

**TOWN OF FAIRFAX  
STAFF REPORT**

**To:** Planning Commission

**From:** Jim Moore, Director of Planning & Building Services  
Garrett Toy, Town Manager

**Date:** October 20, 2016

**Subject:** CONSIDERATION OF SELECT POLICY ISSUES ASSOCIATED WITH THE CH  
TO CC REZONING ORDINANCE

**RECOMMENDATION**

Consider policy issues identified by the Town Council for further discussion and provide staff with direction on any changes to make to the CH to CC rezoning ordinance. No recommendation will be made to the Town Council on the basis of tonight's discussion. The Town Council has indicated it would like a joint special meeting with the Planning Commission to discuss the proposed revisions to the CH to CC ordinance.

**BACKGROUND**

On September 7, 2016, the Town Council held a study session to review the draft ordinance recommended by the Planning Commission for rezoning CH parcels to CC, revising the land uses in the CC, and making associated zoning amendments. In the course of the study session, the Council discussed a number of elements of the draft ordinance that it believed would benefit from further consideration by the Planning Commission. Staff is bringing these matters back to the Planning Commission this evening.

**DISCUSSION**

On July 21, 2016, the Planning Commission reviewed and made further amendments to the draft ordinance that is proposed to rezone all parcels currently zoned CH to CC; do away with the CH zoning district; amend the permitted, conditionally permitted, and prohibited uses in the CC zoning district; and adopt various associated amendments (Attachment A). The Commission had seen many earlier drafts of the ordinance and had heard from members of the public at various public meetings over the course of its preparation. At its July meeting, the Commission recommended the ordinance be adopted by the Town Council.

On September 7, 2016, the Town Council had its first look at the ordinance. A number of members of the public attended the meeting and offered additional input. After considering the draft ordinance, hearing from the public, and discussing it amongst themselves, the Council identified the following elements that it wished the Commission to consider.

A. **Animal sales and services uses.** As currently framed, the draft ordinance addresses these uses as follows:

Use	Status	Limitation	Additional Use Regulations
Animal sales and services			
Animal hospitals / veterinary services	P	L-1	A, B
Animal retail sales and grooming	P	L-1	A, B
Horse stables	-		
Kennels	-		

The current definition of 'Animal hospitals/veterinary services' provides:

**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.

(Underlining added for emphasis.) The Town Council has asked that the Planning Commission revise this definition to clarify that animals may be boarded and/or groomed at such facilities even if the animals are not there to receive medical care at the time of their boarding or grooming, as the case may be. Staff believes this was the intention of the Planning Commission in the present version of the ordinance. This may be clarified by replacing the underlined language above with the following:

Grooming and boarding of animals may be conducted as accessory uses to hospital and veterinary service uses, provided the primary use of the facility remains hospital and/or veterinary services. Animals may be groomed or boarded at such facilities without the need for medical care.

B. **Eating and drinking establishments.** At the Council meeting, a question arose as to whether bars that do not serve food would be allowed, either conditionally or as a principally permitted use, under the new ordinance. This question likely arose as a result of the title of the use category ('eating and drinking establishments') in Table 17.100.040-1, which differs from that in the use classifications definitions ('eating and/or drinking establishments,' emphasis added) in Section 17.008.030(C). Clarifying that the title should indeed be 'Eating and/or drinking establishments' would communicate that drinking establishments that do not serve food, such as Peri's, are conditionally permitted uses. Alternatively, if it was the intention of the Planning Commission to only allow drinking establishments to operate if they also offer prepared food, the use category title of 'eating and drinking establishments' should be retained and that conjunctive should be used throughout the subset of use classification definitions. Staff awaits Planning Commission direction in this regard.

C. **Public parking garages and lots.** Questions arose at Council as to whether parking garages and lots owned by the Town of Fairfax would be permitted under the new CC zoning ordinance. These types of uses are not specifically contemplated in the draft ordinance. The intent of this section is to prohibit privately owned or operated public parking lots or garages, while permitting such public uses. This could be addressed by amending the list of 'community uses' identified in the ordinance to add a new use classification ('Public parking facilities'). This new use classification would be added to the list of definitions in Section 17.008.030(C) and such new use could be included in the use table (Table 17.100.040-1) as a permitted use.

D. **Service stations.** As written, the draft ordinance does not allow service stations (also known as gas stations) in the CC district. The effect of this would be (1) to prohibit new service stations from opening in the CC district, and (2) to render existing gas stations legal, non-conforming uses, which are subject to limitations set out in the Town Code (Ch. 17.016, 'Non-conforming uses and structures') and general legal principles prohibiting their enlargement or expansion.

The Town Council has directed the Planning Commission to consider other ways in which service stations might be treated in the CC district. Some options include:

1. Allow with use permit. Service stations could be conditionally permitted within the district, and the Town could adopt additional criteria that would have to be met in order to approve such a use. Such additional criteria could include, for example, considerations such as:
  - a. Approval of the service station would not result in an overconcentration of such uses within the CC zoning district;
  - b. Hours of operation (including the delivery of fuel to the station) shall not begin before X:00 a.m. and shall cease by Y:00 p.m., in order to allow for the uninterrupted rest of CC district residents; and
  - c. Satisfaction of certain development standards, with the caveat that no service station existing as of the effective date of this ordinance would be deemed to be nonconforming if it did not meet those standards. These development standards could include such things as limits on the number of curb cuts on street frontages, authorization of such uses only along arterials, limits on the number of fuel pumps, et cetera. Any such standards would be developed with an eye toward lessening or avoiding conflicts between pedestrians and bicyclists with vehicles, avoiding the operation of large trucks on small Town roads, and the like.

2. Adopt an overlay zone. According to the Institute for Local Government (ILG):

An overlay zone ... places additional regulations on existing zones within areas of special concern. Their boundaries are fixed\* and usually encompass all or part of multiple zones. Overlay zones are often used in floodplains, hillsides, near fault lines, around airports, and in other areas where additional regulations are necessary to ensure public safety. Overlay zones are also commonly applied to downtowns and historic districts to ensure a certain aesthetic character.

*(Understanding the Basics of Land Use and Planning: Guide to Local Planning, ILG, p. 25. Note that the reference to boundaries being fixed reflects the fact that 'floating' zones were discussed separately in this publication.)*

In California, many communities have adopted overlay zones for uses such as automobile dealerships. One option would thus be to have service station uses be subject to a 'vehicle /

equipment sales and services' overlay district. Such a mechanism could either have fixed boundaries, whereby the Town would determine which portion of the CC district it desired to allow such uses to locate in (for example, parcels in the CC with frontages along Sir Francis Drake Boulevard), or it could be floating, in which case it would be applied to specific sites. With fixed boundaries, any conditions and development standards would necessarily apply to all parcels within the boundaries of the zone. With a floating zone, conditions and development standards would need to be satisfied by each particular use requesting application of the overlay zone to their parcel.

This type of mechanism could potentially capture not only service stations, but also other vehicle sales and services uses, including repair shops, such as S&N Auto Parts & Repair. Development standards that could be applied to uses in this type of district might include those listed above (in the conditional use permit discussion) and/or such considerations as requiring repair activities to only be conducted indoors, limiting the amount of outdoor vehicle storage, limiting the size of vehicle repair entries, et cetera. An applicant seeking the imposition of this floating overlay zone would apply for it, and the Town could determine that it should be applied to existing such uses.

Like allowing service stations with a conditional use permit, the use of overlay zones could be structured to allow for the continued operation of existing uses without necessarily designating them legal, non-conforming and would act as a further procedural step for reviewing new uses within this category.

**E. Density bonus ordinance.** At both the final Planning Commission hearing on the ordinance and at the subsequent Council meeting, members of the community voiced concern that amendment of the CC zoning district would newly allow or encourage the use of density bonus applications. This is not accurate.

The state density bonus law (Government Code §§ 65915, et seq.) is a tool devised by California lawmakers to encourage the development of affordable and senior housing, as well as child care facilities, by permitting qualifying projects to request a higher density than would otherwise be allowed under local law and to seek relief from one or more local zoning regulations that might make the development of such projects economically infeasible. The law exists separate and apart from the Town Code and can be used without the Town adopting any sort of implementing local ordinance. That said, the statute does direct towns and cities to adopt local ordinances, and many communities use these local laws to shape the type of zoning deviations that may be sought by applicants who qualify for this process.

While the Town intends to adopt a local density bonus ordinance, doing so will generally not change the applicability of the law, which is already in place. Neither will the rezoning of CH parcels to CC. What *will* change with the adoption of the CH to CC rezoning ordinance is that residential uses on the second floor are currently only allowed in the CH district with a use permit; once these parcels are rezoned to CC, they will be authorized to develop second story uses by right, provided they can meet the applicable development standards. The density bonus statute could be used by developers in the CH today. One suggestion would a joint special study session with the Council to discuss State affordable housing laws with a focus on how the State density bonus law applies to communities and examples of local density bonuses ordinances adopted by other communities.

F. **Residential units on small lots.** Given the maximum density of 4.5 dwelling units per acre established by the ordinance, a question has arisen as to whether this figure would permit the development of a single unit on a very small lot within the CC. Three points should be noted in this regard.

1. The maximum density simply imposes a ceiling on the number of units per acre; it does not establish any sort of minimum square footage or site size necessary to allow a residential unit to be constructed.
2. To the extent there are minimum square footage requirements in the ordinance, these are imposed through the development standards. These provide that "[r]esidential 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." (Table 17.100.040-1 'Additional Use Regulations') If a parcel within the CC is large enough to bear one 150 square foot (10' x 15') unit on the second story, a single unit would be allowed under the ordinance.
3. Once a single unit is permitted, no further units would be permitted if the additional units would cause the site's density to exceed 4.5 units/acre. To illustrate this concept, a building on a 5,000 sq. ft. lot would be allowed to have one unit even though applying the 4.5 units/acre density would equate to .11 units per acre. However, tenths of a unit would need to exceed 0.5 units/acre in order to qualify for a second unit subject to the units meeting the development standards.

If the Town wishes to establish more detailed development standards applicable to residential uses within the expanded CC district, it certainly can.

G. **Warehouse uses.** A question arose at the Council meeting as to whether a 'warehouse' use would be allowed. Table 17.100.040-1 currently shows 'warehouse' as a use that is not permitted in the CC zoning district. The Council mused that perhaps small warehouses should be allowed. If the Planning Commission wished to allow such a use it could be in an accessory capacity or only in certain locations. The PC would also need to define the maximum size of small warehouse. Such revisions could be added to the ordinance. Staff's recollection is that the Planning Commission had previously determined that stand alone warehouses would not be the best use of the CC retail district, but that storage ancillary to a primary use is allowed.

H. **Medical laboratories.** Two Councilmembers had questions as to whether medical laboratories would be considered accessory uses of medical office uses. The Council did not want to allow medical laboratories, unless it was an accessory use. The definition of medical offices provides that "this classification includes medical laboratories accessory to a medical office use." If this was not the Planning Commission's intention, it should be changed. Otherwise, the current language could be amplified to make clear that medical laboratories are only authorized to the extent that they are ancillary to a medical office use.

I. **Consistency.** Once the Planning Commission has provided direction on the issues listed above, staff will make a final review of the ordinance to ensure that it is internally consistent, and conforms to the rest of the Town Code and General Plan. If further amendments are necessitated by any of the changes directed by the Planning Commission tonight, staff will include such amendments in the next draft presented to the Commission.

**CEQA.** Town 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. Counsel will revisit this

determination once the Planning Commission has made final recommendations as to the issues above in order to determine whether these conclusions remain accurate or whether additional environmental review is necessary.

### **RECOMMENDATION**

Consider the policy issues set forth above and provide direction to staff on revisions to make to the CH to CC rezoning ordinance. No further recommendation from the Planning Commission to the Town Council will be made regarding the ordinance this evening. Rather, the Council indicated that it would like to have a joint special meeting with the PC to discuss the proposed revisions to CH to CC ordinance. Given the upcoming holidays and existing agenda items, staff will look to schedule this sometime early next year.

### **ATTACHMENTS**

Attachment A – Draft ordinance

Attachment B – Comparison Table

## **PROPOSED ORDINANCE FOR DISCUSSION**

**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**, in considering whether to recommend adoption of the Ordinance to the Town Council, the Planning Commission specifically considered the fact that legal uses within the existing CH district that become nonconforming by virtue of the adoption of the Ordinance could continue operating, subject to the legal principles governing the operation of legal nonconforming uses; and

**ATTACHMENT A**

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

**WHEREAS**, on July 21, 2016, the Planning Commission held a duly noticed public hearing, at which it adopted a resolution finding this ordinance to be in conformance with the 2010-2030 General Plan and recommending that the Town Council adopt this ordinance.

**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.

**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.

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

**INSTITUTION.** A non-profit corporation or a non-profit establishment for public use, as defined in Section 17.008.020.

**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.

**SECTION 4.** 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."

**SECTION 9.** 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."

**SECTION 11.** 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."

**SECTION 13.** 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	P Permitted U Use Permit Required - Not Permitted		
Use	Status	Limitation	Additional Use Regulations
<b>Commercial Uses</b>			
Animal sales and services			
Animal hospitals / veterinary services	P	L-1	A, B
Animal retail sales and grooming	P	L-1	A, B
Horse stables	-		
Kennels	-		
Catering services	P	L-1, L-2	A, B
Cleaning services	U	L-1, L-2, L-3	B
Eating and drinking establishments			
Generally	P	L-1	A, B
With take-out services	U	L-1	A, B

Table	P Permitted U Use Permit Required - Not Permitted		
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	A, B
<b>Financial institutions</b>			
Generally	P	L-1	A, B
With automated teller machines	P	L-1	A, B
With drive-up services	U	L-1	B
Food and beverage sales	P	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	
Maintenance and repair services (small equipment)	U	L-1, L-2, L-3	B
<b>Offices</b>			
Offices, business and professional	P	L-1, L-2, L-5	B
Offices, medical	P	L-1, L-2, L-5	B
Nurseries	U	L-1, L-2, L-3, L-4	B
Personal services	P	L-1	A, B
<b>Recreation and Entertainment</b>			
Indoors	U	L-1	A, B
Retail uses	P	L-1	A, B
<b>Vehicle/equipment sales and services</b>			
Automobile rental and leasing	-		
Automobile sales/new and used	-		
Automobile washing	-		

Table	<b>P</b> Permitted <b>U</b> Use Permit Required <b>-</b> Not Permitted		
Automobile wrecking	-		
Service station	-		
With automobile washing	-		
Vehicle/equipment repair	U	L-1	B
Limited vehicle service	U	L-1	B
Vehicle/equipment sales and rental	-		
Vehicle storage	-		
<b>Industrial Uses</b>			
Light industrial	U	L-1, L-2, L-3	B
Warehouse	-		
<b>Community Uses</b>			
Childcare	U		A
Government offices	P		A, C
Institution	U		A, C
Park facilities	P		A
<b>Schools</b>			
Elementary, Middle, Secondary	-		
Specialty	U	L-1, L-2	A
Youth services	U	L-1, L-2	A, B
<b>Residential Uses</b>			
Emergency homeless shelter	P	L-6	B, C, D, E, See Section 17.138.010
<b>Family day care home</b>			
Small family day care home	P	L-6	B, C, D, E
Large family day care home	P	L-6	B, C, D, E
<b>Group care home</b>			
With six or fewer residents	P	L-6	B, C, D, E

Table	P Permitted U Use Permit Required - Not Permitted		
With seven or more residents	U	L-6	B, C, D, E
Group residential	U	L-6	B, C, D, E
Junior second unit	-		
Second-story residential	P	L-6	B, C, D, E
Second unit	P	L-6	B, C, D, E
Single family residential	-		F
Single room occupancy	P	L-6	B, C, D, E
Supportive housing	P	L-6	B, C, D, E
Transitional housing	P	L-6	B, C, D, E

**Table 17.100.040-1 Limitations**

L-1	<p>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:</p> <p>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.</p>
L-2	<p>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. These require the Planning Commission to find that:</p> <ul style="list-style-type: none"> <li>(A) the approval of the use permit shall not constitute a grant of special privilege and shall not contravene the doctrines of equity and equal treatment;</li> <li>(B) the development and use of property, as approved under the use permit, shall not create a public nuisance, cause excessive or unreasonable detriment to adjoining properties or premises, or cause adverse physical or economic effects thereto, or create undue or excessive burdens in the use and enjoyment thereof,</li> </ul>

	<p>any or all of which effects are substantially beyond that which might occur without approval or issuance of the use permit;</p> <p>(C) approval of the use permit is not contrary to those objectives, goals or standards pertinent to the particular case and contained or set forth in any master plan, development plan or other plan or policy, officially adopted by the town; and</p> <p>(D) approval of the use permit will result in equal or better development of the premises than would otherwise be the case, and that the approval is in the public interest and for the protection or enhancement of the community.</p> <p>In addition to the foregoing, in order to grant a conditional use permit to authorize operation in a store frontage, the Planning Commission must also find that the proposed use:</p> <p>(E) is compatible with the existing character and uses in store frontages of nearby buildings in the area;</p> <p>(F) will not deter pedestrian traffic in the vicinity; and</p> <p>(G) activates the store front uses similar to a retail use.</p>
L-3	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.
L-4	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.
L-5	Permitted on the second floor also.
L-6	Permitted on the second floor only.

**Table 17.100.040-2 Additional Use Regulations**

A	Any use permitted by right on the first floor along the street frontage is also permitted on the second floor.
B	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, there shall be no additional residential parking requirement for residential uses within the CC district that are 500 square feet or less, provided the underlying commercial use satisfies its parking requirement. 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, existing single family homes that maintain their residential character as of [EFFECTIVE DATE OF ORDINANCE] are conditionally permitted uses within the CC district and shall be included in any residential density calculation if they are returned to residential use.

**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.

**SECTION 17.** Fairfax Town Code Title 17 ('Zoning'), Chapter 17.100 ('CC Central Commercial Zone'), Section 17.100.050 ('Accessory Uses and Structures'), new Subsections (5) is hereby added to read as follows:

"(5) Electric vehicle charging stations."

**SECTION 18.** 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 19.** 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 20.** 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 21.** 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 22.** 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 23.** This Ordinance shall be effective 30 days following its adoption by the Town Council. Copies of this Ordinance shall, within fifteen days after its passage and adoption, be posted in three public places in the Town of Fairfax, to wit: 1. Bulletin Board, Town Hall Offices; 2. Bulletin Board, Fairfax Post Office; and 3. Bulletin Board, Fairfax Women's Club Building, located at 46 Park.

The foregoing Ordinance was introduced at a regular meeting of the Town Council on the \_\_\_\_ day of \_\_\_\_\_, 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

Attest:

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

\_\_\_\_\_  
Date

## COMPARISON OF AMENDED CC ZONES TO EXISTING CH AND CC REGULATIONS

Please note:

- 1) No current business are retroactively impacted or displaced by amended zoning regulations. Current businesses are only impacted if there is a change in the use of their space or they need to apply for a building permit.
- 2) Business uses are regulated in three ways: allowed BY RIGHT, allowed but only with a CONDITIONAL USE PERMIT (CUP), not allowed unless there is a ZONING AMENDMENT
- 3) Language in "bold" across columns denotes no change in the "Amended CC" zone when compared to the "Current CC" and "Current CH" zones.

	Current CC	Current CH	Amended CC
<b>Location</b>  Note: maps are being prepared and will available at the Council meeting  Note: *approximate	<b>Town center – See Map</b>  Total Acres*: 9.35 acres Total Parcels*: 66 parcels	<b>Westside – see map</b> <b>Fair Anselm Plaza – see map</b> <b>Eastside- see map</b> <b>7-11 on the corner of Park and Bolinas</b>  Total Acres*: 13.9 acres Total Parcels*: 36 parcels	<b>CH and CC combined- see map</b>  Total Acres*: 23.25 acre Total Parcels*: 102 parcels
<b>Residential uses</b>	Allowed on second floor No size limitations	Second floor residences require CUP No size limitations	Allowed on second floor; Min 150sqft – Max 700 sq. ft. with average not to exceed 500sqft
<b>Max # residences (aka "density")</b>	No Maximum	No Maximum	4.5 Units per acre
<b>Existing Number of Residences</b>	Approx. 29 2 <sup>nd</sup> story buildings out of a total of 54 buildings  Est. 40-50 existing residential units	Staff in the process of estimating number of 2 <sup>nd</sup> story units and number of existing residential units	Sets 4.5 units/acre limit in current CC  Sets limit on "new" CC to approximately 57 units (e.g. gross acreage x 4.5 units/acre).  Note: HE modeled 53 units in new CC area.
<b>State Density Bonus</b>	Applies	Applies	Applies
<b>Permitted</b>	List of allowed or conditional specific uses	List of allowed or conditional specific uses	Creates use classifications instead of a list of specific allowed or conditional uses  Easier for staff to regulate and businesses to understand.

			This revision reflects the best practice of modern day zoning codes.
<b>Residential Parking</b>	<p><b>Commercial space:</b> Must meet requirements for on-site parking (e.g., )</p> <p><b>Residential on-site requirement:</b> 1 space for a studio/1bd 2 spaces for anything greater</p>	<p><b>Commercial space:</b> Must meet requirements for on-site parking (e.g., )</p> <p><b>Residential on-site:</b> Residential on-site requirement: 1 space for a studio/1bd 2 spaces for anything greater</p>	<p><b>Commercial space:</b> Must meet requirements for on-site parking (e.g., )</p> <p><b>Residential on-site:</b> If all commercial parking requirements are met and the unit is 500sqft or less, no on-site parking space required.</p> <p>Units over 500 sq. ft. all standard parking requirements would apply.</p>
<b>Size of spaces</b>	No limit	No limit	<p>Over 5,000 sq. ft. requires a use permit.</p> <p>Note: Existing businesses such as Fairfax Market, Good Earth, &amp; Theater allowed to continue to operate.</p>
<b>Formula Businesses (aka "chain stores")</b>	Requires a CUP	Requires a CUP (amended 2015)	Requires a CUP
<b>Automotive Uses (gas stations, repair shops etc.)</b> <i>Example: S&amp;N, Marin Automotive</i>	Not allowed	Requires CUP	<p>Gas stations not allowed</p> <p>Auto repair shops permitted with a CUP.</p> <p>Note: Existing auto repair and gas stations allowed to continue to operate (e.g., "legal non-conforming).</p>
<b>Office Uses (all, medical, administrative etc.) – Example: Casa Manana bldg</b>	<p>Allowed on second floor</p> <p>Anywhere on first floor requires a CUP</p>	Allowed anywhere	<p>Allowed on second floor and in non-street front on first floor.</p> <p>First floor street frontage requires a CUP with increased approval criteria to ensure use is similar to or compliments a retail establishment.</p>
<b>Commercial Parking</b>	Varies by type of business in all zones	Varies by type of business in all zones	Varies by type of business in all zones

Legal non-conforming uses	Allowed	Allowed	Allowed Note: Existing businesses such as a gas station are allowed to remain even if not a permitted use under the amended zoning code.
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