



# TOWN OF FAIRFAX

## STAFF REPORT

### July 16, 2014

**TO:** Mayor and Town Council

**FROM:** Garrett Toy, Town Manager 

**SUBJECT:** Consideration of response to receipt of certified referendum petition regarding Ordinance No. 778 and determine next steps, which may include either introduction of Ordinance No. 780 repealing 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; or placement of Ordinance No. 778 on the November 2014 ballot for voter consideration.

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### RECOMMENDATION

- 1) Consider Council's options in response to receipt of certified referendum petition as to Ordinance No. 778 and determine Council consensus as to next steps;
- 2) Either (a) introduce and waive the first reading of Ordinance No. 780 (repealing Ordinance No. 778), or (b) if the Council wants to place Ordinance No. 778 on the November ballot, the Council should direct staff to return with the required resolution and related materials for Council consideration at its regular August 6th meeting or a special Council meeting.

### BACKGROUND

In April 2012, the Town Council adopted the Town's updated General Plan. Subsequently, in October 2013, the Town Council likewise approved the Town's updated Housing Element. Together, these documents contained certain land use directives that required further action to implement.

Staff began the process of implementing some of these directives by drafting Ordinance No. 778. Among other thing, that ordinance rezoned CH zoned properties to CC, rezoned four properties PDD, and rezoned certain properties to PD. It likewise (a) deleted language appearing in other sections of the Town Code referring to the now-defunct CH district, (b) set forth a rule whereby discrepancies between the zoning text and zoning map would be resolved in favor of the map, (c) adopted as to the Town's official zoning map the map included in the General Plan as Figure LU-2, (d) established a Public Domain (PD) zoning district, and (e) rezoned certain properties to the new PD zoning district.

The Planning Commission found it was consistent with the policies and programs of the General Plan. On January 30, 2014, the Planning Commission adopted a resolution

recommending the Council approve Ordinance No. 778.

The Town Council held a special meeting on February 13, 2014 to introduce Ordinance No. 778. The impetus for the special Planning Commission and Town Council meetings was to expedite the conversion of CH zoned properties to CC in response to the lack of controls for formula-based businesses (i.e., chain stores) in the CH zone. This issue arose as part of the Council's consideration of a use permit for a gas station with national branding. In preparing the ordinance, staff discovered that the zoning map referenced by the General Plan had been adopted by resolution and not by ordinance as is required for zoning actions (e.g., rezoning to CC, PDD, PD). To make the current zoning map consistent with the map referenced by the General Plan, staff included the rezone of properties to PDD and PD as well as other technical amendments in Ordinance No. 778.

At its March 5, 2014 meeting, the Town Council adopted Ordinance No. 778.

On April 2<sup>nd</sup>, the Council agenda contained an action to reconsider the second reading of Ordinance No. 778. However, a referendum petition was submitted prior to the Council meeting on April 2<sup>nd</sup> which precluded the Council from considering the option to rescind Ordinance No. 778 at the April 2<sup>nd</sup> meeting.

On May 1<sup>st</sup> the Town's Election Official (the Town Clerk) did not certify the petition for placement on the ballot due to a defect in the petition. This defect was ultimately corrected by the petitioners.

On May 7, 2014, the Town Council considered the repeal of all or a portion of Ordinance No. 778. The Council voted 3 to 2 to start the repeal process for Ordinance No. 778. The process to repeal a zoning ordinance is the same process used to approve a zoning ordinance in the first place, and requires Planning Commission consideration of the ordinance prior to Council action.

On May 29<sup>th</sup>, the Planning Commission adopted Resolution No. 14-6 recommending that the Council not approve Ordinance No. 780 which would repeal Ordinance No. 778. The attached resolution details the Commission's findings. The Council is not bound by the Planning Commission's recommendation.

On July 2<sup>nd</sup> the Town Clerk certified a referendum petition as to Ordinance No. 778 to the Council. At this point, Ordinance No. 778 is suspended. Elections Code § 9241 provides that the Council consider either repealing Ordinance No. 778 or placing the matter on the ballot for the voters to decide.

At the July 2<sup>nd</sup> meeting, the Council conducted the public hearing and continued the discussion to the July 16<sup>th</sup> meeting of whether to repeal Ordinance No. 778 or place the repeal on the November 2014 ballot. The Council indicated this would provide them an opportunity to consider the comments at the July 12<sup>th</sup> community forum on the General Plan prior to deciding this matter.

## **DISCUSSION**

On July 2<sup>nd</sup>, the Council received the Town Clerk's certification of the referendum petition against Ordinance No. 778. With the certified petition, the Council must consider either

repealing the Ordinance or placing it on the ballot. Introducing Ordinance No. 780 would achieve the action of repeal and preclude placing the matter on the ballot. The repeal would have a restriction that no ordinance in all essential features like Ordinance No. 778 could be adopted within 12 months of the effective date of its repeal.

Separate and apart from the referendum, at its May 7<sup>th</sup> meeting, the Town Council directed staff to begin the process to repeal Ordinance No. 778. By directing staff to start the process to repeal Ordinance No. 778, the Council indicated it wanted to have a “fresh start” for the rezoning process to implement certain General Plan policies, including those found in the Housing Element. This “fresh start” would allow the Planning Commission and Council to address concerns raised during the initial approval process of Ordinance No. 778.

Specifically, staff would return to the Planning Commission and Council with separate rezoning actions for: a) rezoning CH parcels to CC, b) rezoning certain parcels to PD, and c) rezoning four properties to PDD. This more gradual approach would allow the Planning Commission and Council to combine zoning text changes with specific rezoning actions. For example, staff would revise the existing PDD language to reflect the General Plan and Housing Element policies and to provide clarification as to the intent of those policies. The revisions would make clear that the current PDD language would continue to apply to the previously zoned PDD properties. Similarly, any revisions to the language in the CC and proposed PD zones could be undertaken at the same time as their specific rezoning actions.

At their May 7<sup>th</sup> meeting, the Council also directed staff to schedule a community forum to discuss possible amendments to the General Plan, including the Housing Element (HE), to address inconsistencies between the General Plan and zoning code raised during the discussions to consider Ordinance No. 778. Staff has conducted a preliminary review of the GP and HE documents and identified inconsistencies or issues that will need to be addressed by amendments to the zoning code and/or GP and HE. Staff anticipates it will find more revisions as it moves through the amendment process.

The purpose of the Town Hall Forum was to facilitate community discussion regarding the General Plan including the HE. The Forum was scheduled to begin with an overview of the GP and its elements and lead into a discussion on possible amendments, including proposed recommendations. The Forum was held on July 12<sup>th</sup> at 1:00pm in the Women’s Club and the Council will have considered staff’s report on the meeting earlier this evening.

Using information collected from the workshop, staff will compile a list of the proposed zoning and General Plan amendments/revisions for the Council to discuss at a future meeting. At this meeting, the Council would select the specific revisions/amendments that would be processed in GP/HE amendments and/or zoning actions or be the subject of further Council and community discussion.

Staff will incorporate the Council’s proposed revisions/amendments, as applicable, within the separate zoning actions related to rezoning of all CH zoned properties to CC, creating a new PD zoning, and rezoning four properties to PDD. All amendments/revisions to the zoning code or General Plan will also require Planning Commission review at duly-noticed public hearings before consideration by the Council.

If the Council introduces Ordinance No. 780 to repeal Ordinance No. 778, the second reading of Ordinance No. 780 would occur on August 6<sup>th</sup>. The repeal would mean that no ordinance in

all essential features like Ordinance No. 778 could be adopted within 12 months of the effective date of the repeal of Ordinance No. 778.

If the Council decides it wants to place the matter on the ballot, staff would return at the August 6<sup>th</sup> meeting or a special Council meeting with the required documents (e.g., resolution with ballot language). The County requires ballot measure to be submitted to them by August 8<sup>th</sup>. Similarly, if the ballot measure passes, that no ordinance in all essential features like Ordinance No. 778 could be adopted within 12 months of the effective date of the repeal of Ordinance No. 778.

### **CEQA**

The adoption of Ordinance No. 780 to repeal Ordinance No. 778 would be 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.

### **FISCAL IMPACTS**

There are potential financial impacts to the Town and future Senior Housing project should the rezoning actions as identified in this staff report not be implemented in a timely fashion. However, it would be premature to evaluate this impact at this time.

**ATTACHMENTS:** Ordinance No. 780, repealing Ordinance No. 778; Planning Commission resolution

## ORDINANCE NO. 780

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

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 adoption 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.

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 \_\_\_\_ day of \_\_\_\_\_, 2014, and thereafter adopted at a regular meeting of the Town Council, held 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

RESOLUTION NO. 14-6

A RESOLUTION OF THE FAIRFAX PLANNING COMMISSION RECOMMENDING THE TOWN COUNCIL **NOT** ADOPT ORDINANCE NO. \_\_\_\_, REPEALING ORDINANCE 778

WHEREAS, on March 5, 2014, the Fairfax Town Council adopted Ordinance No. 778, thereby amending various sections of the Town Zoning Ordinance (Fairfax Town Code Title 17), as well as the Town's Zoning Map; and

WHEREAS, on May 7, 2014, the Town Council voted to start the process to repeal Ordinance No. 778; and

WHEREAS, the staff of the Town of Fairfax has thus prepared Ordinance No. \_\_\_\_, which would effect the repeal of Ordinance No. 778; and

WHEREAS, pursuant to the State Planning and Zoning Law (California Government Code Section 65000, et seq.), any revisions to a zoning ordinance must first be considered by the Planning Commission for its recommendation on the same to the Town Council; and

WHEREAS, under Government Code § 65855, the Planning Commission's recommendation to the Town Council on any amendment to the Zoning Ordinance must include the reasons for the recommendation, as well as the relationship of the proposed ordinance or amendment to applicable general and specific plans; and

WHEREAS, on Thursday, May 29, 2014, at a duly-noticed and special meeting of the Planning Commission of the Town of Fairfax, the Planning Commission did consider proposed Ordinance No. \_\_\_\_, heard a report on the same from staff, took and considered public comment on the matter, made findings, and formulated a recommendation to the Town Council.

NOW, THEREFORE, BE IT RESOLVED AS FOLLOWS:

**Section 1.** The Planning Commission forwards proposed Ordinance No. \_\_\_\_ Repealing Ordinance No. 778 to the Town Council with its recommendation that the Town Council *not* adopt the Ordinance.

**Section 2.** The Planning Commission makes this recommendation to the Town Council based on the following findings:

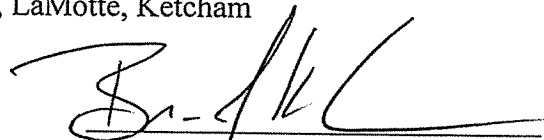
- The General Plan includes Figure LU-1 ('Fairfax General Map') and Figure LU-2 ('Fairfax Zoning'), both of which include Public Domain (PD) and Central Commercial CC zones, and neither of which include a Highway Commercial (CH) zone; and
- The General Plan Land Use Program LU-7.1.1.2 directed that all properties within the Town zoned as Highway Commercial (CH) be rezoned to Central Commercial (CC); and

- General Plan Land Use Element Program LU-8.1.1.3 and Housing Element Program H-2.1.1.2 directed that the real properties commonly known as 10 Olema Road (Assessor's Parcel Number 001-104-12), 2600 and 2626 Sir Francis Drake Boulevard (Assessor's Parcel Numbers 174-070-50 and 17) and School Street Plaza (Assessor's Parcel Number 002-112-13) be rezoned to Planned Development District (PDD); and
- California Government Code § 65860(C) requires towns and cities to amend their zoning ordinances to conform to their respective general plans; and
- Ordinance 778, among other actions, deletes all references to the CH zoning district and rezones all properties previously zoned CH to CC, provides for a certain parcels to be rezoned Planning Development District (PDD) and identifies those parcels, includes a Public Domain (PD) zoning district and identifies the parcels belonging in the PD zoning districts in order to effect General Plan Program LU-7.1.1.2 as well as to achieve conformance with the zoning map depicted in General Plan Figure LU-2; and

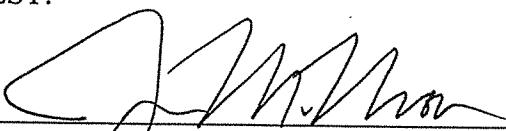
**Section 3.** The Planning Commission finds that Ordinance No. \_\_\_\_, repealing Ordinance 778, does not comply with California Government Code § 65860(C) because its adoption will result in the Town Zoning Ordinance being out of compliance with the 2010-2030 Fairfax General Plan which was unanimously adopted by the Town Council on April 4, 2012.

The foregoing resolution was duly introduced and adopted on the 29th day of May, 2014, by the following vote:

AYES: Ezzet, Gonzalez-Parber, Hamilton, Kehrlein, LaMotte, Ketcham  
 NOES: none  
 ABSENT: Green

  
 Brannon Ketcham, Chairperson

ATTEST:

  
 James M. Moore  
 Director of Planning and Building Services