### TOWN OF FAIRFAX STAFF REPORT

To: Planning Commission

From: Jim Moore, Director of Planning & Building Services

Date: July 21, 2016

Subject: CONSIDERATION OF AN ORDINANCE TO AMEND THE TOWN OF FAIRFAX

TOWN CODE AMEND FAIRFAX TOWN CODE CHAPTER 5.052 ('BUSINESS

TAXES, LICENSES, AND REGULATIONS'), CHAPTER 7.008

('DEFINITIONS'), CHAPTER 17.012 ('ZONÉ DISTRICTS ESTABLISHED'), CHAPTER 17.020 ('DESIGN REVIEW REGULATIONS'), CHAPTER 17.092 ('CL LIMITED COMMERCIAL ZONE'), CHAPTER 17.096 ('CH HIGHWAY COMMERCIAL ZONE'), AND 17.100 ('CC CENTRAL COMMERCIAL ZONE') IN ACCORDANCE WITH THE MITIGATED NEGATIVE DECLARATION

PREPARED FOR THE 2010-2030 FAIRFAX GENERAL PLAN.

### **BACKGROUND**

In April 2012, the Town Council adopted the 2010-2030 General Plan, which, along with the 2015 update to the Housing Element, dictate that certain zoning amendments be made in order to realize the policies and objectives of the Town with respect to the further development of the Town's retail heart and the provision of housing. Included amongst these directives is direction to rezone all properties currently zoned Highway Commercial to Central Commercial, and make certain modifications to the uses permitted in the Central Commercial zone. The draft zoning ordinance before the Planning Commission tonight represents the implementation of some of these policies and objectives within the Central Commercial zoning district. Staff asks the Planning Commission to consider recommending the Town Council adopt the ordinance and make associated CEQA findings.

### **DISCUSSION**

Over the past several months, the Planning Commission and Town Council have hosted a number of public meetings to consider how to carry out the General Plan's directive to rezone all CH parcels to CC and rezone the CC to implement the policy directives in the General Plan. These public meetings include the following:

On **October 29, 2015**, the Town Council held a third General Plan forum to consider policy consideration and the process for rezoning CH parcels to CC. The event drew many participants and provided direction to staff as we began drafting a comprehensive rezoning ordinance.

On **November 18, 2015**, the Planning Commission held a follow-up to the Town Council's October meeting, discussing residential unit sizes, and parking requirements for the CC district.

On **January 21, 2016**, the Planning Commission continued their discussion on residential unit sizes, affordability measures, parking requirements, and the uses to be included in the CC

district. Due to the length of the meeting, a held was scheduled for February to continue the discussion.

On **February 25, 2016**, the Planning Commission met and considered the uses that should be permitted and conditionally permitted in the CC district.

On **April 28, 2016,** the Planning Commission once again met and held an extensive discussion as to the format of the CC district and the uses in the district. Further direction was provided to staff for amendments to the draft ordinance.

On **May 26, 2016,** the Planning Commission held a further meeting to refine definitions, discuss use locations, and seek additional information.

Tonight, after many months of drafting, revision, and study, the Planning Commission is asked to review and recommend to the Town Council the adoption of the proposed ordinance rezoning all CH parcels to CC and amending the permitted and conditionally permitted uses within the CC district accordingly.

**Highlights.** In sum, the draft ordinance attached for the Planning Commission's consideration accomplishes the following:

- Rezones all parcels currently zoned CH to CC, per the General Plan.
- Removes all references to the CH district from other sections of the Town Code.
- Amends the permitted and conditionally permitted uses in the CC district to employ a system of 'use classifications,' rather than listing individually enumerated uses. It is anticipated that this more modern style of zoning will avoid the need for zoning amendments and will be more efficient.
- Deletes outdated zoning definitions and adopts new definitions for use classifications to aid in administering zoning decisions.
- Brings the Town into conformance with state law requirements regarding the treatment of specific residential uses.
- Deletes language in the Town Code that vested the Planning Commission with the authority to dictate the zoning for lots where split zoning occurs.
- Amends the parking requirements for residential uses within the CC district that are 500 square feet or less.
- Imposes a maximum density of 4.5 dwelling units per acre.
- Implements many directives in the General Plan, as required by state law.

**Residential uses.** There were a number of questions about residential uses at the last Planning Commission meeting. According to the general plan, one of the primary reasons for rezoning the CH parcels to CC is to permit the development of certain second-story residential uses without the need for a conditional use permit in order to help the Town meet its regional housing need allocation. Once a zone permits certain such residential uses, however, state

law and our general plan require that additional, specific residential uses be permitted or conditionally permitted. In addition, our own General Plan requires certain residential uses be permitted or conditionally permitted in the CC. The following is a brief overview of the governing principles and laws that have shaped the designation of permitted and conditionally permitted residential uses in the revised CC district:

- 1. Emergency homeless shelters. (Permitted.) Policy H-2.1.6 of the 2015 Housing Element directs us to "[a]mend the Zoning Code to Comply with SB 2. Consistent with SB 2 (GC Sections 65582, 65583, and 65589.5), the Town will establish zoning designations for transitional and supportive housing, and will define "transitional housing" and "supportive housing" in the Zoning Ordinance. The Town will establish procedures to encourage and facilitate the creation of emergency shelters and transitional and supportive housing, and link this housing to programs of the Department of Health and Human Services whenever possible." (Emphasis added.) Table C-1 of the 2015 Housing Element lists 'emergency shelters' as a residential use permitted by right in the Central Commercial zoning district. The Town has also adopted an ordinance regulating the operation of emergency homeless shelters to the fullest extent allowed by state law; any new emergency homeless shelter in the CC will be bound by these regulations. (See Town Code Section 17.138.010.)
- 2. Family day care homes. (Permitted as to both.) Under state law, the use of a single-family home for both small and large family day care homes must be treated as residential use of property. Health and Safety Code §§ 1597.45 and 1597.46. Though single-family homes are not permitted in the CC district, it is recommended that this principle be applied to the second-story residential uses that are permitted there, given the interpretation of these code sections by the State of California over the years. In this regard, the California Department of Social Services publishes the following advice:

"Even though the Health and Safety Code refers to 'single-family residences,' the law has historically been interpreted to protect providers in multiple dwellings such as apartments, condominiums and other non-detached residences. This means that any legal residence can qualify to become a family child care home if it meets the licensing requirements."

('Family Child Care Self-Assessment Guide: Tenant Rights,' published by the Community Care Licensing Division of the California Department of Social Services, page 6.)

3. Group care homes. (Permitted for homes with six or fewer residents; conditionally permitted for seven or more residents.) Under a number of state laws (see, e.g., Welfare & Institutions Code § 5116; Health & Safety Code §§ 1267.8, 1267.9, and 1267.16; and Health & Safety Code § 11834.23, among others), licensed group homes serving six or fewer residents must be treated the same way as single dwelling units for zoning purposes and can only be subject to the same zoning standards as are applied to other residential uses of the same housing type. Since second story residential is allowed by right in the CC district, so, too, must be group care homes of six or fewer

residents. For seven or more residents, we can require a conditional use permit in order to address any special impacts the proposed use may have.

Note: the 'group care homes' use classification replaces earlier proposed classifications in the ordinance, including 'adult day care home,' 'congregate living facility,' and 'residential care home.'

- 4. **Group residential.** (Conditionally permitted.) This use is not subject to state law requirements. Its treatment reflects the direction of the Planning Commission.
- 5. **Junior second unit.** (Not permitted.) Per Town Code § 17.048.220, junior second units are only allowed within the RD 5.5-7, RS-6, RS 7.5, SF-RMP, and UR zoning districts, and "are not allowed in conjunction with duplex or multiple residential developments."
- Second story residential. (Permitted.) This implements Housing Element Program H-3.1.1.1, which directs "[a]mend CH Zone. Rezone all CH zones to CC zones, which will allow housing on second floors without a conditional use permit instead of requiring conditional use permits."
- 7. **Second unit.** (Permitted.) Under Government Code § 65852.2(c), towns and cities are prohibited from adopting any "ordinance which totally precludes second units within single-family or multifamily zoned areas unless the ordinance contains findings acknowledging that the ordinance may limit housing opportunities of the region and further contains findings that specific adverse impacts on the public health, safety, and welfare that would result from allowing second units within single-family and multifamily zoned areas justify adopting the ordinance." We thus recommend allowing second units within the CC, recognizing that their construction will be highly unlikely.
- 8. **Single family residential.** (Not permitted, with exception.) The CC district is the Town's retail core, and housing is thus limited to the second story within this district. As such, single family homes are not permitted, with the exception of such structures existing as of the effective date of this ordinance that are then being used for residential purposes (i.e, have not been converted to a commercial use), which will be allowed to remain and will explicitly not be rendered legal, non-conforming by adoption of the ordinance.
- 9. **Single room occupancy.** (Permitted.) Implements Housing Element Program H-2.1.6.3, which directs "[p]ermit single-room occupancy dwelling units without a conditional use permit in the CC zone." This reflects our fulfillment of Government Code § 65583(c)(1), which requires us to identify sites as needed to "facilitate and encourage the development of a variety of types of housing for all income levels, including multifamily rental housing, factory-built housing, mobilehomes, housing for agricultural employees, supportive housing, single-room occupancy units, emergency shelters, and transitional housing." (Emphasis added.)

- 10. **Supportive housing.** (Permitted.) Per Government Code § 65583(a)(5), supportive housing must be permitted as a residential use subject to only those restrictions that apply to other residential dwellings of the same type in the same zone. (See also Housing Element Policy H-2.1.6) Since we are allowing second story residential by right, we are required to treat supportive housing in the same fashion.
- 11. **Transitional housing.** (Permitted.) Per Government Code § 65583(a)(5), transitional housing must be permitted as a residential use subject to only those restrictions that apply to other residential dwellings of the same type in the same zone. (See also Housing Element Policy H-2.1.6) Since we are allowing second story residential by right, we are required to treat transitional housing in the same fashion.

**CEQA.** As analyzed in greater detail in Attachment B, counsel has determined that the requirements of CEQA, including the State CEQA Guidelines, were satisfied by Town in the Mitigated Negative Declaration ('MND') prepared in order to evaluate the General Plan. The MND was sufficiently detailed such that all potentially significant environmental effects of the rezoning of the CH to CC have been adequately evaluated. Further, to the extent that any environmental effect of the proposed rezoning differs from that evaluated in the General Plan MND, such a difference will result in a decrease, rather than an increase, in those impacts and thus no additional environmental review is required.

### RECOMMENDATION

Conduct a public hearing to consider recommending to the Town Council the adoption of the proposed ordinance and the making of associated CEQA findings.

### **ATTACHMENTS**

Attachment A - Resolution No. 16-25

Attachment B – CEQA memorandum

Attachment C - Draft Ordinance

### **RESOLUTION NO. 16-25**

A RESOLUTION OF THE TOWN COUNCIL OF THE PLANNING COMMISSION OF THE TOWN OF FAIRFAX RECOMMENDING ADOPTION OF ORDINANCE NO. XX TO AMEND TOWN CODE CHAPTER 5.052 ('BUSINESS TAXES, LICENSES, AND REGULATIONS'), CHAPTER 7.008 ('DEFINITIONS'), CHAPTER 17.012 ('ZONE DISTRICTS ESTABLISHED'), CHAPTER 17.020 ('DESIGN REVIEW REGULATIONS'), CHAPTER 17.092 ('CL LIMITED COMMERCIAL ZONE'), CHAPTER 17.096 ('CH HIGHWAY COMMERCIAL ZONE'), AND CHAPTER 17.100 ('CC CENTRAL COMMERCIAL ZONE') IN ACCORDANCE WITH THE MITIGATED NEGATIVE DECLARATION PREPARED FOR THE 2010-2030 FAIRFAX GENERAL PLAN

**WHEREAS**, on April 4, 2012, the Town Council of the Town of Fairfax adopted the 2010-2030 Fairfax General Plan (the "General Plan" or the "Project"); and

**WHEREAS**, in order to evaluate the General Plan Project under the California Environmental Quality Act ("CEQA," codified at Public Resources Code § 21000, *et seq.*, as further governed by the CEQA Guidelines, found at 14 C.C.R. § 15000, *et seq.*), a mitigated negative declaration was prepared (the "MND"); and

**WHEREAS**, on April 4, 2012, prior to adoption of the General Plan, the Town Council of the Town of Fairfax approved the MND; and

**WHEREAS**, subsequent to the adoption of the General Plan, on May 27, 2015, the Town Council approved the 2015 Housing Element update to the General Plan (the "2015 Housing Element"); and

WHEREAS, both the General Plan and the 2015 Housing Element direct that all parcels currently zoned Highway Commercial shall be rezoned to Central Commercial and that additional changes shall be made to the Central Commercial zoning district to implement particular uses, policies, and legal requirements. Staff has thus prepared Ordinance No. XX (the "Ordinance"), to implement these directions (see <a href="Exhibit 1">Exhibit 1</a> hereto and incorporated herein); and

**WHEREAS,** the Ordinance is consistent with the General Plan and the 2015 Housing Element as particularly demonstrated by, but not limited to, the following:

General Plan Directive	Ordinance fulfillment
"Rezone all Commercial Highway (CH) Zone to Central Commercial (CC) Zone and revise the CC Zone as appropriate." (General Plan Land Use Program LU-7.1.1.2)	The Ordinance rezones all Commercial Highway zoned parcels to Central Commercial. It likewise allows residential uses on the second story within the Central Commercial zone as a permitted use.
"Amend CH Zone. Rezone all CH zones to CC zones, which will allow housing on second floors without a conditional use permit instead of requiring conditional use	

### **General Plan Directive**

Program H-3.1.1.1)

"New and/or renewed development in the Town Center Area should preserve and enhance the village character of the Town Center Area in the mix of land uses, architectural styles and ornamentation, materials, colors, and textures." (Land Use Policy LU-7.1.2)

"New and renewed development shall be compatible with the general character and scale of structures in the vicinity." (Land Use Policy LU-7.2.1)

"New and/or renewed development in the Town Center Planning Area shall preserve and enhance the village character and pedestrian scale of the downtown area. Large, highly visible parking lots characteristic of strip shopping centers are inconsistent with village character." (Town Center Policy TC-1.1.1)

"Amend the Zoning Code to Comply with SB 2. Consistent with SB 2 (GC Sections 65582, 65583, and 65589.5), the Town will establish zoning designations for transitional and supportive housing, and will define "transitional housing" "supportive housing" in the Zoning Ordinance. The Town will establish procedures to encourage and facilitate the creation of emergency shelters and transitional and supportive housing, and link this housing to programs of the Department of Health and Human Services whenever possible." (2015)Housing Element Policy H-2.1.6)

Table C-1 of the 2015 Housing Element likewise lists 'emergency shelters' as a residential use permitted in the Central Commercial zoning district.

### Ordinance fulfillment

That area of the Town of Fairfax identified as the Town Center Area by Figure TC-1 in the Town Center Element of the General Plan is nearly coextensive with the combined CC and CH zoning districts, as shown in Figure LU-2 of the Land Use Element of the General Plan.

The Ordinance implements this policy by revising the 'Purpose' language of the CC zoning district to provide, among other things, that within the CC district, "...store frontages are intended to be continuous and to enhance the village character of the Town. Uses should be scaled such that an automobile is not needed to travel between them." In addition, the Ordinance revises the uses permitted and conditionally permitted in the CC district that are amenable to pedestrian usage and are not automobile dependent.

The Ordinance incorporates the statutory definitions of both "transitional" and "supportive" housing and, in compliance with state law, permits such housing types on the same basis as other, like housing types within the CC zoning district.

The Ordinance implements Table C-1 of the 2015 Housing Element by permitting emergency shelters as a residential use in the CC zoning district, subject to the provisions of Fairfax Town Code Section 17.138.010 ('Emergency Homeless Shelter Standards').

- WHEREAS, pursuant to CEQA, when taking subsequent discretionary actions in furtherance of a project for which a mitigated negative declaration has been approved, the lead agency is required to review any changed circumstances or new information to determine whether any of the circumstances under Public Resources Code § 21166 and 14 C.C.R. § 15162 require additional environmental review; and
- WHEREAS, staff evaluated the Ordinance in light of the standards for subsequent environmental review outlined in Public Resources Code § 21166 and 14 C.C.R. § 15162; and
- WHEREAS, based on that evaluation, and as set forth in the Ordinance and in materials accompanying the public review of the Ordinance, staff concluded that the Ordinance is exempt from further CEQA review; and
- WHEREAS, on July 21, 2016, a duly noticed public hearing on the Ordinance was held by the Planning Commission to consider the Ordinance and this CEQA determination, and to accept oral and written testimony from interested persons; and
- WHEREAS, at this hearing, the Planning Commission considered the Ordinance and its CEQA review; and
- WHEREAS, all other legal prerequisites to the adoption of this Resolution have occurred.
- **NOW, THEREFORE, BE IT RESOLVED,** the Planning Commission of the Town of Fairfax hereby finds, determines, and resolves as follows:
- **SECTION 1.** Record and Basis for Action. The Planning Commission has considered the full record before it, which may include but is not limited to such things as the staff report, testimony by staff and the public, and other materials and evidence submitted or provided to it. Furthermore, the recitals set forth above are found to be true and correct and are incorporated herein by reference.
- SECTION 2. Compliance with CEQA. Pursuant to the California Environmental Quality Act (Pub. Res. Code §§ 21000 et seq.) (CEQA), and the State CEQA Guidelines (14 Cal. Code Regs. §§ 15000 et seq.) the Planning Commission recommends that the Town Council determine that the proposed rezoning does not require environmental review in addition to that previously undertaken in the Mitigated Negative Declaration and Initial Study of the General Plan for the Town of Fairfax (General Plan MND), adopted on February 29, 2012. The Planning Commission finds that the requirements of CEQA and the State CEQA Guidelines were satisfied by Town in the General Plan MND, which is sufficiently detailed such that all of the potentially significant environmental effects of the rezoning have been adequately evaluated. Further, the Planning Commission recommends that the Town Council determine that none of the conditions set forth in Section 15162 of the CEQA Guidelines calling for the preparation of a subsequent environmental document have occurred. In addition, to the extent that any environmental effect of the rezoning differs from that evaluated in the General Plan MND, it will result in a decrease in those impacts evaluated in the General Plan MND.

(See Citizens for a Sustainable Treasure Island v. City and Cty. of San Francisco (2014) 227 Cal.App.4th 1036, 1055.) Finally, in the alternative, the proposed rezoning is also exempt from further environmental review pursuant to State CEQA Guidelines sections 15301 and 15303.

**SECTION 3.** Recommendation to Town Council. The Planning Commission likewise finds that the various land uses authorized by the Ordinance are compatible with the objectives, policies, general land uses, and programs specified in the 2010-2030 Fairfax General Plan and 2015 Housing Element, as set forth above, and therefore recommends the Town Council adopt the Ordinance.

PASSED AND ADOPTED this 21st day of July, 2016,	by the following vote:
AYES:	
NOES:	
ABSENT:	
ABSTAIN:	
ATTEST:	APPROVED:
Jim Moore, Secretary	Laura Kehrlein, Chair
Attachments:	
Exhibit 1 – Ordinance No. XX	

Hxis	Existing	Princinal Permitted Hees!	Included in new CC	New 11se	Notes
S	CH		permitted uses?	classification	
$ \times$		Alternative birthing centers licensed by the	No	Health and wellness	Now requires a
		V 4		centers	conditional use permit
		the requirement is waived by the state		,	
1	×	Animal grooming and supplies	Yes	Animal retail sales	
				and grooming	
×	ı	Antique stores	Yes	Retail sales	1
ı		Appliances repair, domestic	Yes	Maintenance and	1
				repair services (small	
				equipment)	
ı	×	Appliances sales, domestic	Yes	Retail sales	1
×	×	Artist's studios and galleries	Yes	Retail sales	'Galleries' not
					previously listed in CC
					permitted uses
×	1	Art supply	Yes	Retail sales	1
×	×	Audio/visual sales and service	Yes	Retail sales	1
ı	×	Automobile supply stores	Yes	Retail sales	1
×	×	Bakeries, including for sale on premises	Yes	Eating and/or	Former CH did not
				drinking	allow on-site baking
				establishments	
×	×	Banks	Yes	Financial institutions	Former CH also
					included 'savings and
					loans' in this category
×	ı	Bars	No	Eating and/or	Now requires
				drinking	conditional use permit
				establishments, with	
				full alcoholic	
				beverage service	
×	×	Barbershops	Yes	Personal services	1

<sup>1</sup> In both CC and CH, principal permitted uses are required to be conducted entirely within a building (unless an exception applies)

Exi	Existing	Principal Permitted Uses <sup>1</sup>	Included in new CC	New use	Notes
ည	CH	•	permitted uses?	classification	
×	X	Beauty shops	Yes	Personal services	
×	X	Bicycle sales and repair	Yes	Retail sales	I
×	×	Butcher shops	Yes	Food and beverage sales	1
×	×	Blueprint and photocopy services	Yes	Personal services	
×	X	Bookstores	Yes	Retail sales	Name of the state
1	×	Building contractor's facilities (provided	No		-
		there is no storage, servicing and repair of heavy equipment on the premises)			
1	×	Building supplies and lumber when within a building	Yes	Retail sales	ı
ī	X	Business machine sales and repair	Yes	Retail sales	
×	1	Cafes	Yes	Eating and/or	CUP will be required
***************************************				drinking	for take-out service,
				establishments	outdoor seating, full
					alcohol sales, or live
					entertainment/dancing
×	,	Camera and photography shops	Yes	Retail sales	ī
×	×	Camera and photography sales, service, developing and printing	Yes	Retail sales	1
×	×	Candy stores and confectioneries	Yes	Retail sales	CH does not mention
	\$				confectioneries
,	<u>حا</u> :	Carpeniers snops, cabinet making			
1	×	Catering	Yes	Food and beverage sales	Catering
×	X	Christmas tree sale lots	Yes	Retail sales	
×	×	Clothing stores	Yes	Retail sales	***************************************
×	×	Computer sales and service	Yes	Retail sales	1
×	×	Craft shops (including custom wood, paper, glass and metal work and sales)	Yes	Light industrial	ı
	X	Dairy product stores	Yes	Food and beverage	

Exi	Existing	Principal Permitted Uses <sup>1</sup>	Included in new CC	New use	Notes
ပ္ပ	CH		permitted uses?	classification	
				sales	
×		Curtain and drapery shops	Yes	Retail sales	1
×	×	Delicatessens	Yes	Food and beverage sales	ı
ı	×	Department stores	Yes	Retail sales	Permitted if less than 5,000 sq ft; larger formats need CUP
1	×	Diaper service	Yes	Cleaning services	
×	×	Drugstores and pharmacies	Yes	Retail sales	CH also allows
					'prescription pharmacies' (not clear how they differ from
×	×	Electrical appliance sales, repair	Yes	Retail sales	
	×	Electronic products, sales, and repairs	Yes	Retail sales	
×		Emergency shelters, subject to compliance with Chapter 17.138 of this title	Yes		
X		Finance companies			
X	X	Floors, floor coverings (retail)	Yes	Retail sales	
X	X	Florists	Yes	Retail sales	
×		Food stores, excluding, supermarkets	Yes	Food and beverage	As written, the
			-	sales	definition of 'food and
					beverage sales'
					currently includes
	×	Furniture repair, upholstery	Yes	Personal services	auportumus da c
×		Furniture stores	Yes	Retail sales	
×	X	Gift shops and greeting card shops	Yes	Retail sales	CH does not mention oreeting card shops
×		Graphic artists, architects, draftsmen and painters (when not located on the ground	Yes	Offices, business and professional	0

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TVT C	Stillig	t micipal t commed Oses	The mean in mew C.C.	Ivew use	Salori
ပ	СН		permitted uses?	classification	
		floor)			
	X	Gymnasiums and athletic clubs	Yes	Health clubs	
X	X	Hardware stores	Yes	Retail sales	
X		Hobby stores	Yes	Retail sales	
×		Ice cream stores	Yes	Eating and/or	
				drinking establishments	
×		Interior decorating shops (with incidental retail sales)	Yes	Personal services	
	×	Janitorial service and supplies	Yes	Cleaning services	
×	X	Jewelry sales and service	Yes	Retail sales	CH uses term 'jewelry
					stores
	×	Laboratories	No	•	
×	×	Laundries	Yes	Personal services	CH includes 'dry
					cleaning' in this use
×	×	Leather goods and luggage stores	Yes	Retail sales	CH does not include
					'luggage stores' in this
	×	Tinen cultur	Voc	Datail colos	Sch
	< }	Linci supply	153	Netall Sales	
	×	Lumberyards	Yes	Retail sales	
	×	Mail order and catalog sales	Yes	Personal services	
	×	Mail services	Yes	Personal services	
	×	Nurseries and garden supply stores	Yes	Nurseries; Retail	
				sales	
×	×	Offices, when not located on the first floor,	Yes	Office, business and	CH allows 'offices and
		including medical/dental offices, real estate,		professional	office buildings' on the
-		insurance, stockbrokers, financial advisory		Office, medical	first floor, as well
		services, tax services, programming,			
		employment agencies and personnel offices			
×	×	Office machines and supplies	Yes	Retail sales	CH includes 'business machine stores, repair'
, m	7				

The function of the permitted uses?  Yes Yes Yes Yes Yes Yes Yes Yes Yes Ye	9	Sating	Duin sing I Dam 1440 d I Land			
X       Office supplies       Yes         X       Music stores       Yes         Newsstands       Yes         Newsstands       Yes         A Packing and crating       Yes         X       Parks, public         X       Parks, public         X       Parks, public         X       Patrocopying         X       Photographic equipment sales and service         X       Photographic equipment sales and service         X       Post offices         X       Printing, publishing, lithography and engraving         X       Printing, publishing, lithography and engraving         X       Radio, television, stereo sales, repair         X       Residential uses on the second floor*         X       Residential user of or carry off trade         X       Residential services         X       Secretarial services         X       Scientific instrument shops and service <th>Y</th> <th>Sime</th> <th>A merpai i el mitteu Oses</th> <th>Thermaga in new Co</th> <th>Ivew use</th> <th>Salori</th>	Y	Sime	A merpai i el mitteu Oses	Thermaga in new Co	Ivew use	Salori
X       Office supplies       Yes         Music stores       Yes         Newsstands       Yes         A Packing and crating       Yes         X       Paint, glass and wallpaper stores       Yes         X       Parks, public       Yes         X       Photocopying       Yes         X       Photographic equipment sales and service       Yes         X       Photographic equipment sales and service       Yes         X       Post offices       Yes         X       Printing, publishing, lithography and engraving       Yes         X       Printing, publishing, lithography and engraving       Yes         X       Radio, television, stereo sales, repair       Yes         X       Residential uses on the second floor*       Yes         X       Residential uses on the secon	<u>၁</u>	$\dashv$		permitted uses?	classification	
X       Office supplies       Yes         Newsstands       Yes         A       Packing and crating       Yes         X       Paint, glass and wallpaper stores       Yes         X       Paths, public       Yes         X       Photocopying       Yes         X       Photographic equipment sales and service       Yes         X       Pricture framing shops       Yes         X       Printing, publishing, lithography and engraving       Yes         X       Printing, publishing, lithography and engraving       Yes         X       Radio, television, stereo sales, repair       Yes         Record, tape and compact disc stores       Yes         Residential uses on the second floor*       Yes         X       Restaurants not providing live entertainment       Yes         X       Rug, carpet cleaning services       Yes         X       Savings and loan offices       Yes         X       Secretarial services       Yes         X       Scientific instrument shops and service       Yes						in this use
Music stores       Yes         Newsstands       Yes         X       Packing and crating       Yes         X       Paint, glass and wallpaper stores       Yes         X       Paint, glass and wallpaper stores       Yes         X       Potocopying       Yes         X       Photographic equipment sales and service       Yes         X       Pricture framing shops       Yes         X       Printing, publishing, lithography and engraving       Yes         X       Radio, television, stereo sales, repair       Yes         Record, tape and compact disc stores       Yes         Residential uses on the second floor*       Yes         X       Restaurants not providing live entertainment       Yes         X       Restaurants not providing live entertainment       Yes         X       Rug, carpet cleaning services       Yes         X       Savings and loan offices       Yes         X       Secretarial services       Yes         X       Scientific instrument shops and service       Yes		×	Office supplies	Yes	Retail sales	
Newsstands Optician and optometrical shops X Packing and crating X Paint, glass and wallpaper stores X Patrs, public X Photocopying X Photocopying X Printing, publishing, lithography and engraving X Printing, publishing, lithography and Service X Radio, television, stereo sales, repair X Radio, television, stereo sales, repair X Restaurants not providing live entertainment X Restaurants not providing live entertainment X Restaurants and loan offices X Restaurants and loan offices X Rug, carpet cleaning services X Secretarial services X Scientific instrument shops and service	×		Music stores	Yes	Retail sales	
X       Packing and crating       Yes         X       Paint, glass and wallpaper stores       Yes         X       Paint, glass and wallpaper stores       Yes         X       Parks, public       Yes         X       Photocopying       Yes         X       Photographic equipment sales and service       Yes         X       Prioture framing shops       Yes         X       Printing, publishing, lithography and engraving       Yes         X       Radio, television, stereo sales, repair       Yes         Record, tape and compact disc stores       Yes         Residential uses on the second floor**       Yes         X       Residential uses on the second floor**       Yes         X       Restaurants not providing live entertainment       Yes         X       Rug, carpet cleaning services       Yes         X       Savings and loan offices       Yes         X       Scientific instrument shops and service       Yes	×		Newsstands	Yes	Retail sales	
X       Packing and crating       Yes         X       Paint, glass and wallpaper stores       Yes         X       Parks, public       Yes         X       Photocopying       Yes         X       Photographic equipment sales and service       Yes         X       Printing, publishing, lithography and engraving       Yes         X       Printing, publishing, lithography and engraving       Yes         X       Record, tape and compact disc stores       Yes         Residential uses on the second floor**       Yes         X       Restaurants not providing live entertainment       Yes         X       Restaurants not providing live entertainment       Yes         X       Rug, carpet cleaning services       Yes         X       Savings and loan offices       Yes         X       Secretarial services       Yes         X       Scientific instrument shops and service       Yes	×		Optician and optometrical shops	Yes	Retail sales and/or	
X       Packing and crating       Yes         X       Paint, glass and wallpaper stores       Yes         X       Parks, public       Yes         X       Photocopying       Yes         X       Photographic equipment sales and service       Yes         X       Picture framing shops       Yes         X       Post offices       Yes         X       Printing, publishing, lithography and engraving       Yes         X       Radio, television, stereo sales, repair       Yes         Residential uses on the second floor*       Yes         X       Residential uses on the second floor*       Yes         X       Restaurants not providing live entertainment       Yes         X       Rug, carpet cleaning services       Yes         X       Rug, carpet cleaning services       Yes         X       Savings and loan offices       Yes         X       Secretarial services       Yes         X       Scientific instrument shops and service       Yes					office, medical	
X       Paint, glass and wallpaper stores       Yes         X       Parks, public       Yes         X       Photocopying       Yes         X       Photographic equipment sales and service       Yes         X       Picture framing shops       Yes         X       Post offices       Yes         X       Printing, publishing, lithography and engraving       Yes         X       Radio, television, stereo sales, repair       Yes         X       Residential uses on the second floor*       Yes         X       Residential uses on the second floor*       Yes         X       Restaurants not providing live entertainment       Yes         X       Rug, carpet cleaning services       Yes         X       Savings and loan offices       Yes         X       Secretarial services       Yes         X       Scientific instrument shops and service       Yes		×	Packing and crating	Yes	Personal services	
X       Parks, public       Yes         X       Pet and bird stores       Yes         X       Photocopying       Yes         X       Picture framing shops       Yes         X       Post offices       Yes         X       Printing, publishing, lithography and engraving       Yes         X       Radio, television, stereo sales, repair       Yes         X       Record, tape and compact disc stores       Yes         X       Residential uses on the second floor*       Yes         X       Residential services       Yes         X       Secretarial services       Yes         X       Secretarial services       Yes         X       Scientific instrument shops and service       Yes	×	X	Paint, glass and wallpaper stores	Yes	Retail sales	
X       Pet and bird stores       Yes         X       Photocopying       Yes         X       Picture framing shops       Yes         X       Post offices       Yes         X       Printing, publishing, lithography and engraving       Yes         X       Radio, television, stereo sales, repair       Yes         X       Record, tape and compact disc stores       Yes         Residential uses on the second floor*       Yes         X       Restaurants not providing live entertainment       Yes         X       Rug, carpet cleaning services       Yes         X       Savings and loan offices       Yes         X       Secretarial services       Yes         X       Scientific instrument shops and service       Yes		X	Parks, public	Yes	Park facilities	
X       Photocopying       Yes         X       Photographic equipment sales and service       Yes         X       Picture framing shops       Yes         X       Post offices       Yes         X       Printing, publishing, lithography and engraving       Yes         X       Radio, television, stereo sales, repair       Yes         Record, tape and compact disc stores       Yes         Residential uses on the second floor*       Yes         X       Restaurants not providing live entertainment       Yes         X       Rug, carpet cleaning services       Yes         X       Savings and loan offices       Yes         X       Secretarial services       Yes         X       Scientific instrument shops and service       Yes	×	×	Pet and bird stores	Yes	Animal retail sales	CH restricts this to 'pet
X       Photocopying       Yes         X       Photographic equipment sales and service       Yes         X       Picture framing shops       Yes         X       Post offices       Yes         X       Printing, publishing, lithography and engraving       Yes         X       Radio, television, stereo sales, repair       Yes         Record, tape and compact disc stores       Yes         X       Residential uses on the second floor*       Yes         X       Restaurants not providing live entertainment       Yes         X       Rug, carpet cleaning services       Yes         X       Savings and loan offices       Yes         X       Secretarial services       Yes         X       Scientific instrument shops and service       Yes					and grooming	stores
X       Photographic equipment sales and service       Yes         X       Picture framing shops       Yes         X       Post offices       Yes         X       Printing, publishing, lithography and engraving       Yes         X       Radio, television, stereo sales, repair       Yes         Record, tape and compact disc stores       Yes         Residential uses on the second floor*       Yes         X       Restaurants not providing live entertainment       Yes         X       Rug, carpet cleaning services       Yes         X       Savings and loan offices       Yes         X       Secretarial services       Yes         X       Scientific instrument shops and service       Yes	×	×	Photocopying	Yes	Personal services	
X       Picture framing shops       Yes         X       Post offices       Yes         X       Printing, publishing, lithography and engraving       Yes         X       Radio, television, stereo sales, repair       Yes         Record, tape and compact disc stores       Yes         Residential uses on the second floor*       Yes         X       Restaurants not providing live entertainment       Yes         X       Rug, carpet cleaning services       Yes         X       Savings and loan offices       Yes         X       Secretarial services       Yes         X       Scientific instrument shops and service       Yes		X		Yes	Retail sales	
X       Post offices       Yes         X       Printing, publishing, lithography and engraving       Yes         X       Radio, television, stereo sales, repair       Yes         Record, tape and compact disc stores       Yes         Residential uses on the second floor*       Yes         X       Restaurants not providing live entertainment       Yes         X       Rug, carpet cleaning services       Yes         X       Savings and loan offices       Yes         X       Secretarial services       Yes         X       Scientific instrument shops and service       Yes	×	×	Picture framing shops	Yes	Personal services	CH adds 'galleries' to
X       Post offices       Yes         X       Printing, publishing, lithography and engraving       Yes         X       Radio, television, stereo sales, repair       Yes         Record, tape and compact disc stores       Yes         Residential uses on the second floor*       Yes         X       Restaurants not providing live entertainment       Yes         X       Rug, carpet cleaning services       Yes         X       Savings and loan offices       Yes         X       Secretarial services       Yes         X       Scientific instrument shops and service       Yes						this
X       Printing, publishing, lithography and engraving       Yes         X       Radio, television, stereo sales, repair       Yes         Record, tape and compact disc stores       Yes         Residential uses on the second floor*       Yes         X       Restaurants not providing live entertainment or fast food service for carry off trade       Yes         X       Rug, carpet cleaning services       Yes         X       Secretarial services       Yes         X       Sceretarial services       Yes         X       Scientific instrument shops and service       Yes		×	Post offices	Yes	None – same	
X       Printing, publishing, lithography and engraving       Yes         X       Radio, television, stereo sales, repair       Yes         Record, tape and compact disc stores       Yes         Residential uses on the second floor*       Yes         X       Restaurants not providing live entertainment or fast food service for carry off trade       Yes         X       Rug, carpet cleaning services       Yes         X       Secretarial services       Yes         X       Secretarial services       Yes         X       Scientific instrument shops and service       Yes					designation	
X       Radio, television, stereo sales, repair       Yes         Record, tape and compact disc stores       Yes         X       Residential uses on the second floor*       Yes         X       Restaurants not providing live entertainment       Yes         Or fast food service for carry off trade       Yes         X       Rug, carpet cleaning services       Yes         X       Secretarial services       Yes         X       Scientific instrument shops and service       Yes	×	×	Printing, publishing, lithography and engraving	Yes	Personal services	
Record, tape and compact disc stores       Yes         Residential uses on the second floor*       Yes         X       Restaurants not providing live entertainment       Yes         Or fast food service for carry off trade       Yes         X       Rug, carpet cleaning services       Yes         X       Secretarial services       Yes         X       Scientific instrument shops and service       Yes	×	×	Radio, television, stereo sales, repair	Yes	Retail sales	CH does not include 'stereo sales'
X       Restaurants not providing live entertainment       Yes         or fast food service for carry off trade       Yes         X       Rug, carpet cleaning services       Yes         X       Secretarial services       Yes         X       Secretarial services       Yes         X       Scientific instrument shops and service       Yes	×		Record, tape and compact disc stores	Yes	Retail sales	
X       Restaurants not providing live entertainment or fast food service for carry off trade       Yes         X       Rug, carpet cleaning services       Yes         X       Savings and loan offices       Yes         X       Secretarial services       Yes         X       Scientific instrument shops and service       Yes	×		Residential uses on the second floor*	Yes		
X       Rug, carpet cleaning services       Yes         X       Savings and loan offices       Yes         X       Secretarial services       Yes         X       Scientific instrument shops and service       Yes	×	×		Yes	Eating and/or	
X       Rug, carpet cleaning services       Yes         Savings and loan offices       Yes         X       Secretarial services       Yes         X       Scientific instrument shops and service       Yes			or fast food service for carry off trade		drinking	ş
X       Rug, carpet cleaning services       Yes         Savings and loan offices       Yes         X       Secretarial services       Yes         X       Scientific instrument shops and service       Yes					establishments	
X Secretarial services Yes  X Scientific instrument shops and service Yes		×	Rug, carpet cleaning services	Yes	Personal services	
Secretarial services Yes Scientific instrument shops and service Yes	×		Savings and loan offices	Yes	Financial institutions	
Scientific instrument shops and service Yes	······································	×	Secretarial services	Yes	Offices, business and professional	
designation of the contract of		×	Scientific instrument shops and service	Yes	Retail sales	

1				N	7 1
EXI	EXISTING	Frincipal Fermitted Uses.	Included in new CC	New use	Notes
ပ္ပ	СН		permitted uses?	classification	
×	X	Shoe stores and repair	Yes	Retail sales	CH only permitted 'shoe repair'
×		Service uses allowed in the CS zone when not	Not explicitly		
		located on the first floor and not displacing a residential use			
×	X	Sporting goods stores	Yes	Retail sales	
×		Stamp and coin stores	Yes	Retail sales	
×	X	Stationery stores	Yes	Retail sales	
	X	Storage buildings, garages	As an accessory use		
9	×	Supermarkets and neighborhood grocery	Yes	Food and beverage	
		stores		sales	
	X	Swimming pool sales, services	Yes		
×	×	Tailor and dressmaking	Yes	Personal services	
	×	Tool and cutlery sharpening	Yes	Maintenance and	
				repair services (small	
				equipment)	
×	×	Ticket agencies	Yes	Personal services	CH actually allows
					'travel bureaus,' which
					I assume are the same
					as 'ticket agencies'
×	×	Toy stores	Yes	Retail sales	
	×	Upholstery shops	Yes	Maintenance and	
				repair services (small	
				equipment)	
×	×	Variety stores	Yes	Retail sales	
	×	Veterinarian's offices and small animal	Yes	Animal hospitals/	
		hospitals, including short-term boarding of		veterinary services	
		animals and incidental care provided all			
		operations are enclosed in a building with			
	44	1 00	7. T		
	X	Warehouses, except for storage of fuel or	No	1	

Exi	sting	Existing   Principal Permitted Uses <sup>1</sup>	Included in new CC   New use	New use	Notes
သ	CC CH		permitted uses?	classification	
		flammable liquids			
×		Watch and clock sales and repair	Yes	Retail sales	
	X	Wholesale establishments	No		
	X	Windows, window coverings	Yes	Retail sales	
×		Yard goods stores.	Yes	Retail sales	
×		No principal permitted use provided for in division (A) above shall include entertainment of customers or clientele by music, actors or singing, nor permit any establishment or business to charge admission	No, any such use requires a use permit		
		or entrance lees.			

Exi	Existing	Conditionally Permitted Uses	Included in new	New use classification	Notes
ည	СН		CC conditional uses?		
×	×	Any of the principal permitted uses not conducted entirely within a building	Yes, for some uses	I	Some uses include a limitation ('L-4'), which allows for outdoor storage of materials with a use permit
×	ı	Drive-up windows or patron service areas and spaces exterior to a building, for any use	Yes, for some uses		Drive-up windows are not allowed, but exterior ATMs may be permitted with CUP
×	1	Theaters, nightclubs and entertainment establishments	Yes	Recreation and Entertainment, Indoors	1
×	ŧ	Offices and service establishments allowed in § 17.100.040 when on the ground floor	Yes	Offices, business and professional Offices, medical	Both permitted on ground floor with CUP
×	ı	Wholesale activities which are accessory to a main use on the same premises	No	1	1
×	t	Uses which combine wholesale and retail sales and/or retail and service activities when neither aspect of the business is an accessory or principal use but both are an integral part of the business	No	1	1
×	1	Residential uses on the ground floor of a building or as accessory uses or in accessory structures	No		Single family homes existing in the CC as of the effective date of the ordinance will be allowed to remain, but no new ground floor residential uses will be

	Dviction	Conditionally Downitted Ileas			
	CH	Conditionally 1 of mitted Oses	CC conditional uses?	ivew use classification	Notes:
					allowed
×	1	Other uses determined by the Planning Commission as equivalent to those listed in divisions (A) through (G) of this section or which are determined to be equivalent to those listed in § 17.100.040, but requiring regulation of location, extent or operation because of some unique characteristic.	It depends	(Various)	The Planning Director has discretion to determine that a proposed use is of the same general nature as a permitted or conditionally permitted use classification and permit or seek PC approval of a CUP accordingly.
×	×	Establishments or businesses which entertain customers or clientele by musicians, actors or singers or establishments which charge admission or entrance fees	Yes	Recreation and Entertainment, Indoors	1
×	X	Cigar shops, smoke shops	No	Retail sales	Retail sales are now a permitted use in the CC
×	ı	Liquor stores	No	Food and beverage sales	Food and beverage sales are now a permitted use in the CC
ı	×	Permitted principal uses with minor and/or accessory fabrication or assembly activities limited to light manufacturing or processing activities, when the entirety of the use, both	Yes	(Various)	ı

Exis	Existing	Conditionally Permitted Uses	Included in new	New use classification	Notes
သ	СН		CC conditional uses?		
		principal and accessory, is contained entirely within a building			
1	X	Small animal boarding outdoors, provided	No	Kennels	Outdoor boarding is
		there is a 500-foot separation from any residential zone			not permitted in the CC
1	X	Car washes, both automatic and self-service	No	Automobile washing	
1	X	Service stations	No	Service station	ı
1	×	Private and public garages and parking lots improved in conformity with the provisions in Chapter 17.052	No	1	ı
1	×	Automobile repair, parts and service	No	Automobile repair;	Automobile repair and
		establishments		Retail sales	service is not
					permitted (without CUP)
ı	×	Used car sales	No	Automobile sales/new and used	1
1,	×	Motels, hotels and residential uses on the	No as to motels	Hotel/motel	Yes, residential uses
		second floor, at a density to be determined by the Planning Commission	and hotels; see 'Notes' for residential		will now be permitted by right in the CC
1	×	Other uses determined by the Planning	No		The Planning Director
		Commission as equivalent to those listed in			has discretion to
		divisions (B)(1) through (9), or which are			determine that a
		determined to be equivalent to those listed in			proposed use is of the
		§ 17.104.030 or this title but requiring			same general nature as
		regulation of location, extent or operation			a permitted or
		oecause of some unique characiensuc			conditionally permitted use

Notes		classification and permit or seek PC approval of a CUP accordingly.	1	New CUP requirements do not include the specific factors listed here.
New use classification			Recreation and entertainment, indoors	Recreation and entertainment, indoors
Included in new	CC conditional uses?		Yes	Yes
Conditionally Permitted Uses			Establishments or businesses which entertain customers or clientele by musicians, actors or singers, or establishments which charge admission or entrance fees	Mechanical amusement device arcades and computers for rent, subject to the following standards:  (a) Use permits shall be granted for periods of no more than six months initially. The Planning Commission may approve extensions. In approving use permits and extensions, findings must be made that the use will not or has not created or increased the incidence of excessive loitering, vandalism, pedestrian obstruction, noise or any other activity that may have an adverse effect on adjacent or vicinity properties, residences or businesses.  (b) Hours of operation shall be no later than 10:00 p.m. The Planning Commission may grant exceptions to this limitation for adults-only establishments or when it is clearly demonstrated that the use is clearly ancillary to another use.
Existing	НЭ		×	×
Exi	သ		×	ı

Notes		1	With CUP			Small group homes	serving six or fewer	residents are permitted	by right; larger such	lacilities are not	Politica	Allowed as a permitted use	The state of the s									ŧ	Allowed as a permitted	nse	F
New use classification		Hotels/motels	Institution	ŧ	Childcare	Small group homes						Retail sales	Recreation and	entertainment, indoors		Hotels/motels	Assembly	Assembly	Maintenance and repair	services (small	equipment)	Automobile sales/new	Retail sales		Schools
Included in new	CC conditional uses?	No	Yes	No	Yes	No						No	Yes		No	No	Yes	Yes	Yes			No	No		No
Conditionally Permitted Uses		Bed and breakfasts	Churches	Convalescent homes	Day care centers	Drug and alcohol treatment facilities						Furniture stores	Game rooms, amusement and recreation	establishments	Hospitals	Hotels	Institutional, non-profit	Institutional, public	Maintenance and repair services			Motorcycle, sales, service and repair	Musical instrument sales and service		Schools
Existing	СН	×	×	×	×	X						×	×		×	×	×	X	×			×	×		×
Exis	သ	ı	1	ı	ı	1						1	1		ı	1	ı	ı	ı			ı			1

Exig	sting	Existing   Conditionally Permitted Uses	Included in new	New use classification	Notes
CC	но о		CC conditional		
			uses?		
ı	×	X Tool repair	Yes	Maintenance and repair	•
				services (small	
				equipment)	
ı	X	Transportation services, bus depots	No	1	
ı	X	Utility substations and structures	No	1	•
,	X	Water tanks	No	1	1



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### Memorandum

To:

Members of the Town of Fairfax Planning

**File No.:** 38072.00001

Commission

From:

Sarah E. Owsowitz

Date:

July 18, 2016

Re:

CEQA Review of Proposed Commercial Highway to Central Commercial

Rezoning

### Introduction

We have reviewed the proposed rezoning to Central Commercial (CC) of those areas of Town of Fairfax currently zoned Commercial Highway (CH) in order to assess whether the California Environmental Quality Act (Pub. Res. Code §§ 21000 et seq.) (CEQA), and the State CEQA Guidelines (14 Cal. Code Regs. §§ 15000 et seq.) require the proposed rezoning (Rezoning) to undergo environmental review in addition to that previously undertaken in the Mitigated Negative Declaration and Initial Study of the General Plan for the Town of Fairfax adopted on February 29, 2012 and supplemented by Addenda in October, 2013 and May, 2015 (collectively, General Plan MND).

Based on that review, we believe that the requirements of CEQA and the State CEQA Guidelines were satisfied by Town in the General Plan MND, which is sufficiently detailed such that all potentially significant environmental effects of the Rezoning have been adequately evaluated. Further, to the extent that any environmental effect of the Proposed Rezoning differs from that evaluated in the General Plan MND, such a difference will result in a decrease, rather than an increase, in those impacts and thus no additional environmental review is required. (See Citizens for a Sustainable Treasure Island v. City and Cty. of San Francisco (2014) 227 Cal.App.4th 1036, 1055.) Finally, none of the conditions set forth in Section 15162 of the CEQA Guidelines calling for the preparation of a subsequent environmental review document have occurred.

### The Proposed Rezoning

As detailed in the Ordinance for the Proposed Rezoning and in the attached chart (Exhibit 1), the rezoning of parcels from CH to CC will not result in significant changes with regard to what uses in are permitted in formally CH-zoned areas. Retail sales, personal services, and eating and drinking establishments will continue to be





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permitted. The most notable changes are that the newly-zoned CC parcels will no longer permit warehouse uses, will now permit grocery stores of up to 5,000 square feet, and, most significantly, will permit residential uses on the second floor of structures "by-right," rather than pursuant to a conditional use permit. Finally, as to all CC zoned areas, there will be a cap on the number of permitted dwelling units (DU) of 4.5 DU per acre cap. This is a shift from prior zoning, which imposed no density cap on parcels in either CH or CC zones.

### The Proposed Rezoning Was Considered in the Adopted General Plan MND

The project under consideration in the General Plan MND, the 2010-2030 General Plan, expressly included the Proposed Rezoning. Specifically, the General Plan MND's Land Use and Planning analysis describes the project under review as follows:

Upon certification of the 2010 Housing Element by HCD (or upon final adoption of the 2010-30 General Plan), the Town proposes to rezone all of the CH (Commercial Highway) properties to CC (Central Commercial); which will allow residential units on the second floor to a minimum density of 20 units per acre "by-right" – rather than by Conditional Use Permit only as is the case under CH.

(General Plan MND, p. 33.)

Further, the General Plan MND's Population and Housing analysis discusses the project under review as follows:

The 2010 Housing Element recommends . . . rezoning all CH to CC . . Residential uses are permitted on the second floor in the CC zone "byright," whereas they are only allowed by Conditional Use Permit in the CH and CL zones. This 2010 Housing Element and Land Use Element area recommending . . . Rezoning the Fairfax Market sites and open parcel next to it including the strip shopping center to the west, and Good Earth market site from CH to CC . . . Rezoning the east side commercial area on Sir Francis Drake Boulevard from CH to CC to allow residential units on the second floor by right.

(General Plan MND, pp. 42-42.)

Finally, the General Plan MND's Transportation and Traffic analysis describes the project under review as follows:

The Fairfax 2010-30 General Plan calls for the limited expansion of the historic mixed-use character of the town center area allowing for more transit oriented development . . . and for the creation and utilization of



existing and new second units in the residentially zoned area – all as a way to accommodate a more equitable and sustainable evolution of the Town.

(General Plan MND, p. 47.)

Accordingly, the Proposed Zoning, including, most critically, its allowance for residential units "by-right" on the second floor of buildings, was already analyzed as part of the project under review in the adopted General Plan MND. Further, to the extent that the General Plan MND anticipated that such a rezoning would allow for "a minimum density of 20 units per acre 'by-right," the Proposed Rezoning will actually have fewer impacts than those assumed by the General Plan MND, as it will set a density cap of 4.5 DU per acre.

### None of the Conditions Set Forth in CEQA Guidelines Section 15162 Have Occurred.

Finally, we have considered whether any of the conditions set forth in Section 15162 of the CEQA Guidelines calling for the preparation of a subsequent have occurred. First, as discussed above, as the Proposed Rezoning was considered as part of the General Plan MND, such that there are no substantial changes in the Proposed Rezoning that will require major revisions to adopted General Plan MND due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects. Second, as no significant development has been approved in the Town since the date of the last addenda to the General Plan MND (May 2015), there have been no substantial changes with respect to the circumstances under which the Proposed Rezoning will be undertaken that will require major revisions to the General Plan MND due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects.

Third and finally, we are aware of no new information of substantial importance, which was not known and could not have been known with the exercise of reasonable diligence at the time the General Plan MND was adopted shows that the Proposed Rezoning will have one or more significant effects not discussed in the General Plan MND, that significant effects previously examined will not be substantially more severe than shown in the General Plan MND, that mitigation measures previously found not to be feasible would in fact be feasible, or that the Town refuses to adopt any additional mitigation measures would substantially reduce one or more significant effects on the environment.



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### Alternate Environmental Review

We note that, had the Proposed Rezoning not been included and analyzed in the General Plan MND, it appears that it would have also been exempt from further environmental review pursuant to State CEQA Guidelines sections 15301 and 15303.

State CEQA Guidelines section 15301 exempts from further environmental review the operation, repair, maintenance, permitting, leasing, licensing, or minor alteration of existing public or private structures, facilities, mechanical equipment, or topographical features where such activities involve "negligible" or "no expansion of previous use beyond that existing at the time of the lead agency's determination." Here, as discussed above, the uses permitted conditionally, or as a matter of right, in CH zones will not be expanded or significantly altered via the rezoning to CC. If anything, the maximum density of 4.5 DU per acre that will be imposed on newly zoned CC areas will act to limit uncapped growth that was previously allowed, pursuant to a Conditional Use Permit, in former CH zones.

State CEQA Guidelines section 15303 exempts from further environmental review the construction, installation, or conversion of small structures, facilities, or equipment. Section 15303 does not allow new construction to exceed certain specified scopes in any single legal parcel, such as limiting apartments, duplexes, and similar structures to six dwelling units in urbanized areas. Here, as discussed above, the uses that will be permitted conditionally, or as a matter of right, in the newly zoning CC areas, will not exceed the size, scope and density of exempt uses encompassed by Section 15303.

### **Attachments**

Exhibit 1 - Comparative table of uses

0	R	D	I	N	Α	٨	Į	C	E	P	ď	O	

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF FAIRFAX AMENDING FAIRFAX TOWN CODE CHAPTER 5.052 ('BUSINESS TAXES, LICENSES, AND REGULATIONS'), CHAPTER 7.008 ('DEFINITIONS'), CHAPTER 17.012 ('ZONE DISTRICTS ESTABLISHED'), CHAPTER 17.020 ('DESIGN REVIEW REGULATIONS'), CHAPTER 17.092 ('CL LIMITED COMMERCIAL ZONE'), CHAPTER 17.096 ('CH HIGHWAY COMMERCIAL ZONE'), AND 17.100 ('CC CENTRAL COMMERCIAL ZONE') IN ACCORDANCE WITH THE MITIGATED NEGATIVE DECLARATION PREPARED FOR THE 2010-2030 FAIRFAX GENERAL PLAN

**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 completed the 2010-2030 Fairfax General Plan, the first revision of its general plan in over 35 years; and

WHEREAS, the potential impacts to the environment associated with the proposed update to the general plan were studied in accordance with the California Environmental Quality Act ('CEQA,' as codified in Public Resources Code 20000, et seq., and as further governed by the CEQA Guidelines, 14 California Code of Regulations 15000, et seq.), and a Mitigated Negative Declaration and Mitigation and Monitoring Plan were prepared for the proposed Fairfax 2010-2030 General Plan (the 'General Plan'); and

WHEREAS, on April 4, 2012, the Town Council of the Town of Fairfax adopted the Mitigated Negative Declaration and Mitigation and Monitoring Plan prepared for the General Plan, and subsequently adopted the General Plan; and

WHEREAS, the General Plan includes Figure LU-1 ('Fairfax General Plan Map') and Figure LU-2 ('Fairfax Zoning'), both of which include a Central Commercial ('CC') zone, and neither of which include the Highway Commercial ('CH') zone; and

WHEREAS, General Plan Land Use Program LU-7.1.1.2 and Housing Element Program H-3.1.1.1 both direct that all properties within the Town zoned as CH will be rezoned to CC; 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.



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

**SECTION 1.** Fairfax Town Code Title 5 ('Business Taxes, Licenses, and Regulations'), Division II ('Specific Business Regulations'), Chapter 5.52 ('Medical Marijuana Dispensaries'), Section 5.52.080 ('Limitation on Location of Dispensary'), Subsection A is hereby amended to read as follows:

"(A) A dispensary shall be located only within a Central Commercial CC or Light Commercial CL area, as designated in the General Plan and zoning map."

SECTION 2. Fairfax Town Code Title 17 ('Zoning'), Chapter 17.008 ('Definitions'), Section 17.008.020 ('Definitions'), is hereby amended to delete only the following definitions:

**DAY NURSERY.** An agency, organization, or individual providing daytime care of five or more children not related by blood or marriage to, or not the legal wards or foster children of, the attendant adult.

**DOG KENNEL or KENNEL.** Any premises, except where accessory to a permitted agricultural use, where three or more dogs, ten weeks in age or older, are kept.

**FILLING (SERVICE) STATION.** Any building or plot of land used or designed to be used for the storage and retail sale of automobile fuels and lubricants and which may include facilities for washing, polishing, greasing, waxing or tire repairing. No vulcanizing or tire recapping or major mechanical repairs shall, however, be included in the operation of a filling station.

### GAS FILLING STATION.

- (1) Not only the house or building provided for the storage of supplies and the use and shelter of the operatives, but also tanks, pumps, structures and filling stations for business purposes and the supplying of gas and oil for automobiles of the general public.
- (2) It also includes, of necessity, suitable exterior stairways and secondary stairways.

**GASOLINE STATION.** Any building, place or location designed to supply motor vehicles with gasoline, oils, greases, automobile sundries or for the inspection, testing and examination of the motor vehicles, or for the repair or replacement of parts thereof; and shall include gasoline pumps and oil pumps.

**KENNEL.** Any premises, except where accessory to an agricultural use, where three or more dogs, ten weeks in age or older, are kept.

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**NURSERY.** Any land used to raise trees, shrubs, flowers and other plants for sale or for transplanting.

**PROFESSIONAL OFFICE.** The office of a person engaged in any occupation, vocation or calling, not purely commercial, mechanical or agricultural, in which a professed knowledge or skill in some department of science or learning is used by its practical application to the affairs of others, either advising or guiding them in serving their interest or welfare through the practice of an act founded thereon.

**RESTAURANT WITH DRIVE-IN SERVICE.** An establishment designed, in whole or part, to cater to or accommodate the consumption of food and/or beverage in automobiles on the premises of such establishment.

**SCHOOL.** A place for systematic instruction in any branch or branches of knowledge.

**SECTION 3.** Fairfax Town Code Title 17 ('Zoning'), Chapter 17.008 ('Definitions'), is hereby amended by adding the following new Section 17.008.030 ('Use Classifications'), which reads as follows:

### "§ 17.008.030 USE CLASSIFICATIONS.

- (A) Use classifications describe one or more uses having similar characteristics, but do not list every use or activity that may appropriately be within the classification.
- (B) The Director of Planning and Building Services shall determine whether a specific use shall be deemed to be of the same general nature as one of the use classifications or within one or more use classifications or not within any classifications within this title. Notwithstanding any other provision of the Town Code, any person aggrieved by a decision of the Director of Planning and Building Services with respect to a use determination may appeal such decision to the Planning Commission.
- (C) For the purpose of this title, the following use classification definitions shall apply, unless the context clearly indicates or requires a different meaning.

### **COMMERCIAL USES**

### ANIMAL SALES AND SERVICES.

ANIMAL HOSPITALS/VETERINARY SERVICES. Establishments where small animals receive medical and/or surgical treatment, shelter, and care on a commercial basis. This classification includes only facilities that are entirely enclosed and soundproofed. Grooming and boarding of animals is included only if accessory to the hospital use.

**ANIMAL RETAIL SALES AND GROOMING.** Retail sales of domestic and exotic animals within an entirely enclosed building. This classification includes bathing and trimming services and boarding of domestic and exotic animals (for no more than forty-eight (48) consecutive hours).

**HORSE STABLES.** Establishments offering horse boarding and which may include instruction in horseback riding. This classification includes rings and exercise areas.

**KENNELS.** Buildings or other enclosures used to confine, feed, exercise, show or provide shelter, for four (4) or more cats or dogs, ten (10) weeks of age or older, on a commercial basis. Animal hospitals are specifically excluded from this classification.

**CATERING SERVICES.** Preparation and delivery of food and beverages for off-site consumption without provision for on-site pick-up or consumption, unless permitted by the subject zoning district.

**CLEANING SERVICES.** Janitorial, diaper cleaning, dry cleaning, self-service laundries and other similar cleaning services that include the use or on-site storage of chemicals, cleaners, or other processes that may pose a health hazard.

**EATING AND/OR DRINKING ESTABLISHMENTS.** Businesses that primarily serve prepared food or beverages for consumption on or off the premises.

**GENERALLY.** Eating and drinking establishments with no take-out services, permanent outdoor seating, alcoholic beverage service, or live entertainment or dancing.

WITH TAKE-OUT SERVICES. Eating and drinking establishments that provide prepared food and/or drinks for off-site consumption and either (a) have floor area devoted to takeout and pick-up space or (b) at which twenty percent (20%) or more of the sales are for off-site consumption.

**WITH PERMANENT OUTDOOR SEATING.** Permanent seating in an open or covered area on the site of a legally established eating and drinking establishment.

WITH FULL ALCOHOLIC BEVERAGE SERVICE. Eating and drinking establishments that are licensed to sell and serve wine, beer, and distilled spirits.

WITH WINE AND BEER SERVICE. Eating and drinking establishments that are licensed to sell and serve wine and beer.

**WITH LIVE ENTERTAINMENT OR DANCING.** Eating and drinking establishments that offer live entertainment and/or dancing.

**FINANCIAL INSTITUTIONS.** A financial institution that provides retail banking services to individuals and businesses. This classification includes only those institutions engaged in the on-site circulation of money. This use does not include check-cashing facilities.

**GENERALLY.** A financial institution without an automated teller machine or drive-up services.

**WITH AUTOMATED TELLER MACHINES.** Institutions providing automated teller services through a machine.

**WITH DRIVE-UP SERVICES.** Institutions providing services accessible to persons who remain in their automobiles.

**FOOD AND BEVERAGE SALES.** Retail sales of food and beverages for off-site preparation and consumption. Typical uses include groceries, liquor stores, convenience markets, delicatessens, bakeries, produce stores, butcher shops, and health food stores.

**HEALTH CLUBS.** Establishments that may include indoor tennis courts, racquetball courts, gyms, aerobic studios, yoga, dance, weight rooms, fitness machines, indoor swimming pools and accessory uses such as food service and child care.

HOME IMPROVEMENT SALES AND SERVICES. Retail establishments that carry a full line of building materials, appurtenances and decorator items (including hardware, plumbing, electrical, heating, air-conditioning, or building supplies, tools and equipment, plants and garden products, patio furniture, swimming pools, spas, and hot tubs, lighting fixtures and cabinets, paint, carpeting, floor coverings, etc.) to facilitate the improvement, rehabilitation and maintenance of individual dwellings. All merchandise other than plants is kept within an enclosed building or fully screened enclosure and fertilizer, soil, soil amendments are stored and sold in package form only. (See also Lumber and Building Material Yards.)

**LUMBER AND BUILDING MATERIAL YARDS.** Establishments engaging in the retail or wholesale sales of lumber, finished wood products, or building and landscape material supplies either inside or outside of a structure. This classification includes incidental sales and rental of hardware, plumbing, electrical, garden or painting supplies and equipment.

**MAINTENANCE AND REPAIR SERVICES (SMALL EQUIPMENT).** Establishments providing on-site repair and accessory sales of supplies for appliances, office machines, home electronic equipment, bicycles, furniture/upholstering, tools, or garden equipment, but not vehicles.

**NURSERIES.** Establishments providing for the cultivation and sale of ornamental trees, shrubs, and plants, including the sale of garden and landscape materials and equipment. All merchandise, other than plants, is kept within an enclosed building or a fully screened enclosure, and fertilizer, soil, soil amendments and groundcover (other than live plants) of any type is stored and sold in package form only.

### OFFICES.

*OFFICES, BUSINESS AND PROFESSIONAL.* Offices of firms or organizations providing professional, executive, management, or administrative services, such as architectural, computer software consulting, data management, engineering, interior design, graphic design, real estate, title companies, stockbrokers, insurance and legal services. This classification includes laboratories accessory to an office use, but excludes banks and savings and loan associations.

**OFFICES, MEDICAL.** Offices for a physician, dentist, chiropractor, physical therapist, psychiatrist, psychologist, counseling service, audiologist, optometrist, acupuncturist, and alternative treatment providers. This classification includes medical laboratories accessory to a medical office use.

**PERSONAL SERVICES.** Provision of recurrently needed services of a personal nature. This classification includes such services as barber and beauty shops, massage, sun tanning, seamstresses, tailors, shoe repair shops, interior decorating, photocopying, photo processing, picture framing, printing, desktop publishing tailoring, travel agencies, , and shipping and mailing services.

**RECREATION AND ENTERTAINMENT.** Businesses providing participant or spectator recreation, entertainment, or sports activities.

**INDOORS.** This classification includes movie or live performing arts theaters, bowling alley, billiard parlor, dance hall, ice/roller skating rinks, game center including pinball arcade, coin-operated electronics or mechanical game machines.

**OUTDOORS.** This classification includes movie or live performing arts theater, sports stadium and arena, commercial golf courses (including private courses where the general public can play for a fee), driving ranges and miniature golf courses.

**RETAIL USES.** Stores and shops selling many lines of merchandise. Examples of these stores and lines of merchandise include: bicycle sales, service, and rental; bookstores, except adult bookstores; apparel and accessories; furniture, home furnishings and appliances sales, service, and rental; miscellaneous retail (including candy or ice cream stores, drug stores, hobby or craft shops, liquor stores, jewelry stores, newsstands, specialty shops, variety stores, pet stores, or computer stores).

and includes repair and service ancillary to the primary retail sales use. This use does not include food and beverage sales.

### VEHICLE/EQUIPMENT SALES AND SERVICES.

**AUTOMOBILE RENTAL AND LEASING.** Rental or leasing of automobiles including storage and incidental maintenance. This classification shall include taxi or limousine service.

**AUTOMOBILE SALES/NEW AND USED.** Sale of new and used automobiles including storage and incidental maintenance.

**AUTOMOBILE WASHING.** Washing, waxing, or cleaning of automobiles or similar light vehicles. (For automobile washing on the same site as a service station see Vehicle/Equipment Sales and Services, Service Stations.)

**AUTOMOBILE WRECKING.** The dismantling or wrecking of used motor vehicles or trailers or the storage of, sale or dumping of, dismantled, partly dismantled, obsolete or wrecked vehicles or their parts.

**SERVICE STATION.** Business engaged in the retail sale of motor fuels, lubricants, parts and accessories. This classification, which may also be referred to as a 'gasoline station' within this Code, includes incidental maintenance and repair of automobiles and light trucks, but excludes body and fender work or repair of heavy trucks or vehicles. This classification also includes food and beverage sales as an accessory use.

**WITH AUTOMOBILE WASHING.** A service station in conjunction with automobile washing.

**VEHICLE/EQUIPMENT REPAIR.** Retail repair of automobiles, trucks, motorcycles, mobile homes, recreational vehicles, or boats, including the sale, installation, and servicing of related equipment and parts. This classification includes tire sales and installation of mufflers, exhaust and suspension systems, auto radio/electronics installation, auto air conditioning/heater service, engine overhauls involving the removal of engine blocks, body and fender work, painting and undercoating, glass replacement, upholstery and convertible top service, vehicle towing, radiator, transmission, wheel and axle repair, but excludes the sale of gasoline and motor fuels, vehicle dismantling or salvage and tire retreading or recapping.

**LIMITED VEHICLE SERVICE.** Limited retail maintenance and service of automobiles and trucks. This classification includes quick lube and oil changing facilities and smog checking facilities with no on-site repair.

**VEHICLE/EQUIPMENT SALES AND RENTALS.** Sale or rental of motorcycles, moving vans, trucks, tractors, construction or agricultural equipment, mobile homes,

recreational vehicles, and similar equipment, including storage and incidental maintenance.

**VEHICLE STORAGE.** Storage of operative or inoperative vehicles. This classification includes storage of parking towed vehicles, impound yards, and storage lots for automobiles, trucks, buses and recreation vehicles, but does not include vehicle dismantling.

### **COMMUNITY USES**

CHILDCARE FACILITY. Facilities, other than family day care homes, which provide licensed, nonmedical care, protection and supervision, to children under eighteen (18) years of age, on a less than twenty-four (24) hour basis. This classification includes, but is not limited to, day nurseries, child day care facilities, and preschools.

### CULTURAL INSTITUTION.

**GOVERNMENT OFFICE.** Administrative, clerical, or public contact offices of a government agency, including postal facilities, together with incidental storage and maintenance of vehicles.

PARK FACILITY. Noncommercial parks, playgrounds, and recreation facilities.

**SCHOOL.** A public, private, or parochial institution conducting regular academic instruction at kindergarten, elementary, and/or secondary levels.

**ELEMENTARY, MIDDLE, SECONDARY.** A public or private academic educational institution, including elementary (kindergarten through 5th or 6th grade), middle and junior high schools (6th through 8th grades), and secondary and high schools (9th through 12th grades).

**SPECIALTY.** A school that provides education and/or training, including vocational training, in limited subjects. Examples of these schools include art schools; ballet and other dance schools; business, secretarial and vocational schools; drama schools; driver education schools; establishments providing courses by mail or electronic; language schools; martial arts; music schools; seminaries/religious ministry training facilities. Does not include pre-schools and child day care facilities (see "Childcare facilities").

**YOUTH SERVICES.** Facilities that offer supervised programs for youth, including, but not limited to, teen centers. This classification does not include childcare facilities or schools.

### **INDUSTRIAL USES**

LIGHT INDUSTRIAL. Manufacturing of finished parts or products, primarily from previously prepared materials; and provision of industrial services; both within an enclosed building. This classification includes processing, fabrication, assembly, printing, treatment, and packaging, but excludes basic industrial processing from raw materials, food processing, and vehicle/equipment services. Examples include, but are not limited to, large-scale book printing and binding, as well as recycling services. Uses involving a high incidence of truck traffic, and/or outdoor storage of products, material, equipment, or bulk fuel are not included within this classification.

### **RESIDENTIAL USES**

EMERGENCY HOMELESS SHELTER. As described in Section 17.138.010.

**FAMILY DAY CARE HOME.** A home which regularly provides care, protection, and supervision of children under the age of eighteen (18), in the provider's own home, for periods of less than twenty-four (24) hours per day, while the parents or guardians are away.

**LARGE FAMILY DAY CARE HOME.** A home which provides family day care to seven (7) to twelve (12) children, inclusive, including children under the age of ten (10) years who reside at the home.

**SMALL FAMILY DAY CARE HOME.** A home which provides family day care to six (6) or fewer children, including children under the age of ten (10) years who reside at the home.

**GROUP CARE HOME.** A residential care facility licensed or supervised by any federal, state, or local agency which provides housing and nonmedical care for children, elderly persons, or physically and mentally handicapped persons in a family-like environment.

Group care homes includes the following:

An intermediate care facility, developmentally disabled habilitative and intermediate care facility/developmentally disabled-nursing or a congregate living facility as identified in California Health and Safety Code Section 1267.8;

A community care facility as identified in California Health and Safety Code Section 1566.3;

A residential care facility for the elderly as identified in California Health and Safety Code Section 1569.85;

An alcoholism or drug abuse recovery or treatment facility as identified in California Health and Safety Code Section 11834.02;

A home for the care of mentally disordered or otherwise handicapped persons as identified in California Welfare and Institutions Code Section 5116:

A home for the care of dependent and neglected children as identified in the California Welfare and Institutions Code Section 300, but not including wards of the court as identified in the California Welfare and Institutions Code Section 601ff.

Group care home does not include emergency shelters, half-way houses for parolees or convicted persons, or group residential uses as defined in this chapter.

**GROUP RESIDENTIAL.** Shared living quarters with or without separate kitchen or bathroom facilities for each room or unit. This classification includes boardinghouses, dormitories, fraternities, sororities, convents, rectories, and private residential clubs but does not include living quarters shared exclusively by a family, as defined in Section 17.008.020. This classification does not include services and facilities licensed by the State of California.

JUNIOR SECOND UNIT. As defined in Section 17.048.230.

**SECOND STORY RESIDENTIAL.** A structure containing one (1) or more dwelling units sharing common walls or being otherwise attached, including duplexes, triplexes, fourplexes, apartments and single-room occupancy facilities.

**SECOND UNIT.** A separate complete housekeeping unit with kitchen, sleeping and full bathroom facilities which is a part of, an extension to, or on the same lot as a detached single family unit, consistent with the provisions of Chapter 17.048.

**SINGLE-FAMILY RESIDENTIAL.** A structure containing one (1) detached dwelling unit located on a single lot. This classification includes mobile homes and manufactured housing.

**SINGLE ROOM OCCUPANCY.** Any building containing two or more units intended or designed to be used, or which are used, rented, or hired out, to be occupied, or which are occupied, for sleeping purposes by residents which is their primary residence. The individual units may lack either cooking facilities or individual sanitary facilities, or both, and must meet currently adopted California Building Code R-2 occupancy classification requirements.

SUPPORTIVE HOUSING. Housing with no limit on length of stay, that is occupied by the target population, and that is linked to onsite or offsite services that assist the supportive housing resident in retaining the housing, improving his or her health status, and maximizing his or her ability to live and, when possible, work in the community, as defined by California Health & Safety Code Section 50675.14. (Per California Health & Safety Code Section 50675.14, 'target population' means persons, including persons with disabilities, and families who are "homeless," as that

term is defined by 42 U.S.C. Section 11302, or who are "homeless youth," as that term is defined by California Government Code Section 11139.3(e)(2).)

**TRANSITIONAL HOUSING.** Buildings configured as rental housing developments, but operated under program requirements that call for the termination of assistance and recirculation of the assisted unit to another eligible program recipient at some predetermined future point in time, which shall be no less than six months, as defined by California Health & Safety Code Section 50675.2.

<u>SECTION 4.</u> Fairfax Town Code Title 17 (Zoning'), Chapter 17.012 ('Zone Districts Established'), Section 17.012.010 ('Established') is hereby amended to read as follows:

"In order to classify, regulate, restrict and segregate the uses of land and building; to regulate and restrict the height and bulk of buildings; to regulate the area of yards and other open spaces about buildings; to regulate the percentage of a lot which may be occupied by a building or structure, and to otherwise regulate the use or development of land and premises, the following land use zones are established to be known and designated as:

- (A) RS-7.5 single-family residential zone;
- (B) RS-6 single-family residential zone;
- (C) RD 5.5-7 residential zone;
- (D) RM multiple-family residential zone;
- (E) CL limited commercial zone;
- (F) CC central commercial district zone;
- (G) CS commercial service zone;
- (H) CR commercial recreation zone;
- (I) PDD planned development district;
- (J) SF-RMP single-family residential master plan zone;
- (K) O-A open area zone;
- (L) UR upland residential zone; and
- (M) PD public domain."

**SECTION 5.** Fairfax Town Code Title 17 ('Zoning'), Chapter 17.012 ('Zone Districts Established'), Section 17.012.030 ('Discrepancies') is hereby amended to read as follows:

"In case of any discrepancy between the designation of land on the "zoning map" as lying within a particular zone and the designation of land in §§ 17.012.040 through 17.012.170 as being within the same zone, §§ 17.012.040 through 17.012.170 shall control."

**SECTION 6.** Fairfax Town Code Title 17 (Zoning'), Chapter 17.012 ('Zone Districts Established'), Section 17.012.100 ('Boundaries, CH Zone') is hereby amended to read as follows:

"§ 17.012.100 RESERVED."

**SECTION 7.** Fairfax Town Code Title 17 (Zoning'), Chapter 17.012 ('Zone Districts Established'), Section 17.012.110 ('Boundaries; CC Zone') is hereby amended to read as follows:

"The boundaries of the CC Zone are shown upon that map designated as the "Zoning Map of the Town of Fairfax," which map is made a part hereof by reference and is contained in Appendix X of the Fairfax Town Code."

- **SECTION 8.** Fairfax Town Code Title 17 (Zoning'), Chapter 17.020 ('Design Review Regulations'), Section 17.020.030 ('Applicability'), Subsection (B) is hereby amended to read as follows:
  - "(B) New construction in Central Commercial (CC), Limited Commercial (CL), Service Commercial (CS), Multiple-Family Residential (RM), Planned Development District (PDD), Single Family-Residential Master Plan (SF-RMP) zones, duplexes in RD 5.5-7 zones and structures in the Ridgeline Scenic Corridor, as required in Chapter 17.060, and residences which have a distance of more than ten feet from the ground to the lowest point of complete enclosure."
- <u>SECTION 9.</u> Fairfax Town Code Title 17 ('Zoning'), Chapter 17.092 ('CL Limited Commercial Zone'), Section 17.092.010 ('Purpose'), Subsection (A) is hereby amended to read as follows:
  - "(A) The CL limited commercial zone provides a location for uses which may be incompatible with the high density characteristics of the Central Commercial zone."
- **SECTION 10.** Fairfax Town Code Title 17 (Zoning'), Chapter 17.096 ('CH Highway Commercial Zone') is hereby amended to read as follows:

"§ 17.096 RESERVED."

<u>SECTION 11.</u> Fairfax Town Code Title 17 ('Zoning'), Chapter 17.100 ('CC Central Commercial Zone'), is hereby amended to delete the words 'Article I: Generally' from the chapter.

**SECTION 12.** Fairfax Town Code Title 17 ('Zoning'), Chapter 17.100 ('CC Central Commercial Zone'), Section 17.100.010 ('Purpose') is hereby amended to read as follows:

"The CC Central Commercial zone is the central business district and the retail commercial heart of the town. It should contain the most valuable land and structures, on a square-foot basis, of any zone in the town. The development of the CC central commercial zone caters to and invites pedestrian traffic. Consequently, store frontages

are intended to be continuous and to enhance the village character of the Town. Uses should be scaled such that an automobile is not needed to travel between them. In order to develop and maintain a zone of concentrated and varied retail and commercial activity, driveways, large parking lots, blank walls, and other conflicts with or deterrents to pedestrian traffic are to be minimized. Second-story residential uses provide both a nighttime population that is commercially desirable and living facilities for owners, workers and those without automobiles."

<u>SECTION 13.</u> Fairfax Town Code Title 17 ('Zoning'), Chapter 17.100 ('CC Central Commercial Zone'), Section 17.100.040 ('Principal Permitted Uses and Structures') is hereby renamed 'Uses and Structures' and is amended to read as follows:

"Table 17.100.040-1 establishes the land uses allowed within the Central Commercial zoning district as indicated by the letter designations as follows:

'P' designates permitted use classifications. Unless followed by an applicable Limitation or Additional Regulation that dictates otherwise, any permitted use classification is allowed to operate along the street frontage.

'U' designates use classifications requiring approval of a conditional use permit.

'-' designates a use classification not permitted within this zoning district.

'L' followed by a number designates use classifications subject to certain limitations listed by number following the table.

The "Additional Use Regulations" column includes specific limitations applicable to the use classification or refers to regulations located elsewhere in the Fairfax Town Code.

The uses listed are based on the use classifications set forth in Town Code Section 17.008.030. Use classifications not listed are prohibited. The Director of Planning and Building Services shall determine whether a proposed use shall be deemed to be of the same general nature as one of the use classifications or within one or more use classifications or not within any classifications within this title. Notwithstanding any other provision of the Town Code, any person aggrieved by a decision of the Director of Planning and Building Services with respect to a use determination may appeal such decision to the Planning Commission. Design review for proposed uses shall be required as per Chapter 17.020.

Table	<ul><li>P Permitted</li><li>U Use Permit Req</li><li>Not Permitted</li></ul>	uired	
Use	Status	Limitation	Additional Use Regulations

Table	P Permitted U Use Permit Re Not Permitted	quired	
Commercial Uses			
Animal sales and service	es	***************************************	
Animal hospitals / veterinary services	P	L-1	A, B
Animal retail sales and grooming	P	L-1	А, В
Horse stables	-		
Kennels	-		
Catering services	Р	L-1, L-2	A, B
Cleaning services	U	L-1, L-2, L-3	В
Eating and drinking estal	⊥ olishments		
Generally	Р	L-1	A, B
With take-out services	U	L-1	A, B
With permanent outdoor seating	U	L-1	A, B
With full alcoholic beverage service	U	L-1	A, B
With wine and beer service	P	L-1	A, B
With live entertainment or dancing	U	L-1	А, В
Financial institutions			
Generally	P	L-1	A, B
With automated teller machines	Р	L-1	A, B
With drive-up services	U	L-1	В
Food and beverage sales	Р	L-1	A, B
Health clubs	U	L-1	A, B
Home improvement sales and services	U	L-1	A, B
Lumber and building material yards	_	L-1	В
Maintenance and repair services (small equipment) Offices	U	L-1, L-2, L-3	В
Onices			

Table	P Permitted U Use Permit Req Not Permitted	uired	
Offices, business and professional	Р	L-1, L-2, L-5	В
Offices, medical	Р	L-1, L-2, L-5	В
Nurseries	U	L-1, L-2, L-3, L-4	В
Personal services	P	L-1	A, B
Recreation and Entertain	ment		
Indoors	U	L-1	A, B
Retail uses	Р	L-1	A, B
Vehicle/equipment sales	and services	1	
Automobile rental and leasing	-		
Automobile sales/new and used	_		
Automobile washing	MA.		
Automobile wrecking	-		
Service station	_		
With automobile washing	-		
Vehicle/equipment repair	-		
Limited vehicle service			
Vehicle/equipment sales and rental	-		
Vehicle storage	-		
Service station			
Industrial Uses			
Light industrial	U	L-1, L-2, L-3	В
Warehouse	_		
Community Uses			
Childcare	U		Α
Government offices	Р	A	A, C
Institution	U		A, C
Park facilities	P		Α
Schools	L		

Table	P U -	Permitted Use Permit Req Not Permitted	uired	
Elementary, Middle, Secondary	-			
Specialty	U		L-1, L-2	Α
Youth services	U		L-1, L-2	A, B
Residential Uses				J
Emergency homeless shelter	Р		L-6	B, C, D, E, See Section 17.138.010
Family day care home	·		-	
Small family day care home	Р		L-6	B, C, D, E
Large family day care home	Р		L-6	B, C, D, E
Group care home	J			
With six or fewer residents	P		L-6	B, C, D, E
With seven or more residents	U		L-6	B, C, D, E
Group residential	U		L-6	B, C, D, E
Junior second unit	-			B, C, D, E
Second-story residential	Р		L-6	B, C, D, E
Second unit	Р	**************************************	L-6	B, C, D, E
Single family residential	-			F
Single room occupancy	Р		L-6	B, C, D, E
Supportive housing	Р		L-6	B, C, D, E
Transitional housing	Р		L-6	B, C, D, E

Table 17.100.040-1 Limitations

Commercial uses with a gross floor area of 5,000 square feet or less are permitted. Commercial uses that exceed 5,000 square feet in gross floor area are permitted on approval of a Conditional Use Permit. In approving the use permit, the following conditions of approval shall be imposed: Prior to use permit approval, the Planning Commission shall review all proposed exterior changes, including signage, and determine whether the design complies with the goals and policies contained within Town Center Element of the General Plan, and is keeping with the architectural nature of the CC District.
Permitted in the rear, or conditionally permitted in store frontage with issuance of conditional use permit. In order to grant a conditional use permit for operation along the street frontage, the Planning Commission must make all findings required by Section 17.032.060, as well as additional findings that the proposed use (1) is compatible with the existing character and uses in the area, and (2) will not deter pedestrian traffic in the vicinity.
In addition to the findings required by L-2, in order to grant a conditional use permit authorizing operation along the street frontage, the Planning Commission must also find that the proposed use will not employ materials or practices that endanger other users or individuals in the area.
Outdoor storage of materials may be allowed in conjunction with a conditional use permit. In order to grant a conditional use permit for outdoor storage of materials, the Planning Commission must make all findings required by Section 17.032.060, and an additional finding that outdoor storage of materials (1) is compatible with the existing character and uses in the area, and (2) will not deter pedestrian traffic in the vicinity.
Permitted on the second floor also.
Permitted on the second floor only.

### Table 17.100.040-1 Additional Use Regulations

А	Any use permitted by right on the first floor along the street frontage is also permitted on the second floor.
В	Permitted uses must be conducted wholly indoors, unless otherwise indicated.

C	Residential units shall be a minimum of 150 square feet and a maximum of 700 square feet, with the average unit size per building not to exceed 500 square feet.
D	Notwithstanding any other provision of the Town Code, the parking requirements for residential uses within the CC district shall be one parking space for each residential unit that is 500 square feet or less. Residential units of greater size shall comply with the parking requirements of Section 17.052.030.
E	The maximum permitted density is 4.5 dwellings per acre.
F	Notwithstanding any other provision of the Town Code, single family homes in existence and in residential use as of [EFFECTIVE DATE OF ORDINANCE] are conditionally permitted uses within the CC district and shall not be included in any residential density calculation.

**SECTION 14.** Fairfax Town Code Title 17 ('Zoning'), Chapter 17.100 ('CC Central Commercial Zone'), Section 17.100.050 ('Conditional Uses and Structures') is hereby deleted in its entirety, and the following sections within Chapter 17.100 shall be renumbered accordingly.

SECTION 15. Fairfax Town Code Title 17 ('Zoning'), Chapter 17.100 ('CC Central Commercial Zone'), Section 17.100.055 ('Procedure for Planning Director Use Determination'), Subsection (A) is hereby amended to read as follows:

"Uses not specifically listed in §§ 17.100.040 are specifically prohibited unless a use determination by the Planning Director is made which finds the use not specifically listed is similar to another use permitted or conditionally permitted within the Central Commercial District."

**SECTION 16.** Fairfax Town Code Title 17 ('Zoning'), Chapter 17.100 ('CC Central Commercial Zone'), Section 17.100.050 ('Accessory Uses and Structures'), Subsections (5) and (6) are hereby deleted.

<u>SECTION 17.</u> Fairfax Town Code Title 17 ('Zoning'), Chapter 17.100 ('CC Central Commercial Zone'), Section 17.100.090 ('Yards') is hereby amended to read as follows:

"No yards are required, except when a lot line of a lot in the CC zone is the boundary of a residential zone, the central commercial lot shall provide yard space or spaces along and adjacent to the boundary line equal to that of the abutting yard space or spaces in the residential zone, except as may be otherwise permitted by a use permit."

**SECTION 18.** Fairfax Town Code Title 17 ('Zoning'), Chapter 17.100 ('CC Central Commercial Zone'), Section 17.100.110 ('Off-Street Parking and Loading'), Subsection (B)(1) is hereby amended to read as follows:

"Except as may be otherwise directed in Section 17.100.040, off-street parking and loading facilities shall be as set forth in Chapter 17.052 of this title."

**SECTION 19.** 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.

SECTION 20. CEQA. Pursuant to the California Environmental Quality Act (Pub. Res. Code §§ 21000 et seq.) (CEQA), and the State CEQA Guidelines (14 Cal. Code Regs. §§ 15000 et seq.) the Town has determined that the proposed rezoning does not require environmental review in addition to that previously undertaken in the Mitigated Negative Declaration and Initial Study of the General Plan for the Town of Fairfax (General Plan MND), adopted on February 29, 2012. The requirements of CEQA and the State CEQA Guidelines were satisfied by Town in the General Plan MND, which is sufficiently detailed such that all of the potentially significant environmental effects of the rezoning have been adequately evaluated. Further, the Town has determined none of the conditions set forth in Section 15162 of the CEQA Guidelines calling for the preparation of a subsequent environmental document have occurred. Finally, to the extent that any environmental effect of the rezoning differs from that evaluated in the General Plan MND, it will result in a decrease in those impacts evaluated in the General Plan MND. (See Citizens for a Sustainable Treasure Island v. City and Cty. of San Francisco (2014) 227 Cal.App.4th 1036, 1055.) Finally, in the alternative, the proposed rezoning is also exempt from further environmental review pursuant to State CEQA Guidelines sections 15301 and 15303.

**SECTION 21.** 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 22.** 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.

	roduced at a regular meeting of the Town Council on 2016, and duly adopted at the next regular meeting of
the Town Council on the day	of, 2016, by the following vote, to
wit:	
AYES:	
NOES:	
ABSENT:	
ABSTAIN:	
	Renee Goddard, Mayor
	Reflee Goddard, Mayor
Attest:	
Michele Gardner, Town Clerk	Date
WHO TO CALCITE, TOWN CICK	שמכ