



# TOWN OF FAIRFAX

## STAFF REPORT

### August 6, 2014

**TO:** Mayor and Town Council

**FROM:** Garrett Toy, Town Manager

**SUBJECT:** Second reading by title only and adoption of Ordinance No. 780 to Repeal Ordinance No. 778, a zoning ordinance that amended Town Code Chapters 5.52, 17.012, 17.020, 17.092, 17.096, and 17.104, and added Chapter 17.130, rezoned all parcels then-zoned Highway Commercial (CH) to Central Commercial (CC) Zone, rezoned APN 002-112-13 and 001-104-012 from Limited Commercial (CL) to Planned Development District (PDD); rezoned APN's 174-070-17 and 174-070-50 from UR-7 to PDD, added a Public Domain (PD) Zone, rezoned selected parcels to Public Domain (PD), provided for the supremacy of the Zoning Map over the text in event of discrepancy, corrected typographical errors, and updated the Town Zoning Map to reflect these zoning changes, in its entirety. CEQA: exempt per 14 C.C.R. §15061(b)(3)

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#### **RECOMMENDATION**

Waive second reading and read by title only Ordinance No. 780, an Ordinance of the Town Council of the Town of Fairfax to Repeal Ordinance No. 778 and adopt Ordinance No. 780

#### **BACKGROUND**

On July 16, 2014, the Council voted, after numerous public meetings to consider the matter, to repeal Ordinance No. 778 in response to the referendum petition submitted against Ordinance No. 778. At the meeting, the Council discussed revisions to Ordinance No. 780, which repeals Ordinance No. 778, and directed staff to incorporate such revisions into the ordinance. As staff was unable to incorporate all the revisions at the meeting, the Council scheduled a special Council meeting on Thursday July 24, 2014 to consider the introduction of Ordinance No. 780.

On July 24<sup>th</sup>, the Council voted 5-0 to introduce Ordinance No. 780 to repeal Ordinance No. 778. It takes two readings to approve an ordinance. After the adoption of the second reading, Ordinance No. 780 will take effect 30 days later.

As clarification, the adoption of Ordinance No. 780 will repeal Ordinance No. 778 which, in essence, means Ordinance No. 778 will have never existed. Ordinance No. 780 does not modify Ordinance No. 778; it eliminates it. The Town's zoning map and code will revert to what they were prior to Ordinance No. 778. The Town Code that is available on-line at [www.townoffairfax.org](http://www.townoffairfax.org) reflects no revisions from Ordinance No. 778. Ordinance No. 780 does not modify the General Plan or Housing Element.

#### **FISCAL IMPACTS**

n/a

**ATTACHMENT:** Ordinance No. 780 to Repeal Ordinance No. 778

AGENDA ITEM # 11

## ORDINANCE NO. 780

### AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF FAIRFAX TO REPEAL ORDINANCE NO. 778

WHEREAS, the Town Council of the Town of Fairfax supports the goals, objectives, policies, and programs contained in the General Plan it adopted in April 2012 and the Certified Housing Element it adopted in October 2013 and is repealing Ordinance No. 778 to facilitate the correction of errors, omissions, and inconsistencies within and between the General Plan and Town Code; and

WHEREAS, after the repeal of Ordinance No. 778, the Town Council intends to expeditiously move forward with appropriate rezoning acts that will move toward aligning the Town Code with the General Plan once errors, omissions, and inconsistencies have been corrected; and

WHEREAS, after repeal of Ordinance No. 778, the Town Council will ensure that appropriate rezoning acts conducted include a precise map or maps illustrating the distribution of zones within the community and complete text changes which correctly identify the specific land uses and development standards allowed in each zone, in conformance with the standards required for zoning ordinances.

Now, therefore, the Town Council of the Town of Fairfax does ordain as follows:

SECTION 1: The Town Council, finds and determines that the adoption of this Ordinance No. 780 is exempt from review under the California Environmental Quality Act (Public Resources Code § 21000, et seq., as further governed by the Guidelines to the California Environmental Quality Act, 14 C.C.R. § 15000, et seq.) per 14 C.C.R. § 15061(b)(3), which applies where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment. Insomuch as there have been no changes to the physical environment since the effective date of Ordinance No. 778, and this Ordinance No. 780 simply returns the Town's zoning to that which existed prior to the adoption of Ordinance No. 778, this action will have no significant effect on the environment.

SECTION 2: Ordinance No. 778, as adopted by the Town Council on March 5, 2014, is hereby repealed in its entirety, and the provisions of all Town Code sections and chapters amended thereby are returned to their status as of March 4, 2014.

SECTION 3: If any section, subsection, sentence, clause, or phrase of this Ordinance is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of the Ordinance. The Town Council hereby declares that it would have passed this Ordinance and each section, subsection, sentence, clause, and phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases be declared valid or unconstitutional.

SECTION 4: The Town Council finds that this Ordinance No. 780 conforms to the following provisions of the Town of Fairfax 2010-2030 General Plan:

- A. *Objective TC-2.1: Work with the community to maintain and enhance the historic character of the Town Center Area.* Repealing Ordinance No. 778, which, among other things, rezoned a number of properties within the Town Center Area and thus affected the permitted uses and development of those properties, will provide the Town with additional time in which to facilitate community discussions on the Town Center Area's future.
- B. *Housing Element Program H-1.1.1.3: Conduct Community Outreach.* The Planning Commission will develop and implement a program providing public information and outreach to increase citizen awareness, including establishing a forum for discussion of housing issues. Repealing Ordinance No. 778, which, among other things, rezoned a number of housing opportunity sites, will provide more time in which to allow the Planning Commission to conduct the community outreach envisioned by the Housing Element prior to the implementation of any zoning changes related to housing issues.
- C. *Land Use Element Objective LU-1.1: Limit development to preserve and enhance the community's unique natural and scenic resources.; and Objective LU-1.2: Limit development on hillsides and ridgeline parcels to preserve and enhance scenic qualities of the Town.; and Goal LU-2: Preserve open space.; and Objective LU-5.1: Permit new and renewed development and extension of urban services in a manner that preserves the area's natural and cultural resources. Open Space Element Goal 1: Protect and Preserve open space lands and native biotic resources within the Fairfax Planning Area.; and Goal 2: Manage, enhance and restore open space to ensure long term vitality and viability.; and Goal 3: Preserve the sensory qualities of open space for recreational, cultural, educational and spiritual experiences.* That real property commonly known as 2626 Sir Francis Drake Boulevard (the "Lutheran Church Site," APN 174-070-017) consists of hilly topography within the Town and is largely undeveloped. Ordinance No. 778 rezoned the entirety of 2626 Sir Francis Drake Boulevard from UR-7 to PDD per General Plan Programs LU-8.1.1.4 and H-2.1.1.1. However, the Town Council finds that the scope of these programs is further refined by the description of the Town's vision for the more limited rezoning of that parcel, which is identified as Housing Opportunity Site No. 1 within the Housing Element. Specifically, the description of Housing Opportunity Site No. 1 on page H-72 of the Housing Element states that this housing opportunity site is envisioned to be only "2 acres (after split)" of the 20 acre site. Insomuch as Ordinance No. 778 rezoned the entirety of the 20 acre tract to PDD, it rezoned more acreage than was intended by the Town. Repealing Ordinance No. 778 thus remedies this error and will allow the Town to implement the more limited rezoning actually intended for this site, thus preserving its scenic qualities and unimproved open space.

Additionally, densities for UR-7 and UR-10 properties were erroneously listed on tables in the Housing Element. While there are several properties zoned UR-7 and UR 10 in Town, two of the properties more commonly known as "the Wall Property" and "Sky Ranch" are identified on the list of parcels in the Fairfax General Plan valued for their open space and conservation potential. Insomuch as public comment received on Ordinance No. 778 expressed concern regarding these typographical

errors' specific impact on the Wall and Sky Ranch properties, and, thus, their open space and conservation potential, the Town desires to repeal Ordinance No. 778 to assure the community that the zoning densities were not adversely impacted or changed for any of the UR-7 and UR-10 properties in town.

- D. *Housing Element Objective H-2.1: Housing opportunities for the Town's residents with special needs, including 40 units of senior housing and 22 units of workforce housing and identify appropriate zones for homeless shelters.* The Town's pledge to rezone for 40 units of senior housing, 22 units of workforce housing, and homeless shelters is reflected in various General Plan goals, policies, and objectives. Specifically, the General Plan anticipates accommodating the senior housing and workforce housing needs by rezoning certain sites to PDD. Accordingly, Ordinance No. 778 rezoned a number of sites to PDD for this purpose. However, unlike the other parcels rezoned PDD by Ordinance No. 778, nothing in the General Plan text expressly contemplated that the real property commonly known as 2600 Sir Francis Drake Boulevard (APN 174-070-050) would be rezoned to PDD to fulfill housing goals. Rather, that parcel is erroneously identified in the General Plan as belonging in the PDD zone only by virtue of its inadvertent PDD labeling on General Plan Figure LU-2. The rezoning of the parcel in Ordinance No. 778, both by changes to the zoning ordinance text and zoning map, implemented this error, which the Town intends to correct. Inasmuch as Ordinance No. 778 did, in fact, rezone 2600 Sir Francis Drake to PDD, repealing that ordinance will correct that error and will not affect the Town's plan to rezone for the provision of senior housing, workforce housing, and homeless shelters.
- E. *Land Use Element Objective LU-7.1: Preserve and enhance the community's small-town scale and character.; and Policy LU-7.1.5: New and renewed residential development shall preserve and enhance the existing character of the Town's neighborhoods in diversity, architectural character, size and mass.; and Policy LU-7.2.3: Traffic and parking concerns related to new and renewed development shall be addressed in a manner that does not result in undue hardship or significant negative impacts on properties and infrastructure in the vicinity.* Repeal of Ordinance No. 778 allows the Town the opportunity to develop guidelines to ensure the existing village character of the downtown is preserved and traffic and parking concerns related to development are addressed in a manner that does not result in undue hardship or significant negative impacts.
- F. The Fairfax Zoning Map (included as Figure LU-2 in the General Plan) incorrectly depicts that real property commonly known as 2600 Sir Francis Drake Boulevard (APN 174-070-050) as lying within the PDD zoning district. No text within the General Plan requires or addresses this location. In order to conform to this depiction, Ordinance No. 778 rezoned this parcel from UR-7 to PDD, both by zoning text and map amendments. The Town believes that no rezoning of this parcel was actually intended, and the map reference in the General Plan is simply erroneous. The Town intends to remedy the map error in the General Plan, and restore the previous zoning at this location, and repealing Ordinance No. 778 is a first step

toward that correction, as it will return the zoning of 2600 Sir Francis Drake Boulevard to its previous UR-7 zoning designation.

In addition, as stated above, Ordinance No. 778 rezoned the entirety of the Lutheran Church site to PDD, when only a 2-acre portion of the site was intended to be rezoned, and only the environmental implications of rezoning 2-acres, including traffic and parking analysis, was studied. Repealing Ordinance No. 778 also offers the Town the opportunity to address this issue.

Since the mistaken zoning of the entirety of the 2626 and 2600 Sir Francis Drake parcels created development potential beyond what was considered or described in the General Plan/Housing Element, Ordinance No. 778 creates housing development opportunities that could potentially have environmental impacts beyond those which were considered and approved by the Mitigated Negative Declaration and the Mitigation and Monitoring Plan for the General Plan in conformance with CEQA.

SECTION 5: This ordinance shall be in full force and effect thirty days from and after its final passage and adoption.

SECTION 6: Copies of the foregoing ordinance shall, within fifteen days after its final passage and adoption, be posted in three public places in the Town of Fairfax, which places are designated for that purpose:

1. Bulletin Board, Town Hall offices, located at 142 Bolinas Road, Fairfax; and
2. Bulletin Board, Fairfax Post Office, located at 773 Center Boulevard, Fairfax; and
3. Bulletin Board, Fairfax Women’s Club building, located at 46 Park Road, Fairfax

The foregoing ordinance was duly and regularly introduced at a special meeting of the Fairfax Town Council, held in said Town on the 24th day of July 2014, and thereafter adopted at a regular meeting of the Town Council, in said Town on the \_\_\_ day of \_\_\_\_\_, 2014, by the following vote:

AYES:  
 NOES:  
 ABSTAIN:  
 ABSENT:

\_\_\_\_\_  
DAVID WEINSOFF, Mayor

Attest:

\_\_\_\_\_  
Michele Gardner, Town Clerk

\_\_\_\_\_  
Date