street Plaza area from Limited Commercial to Planned Development District; thereby making it possible to accommodate a mix of uses, including housing and/or a new school at the site;" and

WHEREAS, Program H-2.1.1.1 of the Housing Element directs:

Rezone two acres of the Christ Lutheran Church property (upon approval of subdivision of the site) at 2626 Sir Francis Drake Boulevard from UR 7 du/acre (UR-7) to PDD and thereby make it possible to accommodate a minimum of 40 units and a maximum of 41 units of senior housing. The maximum does not apply to any units granted under the State Density Bonus Law. Program H-4.1.1.5 proposes to revise the PDD district standards to require residential-only development at this Opportunity Site at a minimum of 20 units per acre and to put specific development standards in place. No discretionary review besides confirming compliance with objective design standards will be allowed on the site

following rezoning. In addition, the standards will be revised to reduce the minimum acreage for this PDD parcel from 5 acres to 1 acre. If the rezoning and General Plan Amendment happens as a result of a submittal of a development application for the Christ Lutheran Church site the Town will cover the costs of the rezone and General Plan Amendment.

WHEREAS, Program H-2.1.1.2 of the Housing Element directs:

Rezone 10 Olema Road, the old "Mandarin Garden" restaurant site, from CL to PDD and thereby make it possible to accommodate a minimum of 22 units and a maximum of 23 units of workforce housing. The maximum does not apply to any units granted under the State Density Bonus Law. Program H-4.1.1.5 proposes to revise the PDD district standards to require residential only development in the PDD zone on two specific Opportunity Sites (e.g., this Site and two acres of the Christ Lutheran Church Site at 2626 Sir Francis Drake Boulevard only) at a minimum of 20 units per acre and to put specific development standards in place. No discretionary review besides confirming compliance with objective design standards will be allowed on the site following rezoning. In addition, the standards will be revised to reduce the minimum acreage for a PDD parcel from 5 acres to 1 acre.

WHEREAS, Program H-4.1.1.1 of the Housing Element directs:

Rezone School Street Plaza from CL to PDD, thereby making it possible to accommodate a minimum of 9 units with a maximum of 10 units of housing. The maximum does not apply to any units granted under the State Density Bonus Law. Please note: The Town is also considering splitting the site into PDD zoning on the back one acre where the 9 units could be accommodated and approximately .8 acres of CC zoning fronting Broadway.

WHEREAS, Program H-4.1.1.5 of the Housing Element directs:

Amend the PDD Zone Standards for Specified Opportunity Sites. Amend Chapter 17.112 of the Fairfax Town Code to:

- Reduce the minimum acreage for a PDD from 5 acres to 1 acre for the Lutheran Church and 10 Olema Road opportunity sites.
- Specify that the 10 Olema Road opportunity site and a maximum of 2 acres on the Christ Lutheran Church opportunity site shall be reserved for residential development only at a minimum of 20 units and a maximum of 21 units per acre. The maximum does not apply to any units granted under the State Density Bonus Law. This change may also require revisions to other sections of Chapter 17.112 including the purpose and residential density policy sections.

WHEREAS, California Government Code Section 65860(c) requires towns and cities to amend their zoning ordinances to conform to their respective general plans; and

WHEREAS, the Planning Department has prepared this amendment to the Town’s zoning ordinance, found at Title 17 of the Fairfax Town Code, in order to implement the General Plan dictates set forth above and make addition amendments to Chapter 17.112; and

WHEREAS, on January 19, 2017, the Planning Commission held a duly noticed public hearing to receive public input on and consider the proposed ordinance, including the zoning ordinance amendments set forth herein, and all persons wishing to testify were heard; and

WHEREAS, by adoption of Resolution No. ____, the Planning Commission recommended the Town Council approve the zoning ordinance amendments set forth herein, which incorporate the direction set forth in the General Plan provisions cited above and, in addition, make further amendments to the existing PDD ordinance in order to update it; and

WHEREAS, all other legal prerequisites to the adoption of this Ordinance have occurred.

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

SECTION 1. The recitals set forth above are adopted by the Town Council as if fully restated here.

SECTION 2. Fairfax Town Code Title 17 (‘Zoning’), Chapter 112 (‘PDD Planned Development District Zone’) is hereby repealed and replaced to provide as follows:

“CHAPTER 17.112: PDD PLANNED DEVELOPMENT DISTRICT ZONE

Section

- [17.112.010](#) Purpose
- [17.112.020](#) General requirements for a planned development
- [17.112.030](#) General standards and requirements
- [17.112.040](#) Residential density policy
- [17.112.050](#) Preliminary development plan
- [17.112.060](#) Master development plan
- [17.112.070](#) Master development plan; Town Engineer’s review
- [17.112.080](#) Master development plan; final Planning Commission action
- [17.112.090](#) Master development plan; approval criteria, standards and procedures
- [17.112.100](#) Master development plan; Town Council action

<u>17.112.110</u>	Master development plan; modification of plan
<u>17.112.120</u>	Precise development plan; application
<u>17.112.130</u>	Precise development plan; open space dedication and maintenance
<u>17.112.140</u>	Precise development plan; performance bond
<u>17.112.150</u>	Final subdivision map
<u>17.112.160</u>	Term of approvals
<u>17.112.165</u>	Qualifying sites
<u>17.112.170</u>	Appeals
<u>17.112.180</u>	Traffic impact permit

§ 17.112.010 PURPOSE.

(A) The purposes of the PDD planned development district include the following:

- (1) To encourage development of parcels sufficiently large as to permit comprehensive site planning and building design;
- (2) To provide a more flexible regulatory procedure by which the basic public purposes of this title may be accomplished;
- (3) To encourage variation in siting of buildings and the appropriate mixing of several land uses, activities and dwelling types;
- (4) To enhance the appearance and livability of the community through encouragement of creative approaches to the use of land and the design of facilities;
- (5) To conserve natural features; and
- (6) To promise and create public and private open space as an integral part of land development design.
- (7) To streamline the review and processing of applications for Opportunity Sites within the General Plan that are directed to be rezoned to PDD by the General Plan ('Qualifying Sites').

(B) These purposes are to be ensured through the preparation and submission of comprehensive development plans showing proper site layout, design character and integration with the surroundings; and through the Planning Commission's careful review of the plans.

§ 17.112.020 GENERAL REQUIREMENTS FOR A PLANNED DEVELOPMENT.

(A) Unless otherwise dictated by the General Plan, five acres or more may be considered a planned development for purposes of this chapter, provided the property is owned, or its development controlled, by a single individual or legally constituted corporation or partnership.

(B) In the case of property in various ownerships, all parties owning and controlling property in the area to be developed shall become parties to a legal agreement binding them to abide by the planned development plan, as approved, with the agreement to run with the land as a condition of future use, sale or lease.

(C) The development shall be initiated and completed by the applicant, or joint applicants, or the Town, as the case may be.

(D) The applicant shall complete the development and shall use and maintain it, in strict accordance with the development plan as approved by the Planning Commission and Town Council.

(E) (1) All the provisions of this title are supplementary to all subdivision regulations of the town.

(2) An application for approval of a tentative subdivision map of lands zoned PDD shall not be accepted, except in conjunction with the concurrent filing of a precise development plan under § [17.112.120](#), or as set forth in § [17.112.165](#), as applicable.

(3) No tentative subdivision map shall be approved prior to the approval of a precise development plan for the property covered by the tentative map. The tentative map and precise development plan applications shall be processed concurrently, or as set forth in § [17.112.165](#), as applicable.

§ 17.112.030 GENERAL STANDARDS AND REQUIREMENTS.

(A) The following provisions shall apply in a planned development district, together with all other applicable provisions of the town zoning and subdivision ordinances. Where conflict in regulation occurs, the regulations specified in this chapter or on a development plan approved pursuant to this chapter shall apply:

(1) No planned development district shall include less than five acres of contiguous land unless:

(a) the Planning Commission and Town Council find that property of less than five acres is suitable as a planned development district by virtue of its unique historical character, topography, landscaping features or other special characteristics as may be determined by the Planning Commission, or

(b) the proposed planned development is a Qualifying Site.

(2) A planned development district shall be established by an ordinance adopted by the Town Council after a recommendation by the Planning Commission, in accordance with §§ [17.004.030](#) through [17.004.120](#) of this title. Whenever a planned development district has been established, its boundary shall be indicated on the zoning maps of the town.

(3) Where contiguous properties proposed for a planned development in accordance with the provisions of this chapter are under separate ownership, written consent of all participating property owners shall be filed with the Planning Director before any application for a planned development can be accepted by the town.

(4) Standards for area, coverage, light and air orientation, site planning, density, yard requirements, open spaces, parking and screening shall be governed by the standards of the residential, commercial or industrial zoning district(s) most similar in nature and function to the proposed planned development district (PDD) use(s), with such deviations as may be approved by the Town Council. All standards adopted shall conform to the Fairfax General Plan.

(5) All electrical and telephone facilities, fire alarm conduits, street light wiring and other wiring conduits or facilities shall be placed underground by the developer. Electric and telephone facilities shall be installed in accordance with standard specifications of the serving utilities.

(6) Within any planned development district, no proposed use or structure that constitutes a formula business or formula restaurant, as those terms are defined in § [17.040.210](#), shall be approved or allowed to operate without first obtaining a use permit in compliance with Article II of [Chapter 17.040](#).

(B) Standards for public improvements shall be governed by applicable ordinances and laws of the town.

(C) Exceptions to standards adopted by the Planning Commission may be granted by the Planning Commission and Town Council only in cases where these bodies find that the exceptions encourage a more desirable environment and are warranted in terms of the total proposed development or a unit thereof.

§ 17.112.040 RESIDENTIAL DENSITY POLICY.

(A) *Conformance to the general plan.* All projects must conform to the adopted General Plan or to any accepted specific plan applicable to the area under consideration.

(B) *Density limitations.* A density shall be set which is consistent with limitations imposed by site conditions including natural resources, topographic and geological conditions and by the level of public services and road conditions that can reasonably be provided. For Qualifying Sites, density shall be as set forth in the General Plan.

(C) *Planning Commission determination.* The Planning Commission shall consider the following criteria in setting density.

(1) Extent of lands which are hazardous to life and property due to soils, geological, seismic or hydrological factors unless the hazards can be mitigated by minor modifications to existing land forms and vegetation. These determinations must be based on the analysis of a licensed engineering geologist and/or civil engineer specializing in soils problems and hydrologist;

(2) The number of safe building sites which exist on the property;

(3) The cumulative impact of the development on existing circulation and drainage systems.

(D) *Gross acreage calculation.*

(1) Density shall be set for gross acreage. Hazardous lands may be excluded from the building area, but will be included in the calculation of gross density per acre.

(2) In cases where a portion of the property falls within two different categories in the General Plan, the Planning Commission shall determine an aggregate density based on the percentage of gross acreage in each category.

§ 17.112.050 PRELIMINARY DEVELOPMENT PLAN.

(A) (1) Approval, in principle, of the preliminary development plan shall be limited to the general acceptability and intensity of land use proposed and their interrelationship and shall not be construed to endorse precise location of uses, configuration of parcels or engineering feasibility.

(2) A preliminary development plan and text shall be prepared by or under the direction of a licensed architect or a licensed building engineer, a registered landscape architect or, in the case of an area in excess of 20 acres, by a team including a licensed architect or licensed building engineer, a registered landscape architect and a qualified urban planner. (A qualified urban planner shall be defined as a planner holding an associate or full membership in the American Institute of Planners or a planner authorized by the state's Planning Advisory Committee to work on comprehensive general plan programs in the state of California.)

(3) It shall include the following information presented in a general schematic fashion: a preliminary development plan of the entire proposed development showing land uses and general configuration of parcels or lots, traffic circulation, streets, driveways, sidewalks and pedestrianways and off-street parking.

(B) The applicant shall, at the time of filing the preliminary development plan, pay a filing fee in accordance with a schedule of fees adopted by resolution of the Town Council. (C) No Qualifying Site shall be required to seek or receive approval of a preliminary development plan prior to submitting an application for a master development plan or pay any filing fee associated with a preliminary development plan.

§ 17.112.060 MASTER DEVELOPMENT PLAN.

(A) (1) Within one year of the approval of the preliminary development plan by the Planning Commission, or extension by the Planning Commission, the applicant shall submit the requisite number of copies of a proposed master development plan, conforming in all major respects with the approved preliminary development plan.

(2) The preliminary development plan shall expire and be of no further effect or benefit if a master development plan is not submitted within the one-year period or if an extension is not approved. (3) For any Qualifying Site, applicant may submit a proposed master development plan without first seeking approval of a preliminary development plan, per § 17.112.050(C) above.

(B) The proposed master development plan shall include all elements included in the preliminary development plan (or which would have been required to have been included in the preliminary development plan, in the case of Qualifying Sites where no preliminary development plan was submitted), plus the following.

(1) Survey of the property showing existing features including trees, structures, streets, easements, utility lines, land uses, existing zoning and existing ownerships; (The information also to be provided for the surrounding area within 100 feet of the proposed development.)

(2) Master plans for street improvements, water, sewerage, flood control, draining facilities and public utilities;

(3) Site, building and landscaping plans and elevations in a detail sufficient to fully illustrate the proposal;

(4) Grading plans;

(5) Character, general design and location of signs, street lighting and street furniture;

(6) Description of design principles for buildings and streetscapes;

(7) Tabulation of land uses;

(8) Tabulation of number of dwelling units by type for each increment of the total master plan and the estimated population per increment;

(9) Proposed standards for height, open space, building, intensity and public improvements; and

(10) Engineering and economic feasibility studies as necessary.

(C) The applicant shall submit evidence that he or she has sufficient control over the land to execute the proposed plan.

(D) The proposed master development plan shall be prepared by or under the direction of a licensed architect, and a registered landscape architect, or in the case of

an area in excess of 20 acres, by a team including an architect, landscape architect, qualified urban planner and registered civil engineer or licensed land surveyor.

(E) The applicant shall, at the time of filing the master development plan, pay a filing fee in accordance with a schedule of fees adopted by resolution of the Town Council.

§ 17.112.070 MASTER DEVELOPMENT PLAN; TOWN ENGINEER’S REVIEW.

Upon receipt of the proposed master development plan by the Town, staff shall forward the development plan and original application to the Town Engineer for review, coordination with other affected town departments and public agencies, and approval of public improvements including streets, sewers and drainage.

§ 17.112.080 MASTER DEVELOPMENT PLAN; FINAL PLANNING COMMISSION ACTION.

Upon receipt of the master development plan in proper form, the Planning Commission, after giving notice pursuant to the provisions of § [17.004.070](#) of this title, shall hold a public hearing thereon. After the hearing, and after examining the plan for conformity to the preliminary development plan, where required, and all applicable criteria and standards, the Planning Commission may recommend approval subject to specified modifications and conditions. When the Planning Commission finds the proposed plan of development does not conform to the preliminary development plan, where required, or does not meet all applicable criteria and standards, it shall recommend denial of the application, giving its reasons therefor. The Planning Commission may permit the applicant to revise and resubmit the plan within 60 days following its action recommending denial.

§ 17.112.090 MASTER DEVELOPMENT PLAN; APPROVAL CRITERIA, STANDARDS AND PROCEDURES.

Before recommending approval, the Planning Commission shall find that the proposed development conforms to the following criteria and to such other criteria as may be applicable to planned developments within the area in which the proposed development is located:

- (A) The location and design of the proposed development shall be consistent with the goals and policies of the Fairfax General Plan and with any other applicable plans or policies adopted by the Town Council.
- (B) The proposed location shall allow the development to be well integrated with its surroundings.
- (C) All vehicular traffic generated by the development must be accommodated safely and without causing undue congestion upon adjoining streets.
- (D) The proposed location and design shall allow residents and business establishments to be adequately serviced by existing or proposed public facilities and services. Where permitted by law, the Planning Commission may require that suitable areas for schools, parks and playgrounds, pedestrianways or public open spaces be dedicated for public use, or reserved by deed covenant for the common use of all residents, establishments or operations in the development.
- (E) The overall design of the proposed planned development shall produce an attractive healthful, efficient and stable environment for living, shopping or working.

(F) The uses proposed shall have a beneficial effect not obtainable under existing zoning regulations. Any departure from existing ordinance requirements shall be warranted by the design and the amenities incorporated in the development plan in accord with adopted policy of the Planning Commission and Town Council.

§ 17.112.100 MASTER DEVELOPMENT PLAN; TOWN COUNCIL ACTION.

(A) (1) The Town Council shall, after giving of public notice and the holding of a hearing as provided in § [17.112.080](#) of this chapter, approve or deny the proposed master development plan.

(2) In overruling a Planning Commission recommendation for denial, the Town Council shall make the findings listed in § [17.112.090](#).

(B) Approval of the master development plan shall be by ordinance.

(C) Approval of the master plan shall include, but not be limited to the following stipulations.

(1) The development, maintenance and use of the property included in the master development plan shall be carried on in conformance with the approved plan drawings and documents.

(2) Approval of the master development plan shall not be interpreted as waiving compliance with other provisions of this code.

(3) An agreement by the owner or owners agreeing to be bound by the conditions and regulations imposed by the Town Council shall be deposited with the Town Clerk prior to final adoption of the ordinance, to be held and recorded by the Town Clerk only after the effective date of the ordinance.

(4) No land shall be used or developed, and no building shall be constructed, maintained or used other than for the purpose specified on the approved master development plan drawings and documents, as approved.

§ 17.112.110 MASTER DEVELOPMENT PLAN; MODIFICATION OF PLAN.

(A) Minor changes to an approved master development plan may be approved by the Planning Commission, provided the change is consistent with the purposes and character of the master development plan. The changes shall not change the densities heretofore established, nor the boundaries of the subject property, nor any use as shown on the approved master development plan, nor the location or amounts of land devoted to specific land uses. All modifications or amendments to an approved plan other than minor changes shall be processed as an original application and shall be subject to all applicable substantive and procedural requirements of the planned development procedure; provided that, the filing fee therefor shall be one-half the fee charged for filing an original application.

(B) This 17.112.110 shall not apply to applications for Qualifying Sites which are concurrently considering proposed master development plans and precise development plans.

(Prior Code, § 17.58.110) (Ord. 352, passed - -1973)

§ 17.112.120 PRECISE DEVELOPMENT PLAN; APPLICATION.

(A) (1) Within one year following approval of the master development plan, or concurrently with the submission of a proposed master development plan for a

Qualifying Site, the applicant shall submit to the Planning Commission an application for approval of a precise development plan.

(2) Precise plan approval, valid for one year, shall be secured as delineated on the master development plan.

(3) No development, improvement or building construction within any phase of the planned development area covered by the master development plan shall be commenced until the Planning Commission has approved a precise development plan for that phase.

(4) Precise plans shall set forth in detail specific features of each increment of development.

(5) They shall conform to the master development plan, and be prepared by a team including a licensed architect or a licensed building designer and registered landscape architect, and a registered civil engineer or licensed land surveyor, and shall consist of:

(a) A topographic map of sufficient detail to show all cut and fill banks, precise drainage and flood control and boundary survey data;

(b) Detailed site plan, showing buildings, area utilization and traffic and pedestrian circulation; location, widths, grades and types of improvements proposed for all streets, parking areas, driveways, walkways, trails, utilities and other public improvements; building heights and dimensions of space between buildings and distances from property lines and rights-of-way;

(c) A precise landscaping plan;

(d) A map showing division of the land for the sale of individual property, if any;

(e) Location and dimensions of public or semipublic areas, including, but not limited to schools, parks, playgrounds and parking areas,

(f) A statement setting forth a program for installation and continued maintenance of parking areas, lighting, courts, public and private grounds, landscaping, streets, utilities, parks, playgrounds or public or semi-public community buildings and facilities; and

(g) Information necessary for evaluation and assignment of fire zone designations, including type of construction, where found necessary by the Planning Commission.

(B) Within 45 days following receipt of the application for precise development plan approval, and after public hearing noticed in the manner set forth in § [17.004.070](#) of this title, the Planning Commission shall approve or disapprove of the proposed precise development plan and shall notify the applicant of its action. Appeal may be made to the Town Council by the applicant in accordance with Chapter 17.036 of this title.

(C) The applicant shall, at the time of filing the precise plan, pay a filing fee in accordance with a schedule of fees adopted by resolution of the Town Council. Qualifying Sites that seek concurrent review of proposed master development plans and precise development plans shall pay a fee as established by the Town Council.

§ 17.112.130 PRECISE DEVELOPMENT PLAN; OPEN SPACE DEDICATION AND MAINTENANCE.

(A) To the extent permitted by law, the Planning Commission may as a condition of approval require that suitable areas for schools, parks and playgrounds be set aside,

unproved, and dedicated for public use, or be reserved for the owners, residents and establishments in the development by deed restrictions.

(B) (1) Whenever group or common open space is provided, whether required or not, the Planning Commission may, to the extent permitted by law, require that an incorporated nonprofit homeowners' association be established prior to any sale of land or facilities for the purpose of maintaining the open space.

(2) The association may also undertake other legal and proper functions. Agreements and covenants running with the land shall include provisions for automatic membership and charges to be levied for carrying out of the specified functions and administrative expenses.

(3) The association shall be responsible for levying, collecting and disbursing funds and for enforcement of the agreements.

(4) The agreements and covenants shall operate for a minimum of 20 years with a provision for automatic extension, except upon a majority vote for termination, upon which occasion the mutually owned properties will automatically go to public ownership.

(5) The town shall be a party of interest in any such development and may by mandatory injunction enforce the provisions in this section.

(C) Where permitted by law and to assure that open space shall be available for the entire developed planned development district, public sites and development rights to required open spaces shall be dedicated in advance of development. Where required, dedication of public sites and development rights to required open spaces for the entire district shall be made before the building permit is issued.

(D) Other dedications for street, utility, flood control, rights-of-way and/or easements and other public purposes, may also be required before the issuance of the first building permit.

§ 17.112.140 PRECISE DEVELOPMENT PLAN; PERFORMANCE BOND.

(A) As a condition precedent to approval of any precise development plan, the Town Council shall require the applicant to furnish a completion bond, or the cash equivalent, or other evidence of financial assurance, in an amount deemed sufficient by the Town to cover the cost of public improvements, common areas, incidental expenses, and to cover replacement and repair of existing streets and other improvements damaged in the development of the unit. The Town may determine sufficiency of the proposed amount of the performance bond or other assurance on the basis of materials submitted by the applicant.

(B) All public improvements shall be constructed in accordance with the standard specifications of the town.

§ 17.112.150 FINAL SUBDIVISION MAP.

(A) (1) No precise development plan or tentative map shall be approved under this chapter until the planned development district zoning has become effective, except in the case of applications submitted for Qualifying Sites, which may receive approval of a precise development plan concurrently with approval of a new planned development district zone .

(2) Disapproval of any precise development plan shall also constitute disapproval of any application for a tentative subdivision map for the property covered by the precise development plan for failure to conform to the applicable zoning requirements.

(B) No building permit shall be issued until a final subdivision map, if required, has been recorded for the area covered by the precise development plan, or any approved stage thereof, in compliance with the town’s subdivision regulations.

§ 17.112.160 TERM OF APPROVALS.

(A) Except as otherwise provided in §17.112.165 with regard to Qualifying Sites, if the applicant fails to submit a precise development plan for a first increment within one year of approval of the master development plan by the Town Council, or fails to record a final subdivision map to effectuate an approved precise development plan and/or fails to initiate development within two years after the precise plan approval, then approval of a master development plan by the Planning Commission and Town Council shall be rendered null and void.

(B) The time limits may be extended upon mutual agreement by the Town Council and the applicant.

§ 17.112.165 QUALIFYING SITES.

(A) Notwithstanding any other provision of this Chapter, any applicant seeking the rezoning of a Qualifying Site to PDD may request the concurrent review of a proposed master development plan and precise development plan, and shall not be required to seek or receive a preliminary development plan as a condition precedent thereto.

(B) Notwithstanding any requirement for separate hearings before the Planning Commission and Town Council, Qualifying Sites shall be eligible to have both proposed master development plans and precise development plans considered at a consolidated public hearing before each body.

(C) It is the intention of the Town of Fairfax to streamline the review of rezoning applications for Qualifying Sites. The provisions of this chapter shall be interpreted in accordance with this policy.

§ 17.112.170 APPEALS.

(A) Within ten days following the date of a decision by the Planning Commission upon an application for approval of a precise development plan, or for approval of any modification or amendment of any authorized plan, or any condition imposed therein, an appeal may be taken to the Town Council by any interested party.

(B) Any appeal of a decision of the Planning Commission made pursuant to this Chapter 17.112 shall conform to the requirements of Chapter 17.036. The Town Council may approve, modify or reverse a Planning Commission decision on appeal. The decision of the Council shall be final.

§ 17.112.180 TRAFFIC IMPACT PERMIT.

The provisions of the traffic impact permit, Chapter 17.056 of this title, are applicable to properties in the PDD zoning district.”

SECTION 3. Compliance with the California Environmental Quality Act. The ordinance revision set forth herein is not a project requiring review under CEQA. CEQA requires environmental review only of 'projects' as defined in CEQA, and CEQA Guidelines § 15378 provides that 'projects' are only those actions which have the 'potential for resulting in either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment.' Since, pursuant to § 15378(b)(2), the ordinance revision consists of procedural changes which will not have any potential for resulting in physical direct change in the environment or a reasonably foreseeable indirect physical change in the environment, the ordinance revision is not a 'project' subject to CEQA review. Any project proposing to use the revised ordinance procedures will be subject to its own review under CEQA. (See *Northwood Homes Inc. v. Town of Moraga* (1989) 216 Cal.App.3d 1197.)

SECTION 4. 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, provided, however, that if any decision of a court of competent jurisdiction invalidates the increase of the water service charges set forth in this Ordinance, then the water service charges in effect on the date of adoption shall continue in existence.

SECTION 5. 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; and 3. Bulletin Board, Fairfax Women's Club Building, located at 46 Park.

The foregoing Ordinance was introduced at a regular meeting of the Town Council on the ___ day of _____, 2017, and duly adopted at the next regular meeting of the Town Council on the ___ day of _____, 2017, by the following vote, to wit:

AYES:
NOES:
ABSENT:
ABSTAIN:

John Reed, Mayor

Attest:

Michele Gardner, Town Clerk

Date