



TOWN OF FAIRFAX

STAFF REPORT

January 23, 2019

TO: Mayor and Town Council

FROM: Ben Berto, Director of Planning and Building Services *GB*

SUBJECT: Introduce and read by title only an ordinance amending Town Code Chapter 17.112 PDD Planned Development District Zone, which amends Section 17.112.040 (B) to establish a maximum residential density based on an objective development standard of parcel slope; exempt under CEQA Guidelines Section 15060(c)(2), 15061(b)(3), and 15305.

(Note: This staff report has been revised from the version published for the 1/16/19 Council meeting. Please note revisions to the ordinance.)

RECOMMENDATION

1. Conduct public hearing
2. Introduce and read by title only an "Ordinance of the Town Council of the Town of Fairfax Amending Chapter 17.112 PDD Planned Development District Zone."

BACKGROUND

At the June 6th Town Council meeting, Heather Lee of the Town Attorney's office presented a comprehensive overview of the State's extensive housing legislation (SB 35 and the Housing Affordability Act), and its potential effects on Fairfax. As noted in the presentation, one of the State's stated housing goals is "effectively curbing the capability of local governments to deny, reduce the density of, or render infeasible housing development projects" (Housing Accountability Act). Staff reported, at the meeting, that there is an urgent need to develop objective development and design standards for housing in response to state legislation.

The Planning Commission (PC) was scheduled to begin discussions on objective development standards for the Planned Development District (PDD) at its October 25th meeting. However, the Commission was not able to review this topic owing to the lateness of the hour. As a result, on November 7, 2018, the Town Council adopted Urgency Ordinance No. 821 pursuant to Government Code Section 65858 establishing a forty-five (45) day moratorium on housing development projects in the Planned Development District (PDD) Zone. The Town Council subsequently extended this moratorium for an additional 10 ½ months (to November 7, 2019) at their December 5 meeting. During the moratorium, the Town will re-evaluate the standards and conditions for housing development and prepare permanent regulations establishing objective standards for development consistent with State law and the Town's General Plan.

DISCUSSION

The Planning Commission began its discussion of objective development standards at its November 15th meeting, and continued that discussion, focusing on possible changes to PDD Chapter 17.112, at their December 20, 2018 meeting. The Commission unanimously voted to approve a resolution recommending an amendment to Section 17.112.040(B) of the PDD

Chapter which focused on establishing a maximum density based on an objective development standard of parcel slope.

The PC did have a broader discussion of more global changes to the PDD Chapter regarding objective development standards. However, the PC agreed with staff that such revisions are a much longer-term undertaking and it would be prudent to first establish maximum residential densities in PDD zones based on parcel slope.

The PDD Chapter currently relies solely on subjective development standards in order to provide flexibility in the Town's evaluation of potential projects in the PDD zones. As a result, the Town's Planned Development District (PDD) zoning district currently lacks objective development standards and density limits. The current zoning regulations task the Planning Commission with determining appropriate densities based on subjective and general discretionary determinations, such as site topographic and geological conditions. As a result, SB 35 and the HAA have the potential to severely constrain the Town's ability to review and regulate housing projects that might be proposed in the PDD zoning district.

To facilitate the Town's ability to comprehensively plan PDD sites consistent with the character of the community, objective density limits should be established to prevent development that has limited or no discretionary review for potential impacts. Attached is a map showing the locations of the properties with a current PDD zoning designation.

In recommending appropriate densities, the Planning Commission recognized that remaining large, undeveloped PDD-zoned areas are largely steeply sloped (i.e., 30+% slope). Steeply-sloped parcels typically have a number of inherent development issues such as site stability, drainage, and visibility. The PC also found that other large, similar steeply-sloped parcels (i.e., 30%+ slope) in Town feature UR-7 or UR-10 zoning, which allows only one residential unit per 7 or 10 acres, respectively. In consideration of the zoning on similar, steeply sloped parcels and potential development issues, the PC's proposed amendment would create a sliding scale of residential density based on slope in the PDD zones.

Specifically, the most steeply sloped sites should have a density that is consistent with the most restrictive residential zoning designation available in Town which is UR-10 (i.e., 1 unit per 10 acres). The proposed sliding scale increases density as the slope decreases (i.e., 20%-29%- 1 unit per 5 acres, 10-19%- 1 unit per 2 acres). While there is no current zoning designation for 1 unit per 5 acres or 1 per 2 acres, the PC indicated that its proposed densities based on slope better reflect the inherent development issues (e.g., drainage) that face steeply sloped sites.

With regard to slopes of less than 10%, the current PDD process for setting density based on a variety of factors such as geological, topographic, and hydrological conditions of the site would apply. As stated above, the PC will be discussing objective development standards such as grading, parking, and building areas at a future meeting. These discussions will also include establishing density limits for parcels with slopes of less than 10%.

At the Planning Commission meeting, staff reported that in our research of Town minutes, planning files and County records we could not find any evidence of development restrictions (e.g., open space easement) placed on the undeveloped, vacant parcels in the PDD zone. This research was conducted in response to residents' comments that some parcels with PDD zoning already had development restrictions. We continue to encourage the public to share any

documentation with us that could assist with further research into the matter. However, it should be noted that recorded development restrictions that exist outside the zoning regulations should not be affected or allowed to develop as a result of the proposed zoning amendment. Furthermore, the proposed amendment does not affect the other provisions of the PDD ordinance.

The proposed amendment provides basic safeguards on development in PDD zones by establishing a maximum density based on parcel slope, which are lacking in the current PDD zoning. Specifically, the amendment adds a density table to Chapter 17.112.040 (B) and modifies the existing language in 17.112.040 (B) and Section (C) which provides the PC with the ability to consider additional factors to further restrict density on a parcel. Attached is a redline of the revisions in Section 17.112.040 "Residential Density Policy". The proposed ordinance is slightly different from the version recommended by the PC because of the language added to provide more clarity and address an inconsistency between Sections B & C.

The moratorium is not proposed to terminate with the effective date of this ordinance, which is 30 days after the second reading. The PC would continue with its discussions regarding objective development standards, with recommendations to be forwarded to the Council at a future meeting.

CEQA

Adoption of the proposed Ordinance is exempt from the California Environmental Quality Act ("CEQA") insofar as adoption of this Ordinance will enact only minor changes in land use regulations, will not authorize any new development, and it can be seen with certainty that its adoption will not have a significant effect on the environment because it will not allow for housing development at densities that exceed what was previously allowed in the PDD regulations, and the proposed Ordinance does not constitute a "project" within the meaning of the California Environmental Quality Act of 1970 (CEQA) Guidelines Section 15060(c)(2) and 15061(b)(3) because there is no potential that the regulations result in a direct or reasonably foreseeable indirect physical change in the environment, and CEQA Guidelines Section 15378 because they have no potential for either a direct physical change to the environment, or a reasonably foreseeable indirect physical change in the environment. Moreover, the regulations are exempt from CEQA pursuant to CEQA Guidelines Section 15305, which exempts minor alterations in land use limitations.

FISCAL IMPACT

None at this time

ATTACHMENTS

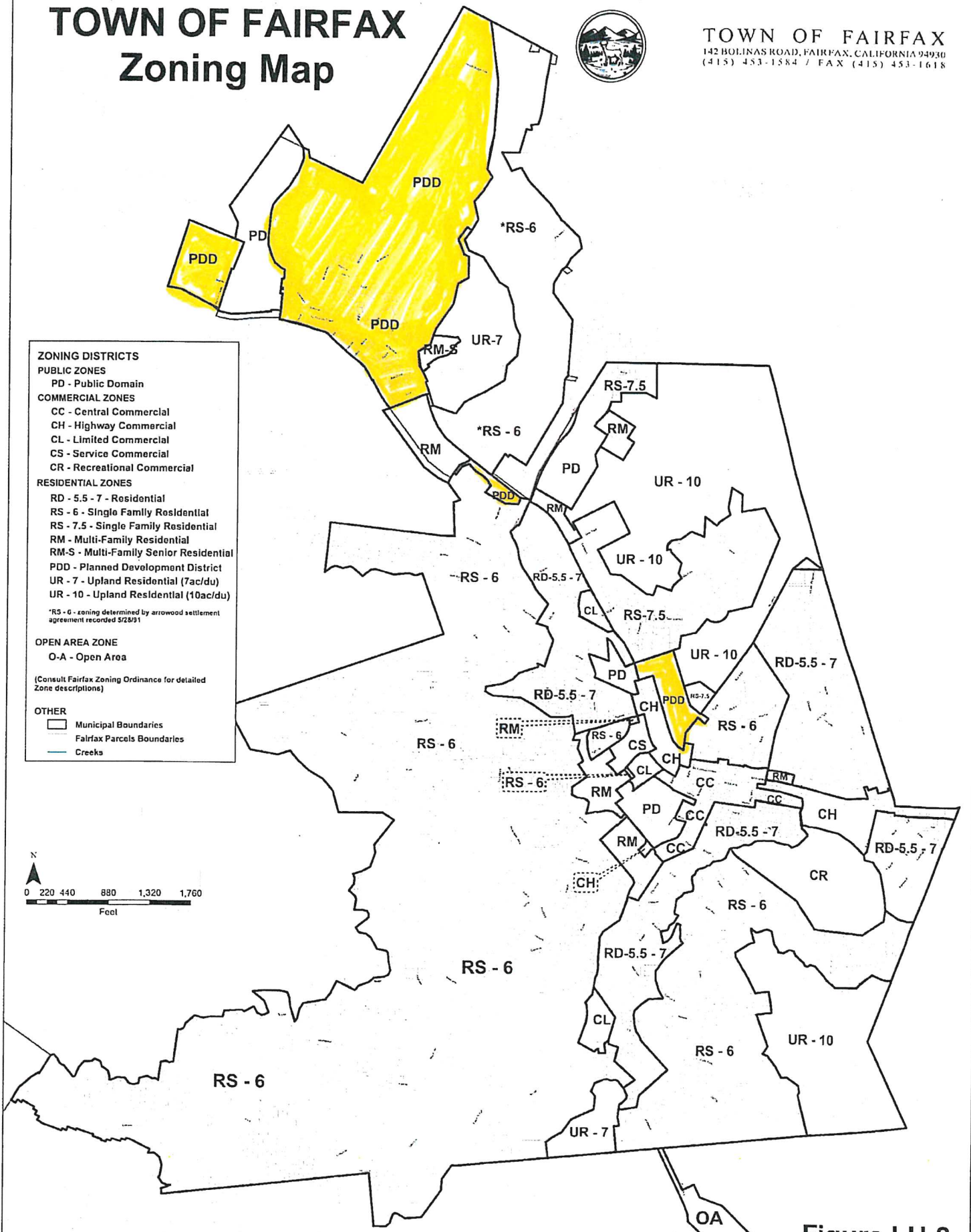
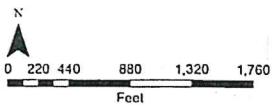
- A. Map of PDD zones
- B. Redline of 17.112.040
- C. Zoning Ordinance
- D. PC Resolution

TOWN OF FAIRFAX Zoning Map



TOWN OF FAIRFAX
142 BOLINAS ROAD, FAIRFAX, CALIFORNIA 94930
(415) 453-1584 / FAX (415) 453-1618

- ZONING DISTRICTS**
- PUBLIC ZONES**
PD - Public Domain
- COMMERCIAL ZONES**
CC - Central Commercial
CH - Highway Commercial
CL - Limited Commercial
CS - Service Commercial
CR - Recreational Commercial
- RESIDENTIAL ZONES**
RD - 5.5 - 7 - Residential
RS - 6 - Single Family Residential
RS - 7.5 - Single Family Residential
RM - Multi-Family Residential
RM-S - Multi-Family Senior Residential
PDD - Planned Development District
UR - 7 - Upland Residential (7ac/du)
UR - 10 - Upland Residential (10ac/du)
- *RS - 6 zoning determined by arrowwood settlement agreement recorded 5/28/91
- OPEN AREA ZONE**
O-A - Open Area
- (Consult Fairfax Zoning Ordinance for detailed Zone descriptions)
- OTHER**
 Municipal Boundaries
 Fairfax Parcels Boundaries
 Creeks



ATTACHMENT **A**

Figure LU-2

Zoning Map created by LAK Associates, LLC - October 2017

§ 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) Residential Density limitations.—A Maximum residential density shall be established based upon average slope, as set forth in the following table:

<u>Average Slope</u>	<u>Maximum Residential Density</u>
<u>30% and greater</u>	<u>1 dwelling unit / 10 acres</u>
<u>20 to 29.9%</u>	<u>1 dwelling unit / 5 acres</u>
<u>10 to 19.9%</u>	<u>1 dwelling unit / 2 acres</u>

A density shall be ~~further set which is consistent with limited ations 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.

(C) *Planning Commission determination.* The Planning Commission shall consider the following criteria in ~~further limiting 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)

**AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF FAIRFAX
AMENDING CHAPTER 17.112 PDD PLANNED DEVELOPMENT DISTRICT ZONE
OF THE FAIRFAX MUNICIPAL CODE**

WHEREAS, this Ordinance is adopted as follows:

- 1) The State of California has recently passed legislation (collectively referred to as the Housing Accountability Act and Senate Bill 35) intended to ensure greater predictability in local jurisdictional review of housing developments.
- 2) The State law severely limits the ability of local jurisdictions to regulate the density of, or to deny applications for, housing development absent reliance on specific, objective development standards.
- 3) The purpose of this Ordinance is to update the Town's Municipal Code to apply objective development standards to the review of housing development projects in the PDD zone.
- 4) The Town's current regulations governing development in the Planned Development District Zone Chapter 17.112 have not been amended in several decades and lack objective development standards.
- 5) The Town wishes to continue to effectively govern the density of housing development and determine whether or not housing development is consistent with the Fairfax General Plan and local regulations; and

WHEREAS, adoption of this Ordinance is consistent with the Town's General Plan, which provides goals, policies, and programs to preserve the environment, protect against hazards, and retain protect Fairfax's small-Town character, aesthetics and environmental characteristics while also allowing for residential development; and

WHEREAS, the Planning Commission conducted a duly-noticed public hearing on December 20, 2018 to consider the draft ordinance; and

WHEREAS, the Town Council has conducted a duly-noticed public hearing on January 16, 2019 to consider the draft ordinance, heard the presentation of a staff report, and received public comment on the matter;

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

Section 1. Section 17.112.040 of the Fairfax Municipal Code is hereby amended to read as follows:

“(B) Residential Density. A Maximum residential density shall be established based upon average slope, as set forth in the following table:

Average Slope	Maximum Residential Density
30% and greater	1 dwelling unit / 10 acres
20 to 29.9%	1 dwelling unit / 5 acres
10 to 19.9%	1 dwelling unit / 2 acres”

A density shall be further limited 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.

“(C) *Planning Commission determination.* The Planning Commission shall consider the following criteria in further limiting 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.

Section 2. Adoption of the proposed Ordinance is exempt from the California Environmental Quality Act (“CEQA”). Adoption of this Ordinance will enact only minor changes in land use regulations, and it can be seen with certainty that its adoption will not have a significant effect on the environment because it will not allow for housing development at densities that exceed what was previously allowed in the PDD regulations, and the proposed Ordinance does not constitute a “project” within the meaning of the California Environmental Quality Act of 1970 (CEQA) Guidelines Section 15060(c)(2) and 15061(b)(3) because there is no potential that the regulations result in a direct or reasonably foreseeable indirect physical change in the environment, and CEQA Guidelines Section 15378 because they have no potential for either a direct physical change to the environment, or a reasonably foreseeable indirect physical change in the environment. Moreover, the regulations are exempt from CEQA pursuant to CEQA Guidelines Section 15305, which exempts minor alterations in land use limitations; and

Section 3. Severability. If any section, subsection, sentence, clause, phrase, or word of this Ordinance is, for any reason, deemed or held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, or preempted by legislative enactment, such decision or legislation shall not affect the validity of the

remaining portions of this Ordinance. The Town Council of the Town of Fairfax hereby declares that it would have adopted this Ordinance and each section, subsection, sentence, clause, phrase, or word thereof, regardless of the fact that any one or more sections, subsections, clauses, phrases, or word might subsequently be declared invalid or unconstitutional or preempted by subsequent legislation; and

Section 4. Effective Date. This Ordinance shall become effective 30 days following its adoption by the Town Council. Copies of this Ordinance shall, within fifteen days after its passage and adoption, be posted in three public places in the Town of Fairfax, to wit: 1. Bulletin Board, Town Hall Offices; 2. Bulletin Board, Fairfax Post Office; 3. Bulletin Board, Fairfax Women's Club building.

The foregoing Ordinance was introduced at a regular meeting of the Town Council of the Town of Fairfax on the 16th day of January 2019, and duly adopted at the next regular meeting of the Town Council on the __ day of _____, 2019, by the following vote, to wit:

AYES:

NOES:

ABSENT:

ABSTAIN:

Barbara Coler, Mayor

ATTEST:

Michele Gardner, Town Clerk

RESOLUTION NO. 2018-24

**A RESOLUTION OF THE PLANNING COMMISSION OF THE TOWN OF FAIRFAX
RECOMMENDING THE TOWN COUNCIL ADOPT ORDINANCE NO. ____ ENTITLED
“AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF FAIRFAX
AMENDING CHAPTER 17.112 PDD PLANNED DEVELOPMENT DISTRICT ZONE
OF THE FAIRFAX MUNICIPAL CODE” AND MAKING CEQA FINDINGS OF
EXEMPTION**

WHEREAS, the State of California has recently passed legislation (collectively referred to as the Housing Accountability Act and Senate Bill 35) intended to ensure greater predictability in local jurisdictional review of housing developments; and

WHEREAS, the new State law severely limits the ability of local jurisdictions to deny or reduce the density of housing developments where objective development standards are lacking; and

WHEREAS, the purpose of this resolution is to make a recommendation to the Town Council to adopt an Ordinance to update the Town's Municipal Code to apply objective development standards to the review of housing development projects in the PDD zone in accordance with State law; and

WHEREAS, the Town's current regulations governing development in the Planned Development District Zone Chapter 17.112 have not been amended in several decades and lack objective development standards, and

WHEREAS, the Town wishes to continue to effectively govern the density of housing development and determine whether or not housing development is consistent with the Fairfax General Plan and local regulations; and

WHEREAS, adoption of the proposed Ordinance is consistent with the Town's General Plan, which provides goals, policies, and programs to preserve the environment, protect against hazards, and retain protect Fairfax's small-Town character, aesthetics and environmental characteristics while also allowing for residential development; and

WHEREAS, the adoption of the proposed Ordinance is exempt from the California Environmental Quality Act (“CEQA”). Adoption of this Ordinance will enact only minor changes in land use regulations, will not authorize any new development, and it can be seen with certainty that its adoption will not have a significant effect on the environment because it will not allow for housing development at densities that exceed what was previously allowed in the PDD regulations, and the proposed Ordinance does not constitute a “project” within the meaning of the California Environmental Quality Act of 1970 (CEQA) Guidelines Section 15060(c)(2) and 15061(b)(3) because there is no potential that the regulations result in a direct or reasonably foreseeable indirect physical change in the environment, and CEQA Guidelines Section 15378 because they have no

potential for either a direct physical change to the environment, or a reasonably foreseeable indirect physical change in the environment. Moreover, the regulations are exempt from CEQA pursuant to CEQA Guidelines Section 15305, which exempts minor alterations in land use limitations; and

WHEREAS, the Planning Commission has conducted a duly-noticed public hearing to consider the draft ordinance, heard the presentation of a staff report, and received 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 Attachment 1 and finds that it is consistent with the Town General Plan, as set forth above.

SECTION 3. The Planning Commission hereby recommends that the Town Council adopt Attachment 1 amending Chapter 17.112 PDD 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 20th day of December 2018 by the following vote, to wit:

AYES: Fragoso, Gonzalez Parber, Kehrlein, Rodriguez, Swift, Chair Newton
NOES:
ABSENT: Green
ABSTAIN:

Mimi Newton, Chair

Attest:

Ben Berto, Secretary