

**TOWN OF FAIRFAX
STAFF REPORT
Department of Planning and Building Services**

TO: Fairfax Planning Commission

DATE: January 11, 2024

FROM: Jeffrey Beiswenger, AICP, Planning & Building Director

ACTION: **Consideration for recommendation to the Town Council zoning amendments to implement Program 2-A (Workforce Housing Overlay) of the Housing Element:**
A resolution of the Fairfax Planning Commission recommending the Town Council adopt an ordinance to amend the following chapters of Title 17 (Zoning) of the Fairfax Municipal Code: 17.012 (Zone Districts Established), 17.126 (Workforce Housing Overlay Zone), 17.092 (CL Limited Commercial Zone); 17.096 (CH Highway Commercial Zone); and 17.100 (CC Central Commercial Zone). Adoption of this ordinance has been analyzed as part of the Environmental Impact Report prepared for the 2023-31 Housing Element project.

CEQA STATUS: Adoption of this ordinance is consistent with the Environmental Impact Report prepared for the recently adopted Housing Element

BACKGROUND

The Town began work on the 6th Cycle Housing Element in 2021, which has required a more robust process than previous cycles due to increased state regulation, oversight, and potential penalties, and tightened timelines. The Town has now adopted the Housing Element and has completed the related Environmental Impact Report (EIR). For consideration at this public hearing, Town staff has prepared zoning ordinance amendments to implement certain provisions of the Housing Element.

The Housing Element includes goals which are implemented by a series of programs which are necessary to achieve certification with the California Department of Housing and Community Development (HCD). Certain programs require updates to the zoning ordinance. Goal 2 states, *“Address housing affordability by addressing regulatory, process, and market factors that limit housing production and preservation in Fairfax.”*

Program 2-A calls for the creation of a Workforce Housing Overlay (WHO) that would add Chapter 17.126 to the Town Code. The proposed WHO regulations build on the Inclusionary Housing Ordinance that was adopted by the Town Council on November 1, 2023.

The purpose of the WHO zones is to promote the construction of additional housing that is affordable for teachers, restaurant and service workers, firefighters, police officers, and others that could be employed within the Town of Fairfax and Marin County. Housing cannot be restricted and only provided to certain types of individuals, but it can be limited to certain income groups. The overlay will apply to select properties in the CL, CH, and CC zones; it will provide property owners with the option to redevelop their land with housing or mixed-use projects should they elect to do so. If they don't, then the regulations of the base zone apply. Two subzones are envisioned:

- A. WHO-A is for high density workforce housing in the downtown area. It has a base density of 40 units per acre and allows up to 75 units per acre with a 10 percent increase in the percentage of for-sale units affordable to moderate income households (20% to 30%) and a similar increase in the percentage of rental units for lower income households (15% to 25%). The requirements for intermediate densities are shown in the table on page 3.
- B. WHO-B is for medium density workforce housing on smaller parcels along Sir Francis Drake Boulevard. It has a base density of 20 units per acre and allows up to 40 units per acre with the same 10 percent increase in the percentage of for-sale units affordable to moderate and the percentage of rental units for lower income households set for WHO-A.

In its comment letters to the Town, HCD indicated that the base zones must allow residential uses, with a minimum density of 20 units per acre. The objective design standards that were set for multi-family dwelling units in the first implementing ordinance would apply to any housing built in the commercial zones under these provisions.

The proposed regulations for the WHO zones:

- Allow for both horizontal and vertical mixed use development and 100 percent residential buildings on commercial properties;
- Establish an "as of right" base density (40 units per acre in downtown and 20 dwelling units per acre along Sir Francis Drake Boulevard) with the minimum percentage of affordable housing that is set in the Inclusionary Ordinance;
- Incorporate the development standards for multi-family development established for the RM zone in the first implementing ordinance and add standards for ground-floor commercial space in mixed use projects;
- Create a sliding scale that provides bonus density in exchange for a greater commitment to affordability;
- Allow for a reduction in the amount of private and common open space from that set for multi-family development in the RM zone to reduce development costs and allow flexibility to achieve desired densities within proposed height limits;
- Incorporate setback and upper-story stepback standards to ensure appropriate buffering of adjacent lower density residential land uses; and
- Enable approval of certain specified parking reduction, such as for shared parking in

mixed use development, for projects within 400 feet of a bus stop, and for affordable housing.

DISCUSSION

The Planning Commission held a study session on December 14, 2023, to discuss possible amendments to the zoning ordinance. The following is a summary of discussion items and changes that have been made to the draft zoning text since that time.

Workforce Housing Definition

The term “workforce housing” is not defined in State law but typically refers to affordable units that are generally affordable to workers in the Fairfax area who make less than 100 percent of the Area Median Income as established annually by the Department of Housing and Community Development. Fair housing law does not permit units to be restricted to only Fairfax or Marin County area residents. Units can be restricted based on the qualifying income of households.

Interest by Owners

During the Housing Element update process, Town Staff reached out to property owners in the Town Center area and commercial areas along Sir Francis Drake Boulevard. Several owners indicated an interest in developing residential in the future. These property owners were included as WHO rezone sites. Since the overlay would only apply to properties designated with the WHO, properties owners not included would be required to apply for a rezone if this designation is desired in the future.

Height

The most significant concerns expressed by Planning Commissioners were related to the possibility of excessive height. Fairfax is currently a community of mostly one and two-story buildings, with the occasional three-story building. The WHO allows for density increases, which could result in height exceptions allowing for taller buildings, in exchange for affordable housing. The draft ordinance has been amended to:

- Limit the height of buildings with ground floor commercial (e.g. two-stories over ground floor commercial for a maximum of three stories). Specifically, additional height is permitted up to 45 feet in WHO-A for up to 1/3 of the building if above ground floor commercial such as retail, restaurants, or personal services with walk-in clientele. Maximum height for remainder of the building is 35 feet.
- Provide allowances for increases in building coverage and reductions in the ground floor open space requirements (aka ground floor building footprint). This results in buildings able to spread-out at the ground floor level, reducing the need to go taller.
- Requiring step-backs of elevator towers, roof-top equipment screens and other vertical components that are located on the roof. If these elements are set back from the roof edge the apparent height of buildings can be reduced.
- Eliminating extra height allowance for a sloped roof. A slope roof is a good architectural option for mixed use and multi-family residential buildings since it fits in architecturally with nearby homes. However, pitched roofs do require additional height. Since it is the preference of the Commission to reduce height as much as possible, the height allowance for pitched roofs has been eliminated.

Commercial / Residential Proximity

The Commission expressed two primary concerns related to adding residential into commercial areas. One concern was related to creating conflicts between residential and commercial uses. A second concern was eliminating/losing commercial uses. Staff did a thorough analysis of properties where residential is proposed and in most cases the properties are underutilized or vacant, so adding the option of residential uses creates infill development opportunities and does not significantly reduce the commercial land use supply.

Fairfax has many existing examples of residential uses that are proximate to retail / service uses. While noise, odors and other impacts can happen, any negative impacts should be counterbalanced with the benefits of a vibrant mixed-use environment with a variety of different complementary land uses in close proximity to one another. Impacts can be reduced by careful design.

Prevailing wage

The State has adopted recent regulations related to prevailing wages. State SB 35, provides an optional streamlined application process for projects and this was recently codified into the Town's zoning ordinance. Projects under SB 35 are required to include prevailing wage and other labor related provisions. In 2023, SB 423 was adopted, in part to specifically reduce some of the labor related provisions in SB 35. The labor related requirements now vary based on the type and size of project (see <https://www.allenmatkins.com/real-ideas/critical-state-housing-laws-approved-by-governor-newsom.html> for more information). AB 2011 allows for ministerial, by-right approval for affordable housing on commercially zoned lands, and also allows such approvals for mixed-income housing along commercial corridors, as long as the projects meet specified affordability, labor (including prevailing wage), and environmental criteria.

Prevailing wage is not required when developers use State density bonus, which we also codified into the Town's zoning ordinance in November. It is not recommended that the Town establish a unique prevailing wage requirement that may be different or conflict with State law. Doing so may create unnecessary complexity and a more onerous process and could be interpreted by HCD as creating an obstacle to development.

Targeting Housing for Low Income Households

The Commission stated a preference for building housing that is affordable to lower income households, since this would be most appropriate for the Fairfax workforce. Staff has made adjustments to the density bonus table to reflect this preference.

GENERAL PLAN CONSISTENCY

The proposed ordinance is consistent with the Fairfax General Plan, including the 2023-31 Housing Element.

CEQA CONSISTENCY

This is a study session only, no action is anticipated, and CEQA consistency is not required at this time. Program 2-A in the Housing Element calls for the establishment of the WHO and the Housing Element has been analyzed with the preparation of an Environmental Impact Report. It is expected that the WHO would be consistent with this EIR.

RECOMMENDATION

Adopt Resolution 2024-01 recommending that the Town Council adopt an ordinance amending the Fairfax Zoning Ordinance to amend the following chapters of Title 17 (Zoning) of the Fairfax Municipal Code: 17.012 (Zone Districts Established), 17.126 (Workforce Housing Overlay Zone), 17.092 (CL Limited Commercial Zone); 17.096 (CH Highway Commercial Zone); and 17.100 (CC Central Commercial Zone). Adoption of this ordinance has been analyzed as part of the Environmental Impact Report prepared for the 2023-31 Housing Element project.

ATTACHMENT

- A. Resolution 2024-01 recommending that the Town Council adopt zoning amendments to implement the Workforce Housing Overlay.

Exhibit 1 Zoning Amendments for Workforce Housing Overlay Zone