



FAIRFAX TOWN COUNCIL MEETING

STAFF REPORT

MEETING DATE February 7, 2024

PREPARED FOR Mayor and Town Council

PREPARED BY Jeffrey Beiswenger, AICP, Building & Planning Director

SUBJECT Waive Second Reading, Read by Title Only and Adopt an Ordinance Amending Title 17 (Zoning) of the Fairfax Municipal Code to Update Chapters: 17.012 (Zone Districts Established); 17.092 (CL Limited Commercial Zone); 17.096 (CH Highway Commercial Zone); and 17.100 (CC Central Commercial Zone); and adding 17.126 (Workforce Housing Overlay Zone).

CEQA Adoption of this Ordinance is Consistent with the Environmental Impact Report Prepared for the Recently Adopted Housing Element.

RECOMMENDATION

Waive second reading, read by title only and adopt an ordinance “Amending Title 17 (Zoning) of the Fairfax Municipal Code to update chapters: 17.012 (Zone Districts Established); 17.092 (CL Limited Commercial Zone); 17.096 (CH Highway Commercial Zone); and 17.100 (CC Central Commercial Zone); and adding 17.126 (Workforce Housing Overlay Zone).” Adoption of this ordinance has been analyzed as part of the Environmental Impact Report prepared for the Housing Element project.

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 certified the related Environmental Impact Report (EIR). Town staff has prepared zoning ordinance amendments to Program 2-A (Workforce Housing Overlay) of the Housing Element. The Housing Element contains programs, including Program 2-A, which are necessary to achieve certification with the California Department of Housing and Community Development (HCD).

Program 2-A calls for the creation of a Workforce Housing Overlay (WHO) that would add Chapter 17.126 to the Town Code and amend other chapters. 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 and related amendments is to promote the construction of additional housing that is affordable for teachers, restaurant and service workers, firefighters, police officers, and others with similar incomes 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; as well as one large underutilized site in the UR-7 zone and one site in the RS-6 zone. Both the UR-7 site and the RS-6 site are accessible from Sir Francis Drake Boulevard. The WHO will provide property owners with the option to redevelop their land with higher density housing should they elect to do so. If they don't, then

the regulations of the base zone apply. On January 24, the Town Council conducted a public hearing, introduced the ordinance amendments, and specified minor error corrections and wording changes, which have been incorporated.

General Plan Consistency

The proposed ordinance is consistent with the Fairfax General Plan. Including the proposed Housing Element. Program 2-A (Workforce Housing Overlay).

FISCAL IMPACT

N/A

ATTACHMENT

- A. Ordinance amending Title 17 (Zoning) of the Fairfax Municipal Code to amend chapter 17.012 (Zone Districts Established), chapter 17.092 (CL Limited Commercial Zone), chapter 17.096 (CH Highway Commercial Zone), and chapter 17.100 (CC Central Commercial Zone), and add chapter 17.126 (Workforce Housing Overlay Zone).

ORDINANCE NO.

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF FAIRFAX AMENDING TITLE 17 (ZONING) OF THE FAIRFAX MUNICIPAL CODE TO AMEND CHAPTER 17.012 (ZONES ESTABLISHED), CHAPTER 17.092 (CL LIMITED COMMERCIAL ZONE), CHAPTER 17.096 (CH HIGHWAY COMMERCIAL ZONE), AND CHAPTER 17.100 (CC CENTRAL COMMERCIAL ZONE) AND ADD CHAPTER 17.126 (WHO WORKFORCE HOUSING OVERLAY ZONE) TO IMPLEMENT THE GENERAL PLAN HOUSING ELEMENT

WHEREAS, the Town of Fairfax, California ("Town") is a municipal corporation, duly organized under the constitution and laws of the State of California; and

WHEREAS, State law authorizes jurisdictions to adopt and administer zoning ordinances to implement General Plans and requires that zoning regulations be consistent with the General Plan of that jurisdiction; and

WHEREAS, in recent years, the California Legislature has approved, and the Governor has signed into law, a number of bills that, among other things, amended the Government Code (1) to require General Plan Housing Elements to analyze the availability of land resources in the Town to accommodate the Town's share of the region's future housing needs and to identify zoning amendments needed to meet these needs and (2) to enable by-right development of mixed use projects and affordable housing in commercial corridors; and

WHEREAS, the Town wants to explore and, to the extent feasible, use all available tools to meet its mandated regional housing goals and implement State law; and

WHEREAS, a lack of new units affordable to teachers, restaurant and service workers, firefighters, police officers, and others employed in the Town and Marin County results in housing located a significant distance away from the Town, requiring excess commutes by workers and negatively impacting traffic, air and noise pollution; and

WHEREAS, the Town had determined that certain sites in downtown and along Sir Francis Drake Boulevard, which have been identified in the General Plan Housing Element, provide opportunities for mixed use and multi-family housing and that these sites are a means of providing housing for teachers, restaurant and service workers, firefighters, police officers, and others employed in the Town and Marin County and may enable the Town to respond to the State's requirements with appropriate objective development and design standards and incentives for additional affordable housing units exceeding baseline requirements established in the Town's inclusionary housing regulations; and

WHEREAS, the Town wants to continue to protect existing housing resources and ensure appropriate transitions to adjacent lower density uses; and

WHEREAS, the Town desires to amend its local regulatory scheme for these zoning regulations to implement the General Plan Housing Element and to comply with the governing provisions of Government Code; and

WHEREAS, on January 11, 2024 the Planning Commission of the Town of Fairfax held a special meeting, received public comment, discussed the ordinance, and held a vote on whether to advance a recommendation of ordinance approval to the Town Council; and

WHEREAS, the recommendation to support the adoption of the ordinance failed with a vote of four commissioners in favor and two opposed and thus failed to achieve the support of two-thirds of the total voting membership of the Planning Commission as required by Section 17.004.100 (Amendment; Hearing by Planning Commission) of the Municipal code; and

WHEREAS, a duly and properly noticed public hearing regarding the Ordinance was conducted by the Town Council on January 24, 2024, and the Town Council carefully considered all pertinent testimony and the staff report offered at the public hearing.

NOW, THEREFORE, THE TOWN COUNCIL OF THE TOWN OF FAIRFAX DOES ORDAIN AS FOLLOWS:

SECTION 1. The recitals above are each incorporated by reference and adopted as findings by the Town Council.

SECTION 2. The Town has prepared an Environmental Impact Report (EIR) on the Sixth Cycle Housing Element amendment to the General Plan, pursuant to the California Environmental Quality Act ("CEQA") and State CEQA Guidelines and determined that the proposed amendments are consistent with the Sixth Cycle Housing Element, no new potential impacts will occur that were not previously considered, and that no further environmental review is required for these amendments.

SECTION 3. Title 17 of the Fairfax Municipal Code is hereby amended and restated to read in its entirety as provided in Exhibits A, B, and C attached hereto and incorporated herein by reference (deletions shown in ~~strikethrough~~ and additions shown in underline). Ellipses ("...") denote where text is not shown because no changes are proposed.

SECTION 4. The Town of Fairfax, Overlay Zones Map is hereby adopted, as provided in Exhibit D attached hereto and incorporated herein by reference.

SECTION 5. This ordinance takes effect 30 days after second reading.

SECTION 6. The Town Clerk shall certify as to the adoption of this ordinance and within fifteen (15) days of its adoption shall post a certified copy of this ordinance 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 Road.

SECTION 7. The Town Clerk shall submit a copy of this ordinance to the Department of Housing and Community Development within 60 days after adoption.

SECTION 8. 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.

The foregoing ordinance was passed, approved, and adopted at a meeting of the Town Council on the seventh (7th) day of February 2024, by the following vote, to wit:

AYES:
NOES:
ABSENT
ABSTAIN:

Approved: _____
Barbara Coler Mayor

Attest: _____
Christine Foster, Deputy Town Clerk

EXHIBIT A TO ORDINANCE
AMENDMENTS TO ESTABLISH AND ADD BOUNDARIES FOR THE
WHO ZONE IN THE TOWN CODE

CHAPTER 17.012: ZONE DISTRICTS ESTABLISHED

Section

- 17.012.010 Established
- 17.012.020 Zoning map
- 17.012.030 Discrepancies
- 17.012.040 Boundaries; generally
- 17.012.050 Boundaries; RS-7.5 zone
- 17.012.060 Boundaries; RS-6 zone
- 17.012.070 Boundaries; RD 5.5-7 zone
- 17.012.080 Boundaries; RM zone
- 17.012.090 Boundaries; CL zone
- 17.012.100 Boundaries; CH zone
- 17.012.110 Boundaries; CC zone
- 17.012.120 Boundaries; CS zone
- 17.012.130 Boundaries; CR zone
- 17.012.140 Boundaries; PDD zone
- 17.012.150 Boundaries; O-A zone
- 17.012.160 Boundaries; UR zone
- 17.012.165 Boundaries; WHO zones (WHO-A and WHO-B)
- 17.012.170 Boundaries; PD zone
- 17.012.180 Boundaries; RM-S zone

§ 17.012.010 ESTABLISHED.

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) RM-S multiple-family residential - senior zone;
- (F) CL limited commercial zone;
- (G) CH highway commercial zone;
- (H) CC central commercial district zone;
- (I) CS commercial service zone;
- (J) CR commercial recreation zone;
- (K) PDD planned development district;
- (L) SF-RMP single-family residential master plan zone;
- (M) O-A open area zone;
- (N) UR upland residential zone; ~~and~~
- (O) WHO Workforce housing overlay zones (WHO-A and WHO-B); and
- (~~O~~-P) PD public domain

...

§.17.012.165 BOUNDARIES; WHO ZONE.

- (A) The boundaries of the WHO zones are shown on the Town of Fairfax Zoning Overlay Map.

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EXHIBIT B TO ORDINANCE
AMENDMENTS TO ADD CHAPTER 17.126, WORKFORCE HOUSING
OVERLAY ZONE, TO THE TOWN CODE

CHAPTER 17.126 WORKFORCE HOUSING OVERLAY ZONE

Section

17.126.010 Purpose and applicability.

17.126.020 Permitted uses.

17.126.030 Development standards for the WHO zones

17.126.060 Review procedures.

17.126.070 Additional parking regulations.

17.126.010 PURPOSE AND APPLICABILITY.

- (A) Purpose and applicability. The purpose of the Workforce Housing Overlay (WHO) zone is to promote the development of affordable workforce housing for lower and moderate income households in specific areas of the town identified in the General Plan. The WHO contains WHO-A zone and WHO-B zone. The WHO-A zone applies to downtown sites and permits densities of up to 75 dwelling units per acre if specified percentages of affordable housing are provided; the WHO-B applies to sites along Sir Francis Drake Boulevard and permits up to 40 dwelling units per acre if specified percentages of affordable housing are provided. In addition, the approval process for projects in the WHO zones is streamlined, with ministerial approval for qualifying projects with affordable housing using checklists and objective standards as required by State law.
- (B) Relation to base zone. The WHO use regulations and development standards only apply to proposed housing and mixed use projects, and these use regulations and development and design standards zones shall apply in the case of a conflict with the commercial zoning district regulations for the base zones.

17.126.020 PERMITTED USES.

- (A) Additional permitted uses. In addition to the uses that are permitted within the applicable base zone with which the WHO zones are overlaid, additional permitted uses in the WHO zones include multiple dwellings (townhouses, condominiums, and apartments) and mixed use development (residential units above the ground floor or adjacent to commercial, office, or retail uses).

In the WHO-A zone, the minimum density is one housing unit for each 1,089 square feet of lot area, which represents a density of 40 units per acre of net land area.

- (a) The maximum density of 40 units per acre may be increased up to a maximum of 75 units per net acre in exchange for a commitment to make a greater percentage of the total units affordable in accordance with Table 17.126.020-A. If the maximum number of units resulting from this calculation yields a fraction, it shall be rounded down to the nearest whole number.

In the WHO-B zone, the minimum density is one living unit for each 2,178 square feet of lot area, which represents a density of 20 units per acre of net land area.

- (b) The maximum density of 20 units per acre may be increased up to a maximum of 40 units per net acre in exchange for a commitment to make a greater percentage of the total units affordable in accordance with Table 17.126.020-A. If the maximum number of units resulting from this calculation yields a fraction, it shall be rounded down to the nearest whole number.

- (2) As an alternative to developing for-sale affordable units within a residential or mixed use development project, for-sale residential and mixed use development projects may satisfy the requirements of this section by developing rental low-income units included within the residential portion of the development equal to 20 percent of the total number of for-sale and rental units included in the development. The developer may create a separate legal parcel within the development project upon which the rental low-income units may be located. Also, the developer may, at its discretion, provide very low-income units instead of low-income units.

Table 17.126.020-A: Minimum Percentage of Affordable Units Required for Specified Maximum Densities in WHO-A and WHO-B Zones

WHO-A			WHO-B		
Maximum Density	Min. % Affordable Units		Maximum Density	Minimum % Affordable Units	
(Units/acre)	For Sale for Moderate Income	Rental for Low Income	(Units/acre)	For Sale for Moderate Income	Rental for Low Income
40	20	15	20	20	15
44	21	16	22	21	16
48	22	17	24	22	17
52	23	18	26	23	18
56	24	19	28	24	19
60	25	20	30	25	20
62	26	21	32	26	21
64	27	22	34	27	22
66	28	23	36	28	23
70	29	24	38	29	24
75	30	25	40	30	25

- (3) If a project with at least 60 units per acre is in compliance with the affordability requirements of Table 17.126.020-A, then the developer is eligible for any or all of the following additional incentives provided that, when all incentives are combined, the overall density on the site shall not exceed 90 units per acre prior to the application of any State density bonus:
- (a) If a developer includes family units with 3 or more bedrooms in a mixed use or residential only project, one bonus unit for each family unit provided shall be permitted in addition to the density established in Table 17.126.020-A up to a maximum of 10 additional units. These bonus units are not required to be income restricted.
 - (b) If a developer includes units for statutorily defined special needs populations listed in Cal. Gov. Code § 65583(a)(7) (including the elderly, persons with disabilities (including a developmental disability), large families, farmworkers, families with female heads of households, and families and persons in need of emergency shelter), one bonus unit for each special needs unit provided shall be permitted in addition to the density established in Table 17.126.020-A up to a maximum of 10 additional units. These bonus units are not required to be income restricted.
 - (c) For any unit that is eligible for more than one of the above incentives, the developer shall identify and inform the Town under which incentive the bonus unit is being requested and, in the case of special

needs units, how continued occupancy for those with special needs will be assured, which shall be subject to approval by the Town Attorney.

- (4) Income qualifications for affordable units shall be determined in the same manner established for inclusionary units in Chapter 17.140. For Moderate, Low, Very Low, or Extremely Low affordable housing units, deed restrictions or covenants shall be recorded with the Marin County Assessor – Recorder – County Clerk and shall run with the land.
- (B) Additional land use regulations for WHO zones.
- (1) Residential only projects.
- (a) A covered pedestrian entrance, that provides a minimum of three feet of covered weather protection shall be provided in front of exterior entry doors along primary building frontages.
- (b) Windows and doors (with windows) shall be provided along primary building frontages to achieve a minimum visual transparency of 25 percent of the building frontage to allow for residents to view out and allow for sunlight to come in.
- (c) For privacy, building entrances at the ground floor shall be separated from any public sidewalk either horizontally with a courtyard with a minimum dimension of eight feet or vertically with a porch or stoop that is a minimum of 18 inches in height.
- (2) Types of mixed use allowed. Where the base zone allows commercial uses, both horizontal and vertical mixed-use development shall be allowed in the WHO zones.
- (a) Horizontal mixed use development allows a range of uses adjacent to one another, either in separate buildings or parcels. Individual buildings may share project components, such as parking, serving, loading, and utility areas.
- (b) Vertical mixed use allows for a mix of uses within a single building where non-residential uses occupy the ground floor and residential uses are on the upper levels. A vertical mixed use project may have surface parking, subterranean parking decks, and/or at grade and above grade parking decks.
- (3) Minimum amount of residential in a mixed use project. A minimum of 50 percent of the total floor area in a mixed use project shall be devoted to residential use.
- (4) Active and pedestrian-oriented frontages required in a mixed-use project. Along the primary building frontage, active ground floor uses are required in mixed use buildings with residential uses above commercial uses for at least 70 percent of street-facing tenant space. These may include but are not limited to retail shops, eating and drinking establishments, retail banks,

financial and business services, personal services, and offices for walk-in clientele, such as employment agencies, insurance offices, real estate offices, travel agencies, and offices for elected officials. In a mixed use project with through lots, the primary frontage may be the frontage providing the principal pedestrian access from an adjoining street; it does not have to be the frontage with primary vehicular access.

17.126.030 DEVELOPMENT STANDARDS FOR THE WHO ZONES.

All residential and mixed use development in the WHO zones shall comply with the development standards in Table 17.126-A, the table notes, and the supplemental standards following the table.

TABLE 17.126-A: DEVELOPMENT STANDARDS FOR WHO ZONES

Feature	Standard		Additional Regulations
	WHO-A	WHO-B	
Site Requirements			
Minimum Site Area (sq. ft.)	6,000	5,000	
Minimum Lot Width (ft.)	75	60	
Maximum Lot Coverage (%)	None	75 (Note 1)	
Maximum Floor Area Ratio (non-residential uses)	0.80	0.40	See also §17.126.020(B)(4)
Minimum Landscape Coverage (%)	15	15	See §17.138.470
Building Form and Location			
Maximum Building Height	3 stories, up to 35 feet for residential; 4 stories and up to 45 feet for mixed use.	2 stories, up to 28.5 feet for residential; 3 stories and up to 35 feet for mixed use.	Note 2
Minimum Ground Floor Ceiling Height	14 feet non-residential; 9 feet residential		
Minimum Setbacks:			
Front	None	10 feet	Notes 3 and 4
Rear	None; 15 feet if adjacent to a Residential zone		See also §17.138.420
Interior Side	5 feet; 12 feet if adjacent to a Residential zone		
Street Side	None	10 feet	Notes 3 and 4
Minimum Building Separations	15 feet	15 feet	
Other Requirements			
Design standards for multi-family housing	See §§ 17.138.430, 17.138.440, 17.138.450, and 17.138.480. A 10-foot upper-story setback shall not be required above the second level if the floor area of the third level or higher does not exceed the floor area of the level below. This exception does not apply to § 17.138.420, which requires setbacks for windows in residential units facing an interior side or rear yard for privacy considerations.		
Off-street parking and loading	See Chapter 17.052 and §17.138.460		

TABLE 17.126-A: DEVELOPMENT STANDARDS FOR WHO ZONES

Feature	Standard		Additional Regulations
	WHO-A	WHO-B	
<u>Notes:</u>			
[1] <u>Applies to mixed use projects only; for 100 percent residential projects located outside of the Town Center Area shown on Figure TC-2 Town Center Land Use Map in the General Plan, the maximum lot coverage shall be 60 percent (see Section 17.010.100 (Determining Lot Coverage)).</u>			
[2] <u>Additional height and an additional story is allowed up to 45 feet and four stories in the WHO-A zone and 35 feet and three stories in the WHO-B zone for up to one-half of the floorplate of the story below if the project includes at least 50 percent of the ground-floor building area accommodates commercial uses such as retail, restaurants, or personal services with walk-in clientele. The maximum height for the remainder of the building is 35 feet in the WHO-A zone and 28.5 feet in the WHO-B zone. Enclosures for elevators and stair towers, roof-top equipment screens, roof-top open space amenities, and other vertical components that are located on the roof may project up to 10 feet above these height limits provided they are stepped back at least 10 feet from the edge of the building. Parking levels are not counted in determining the number of stories on a site. At least 75 percent of the street-facing elevation of a story above 35 feet shall be setback back a minimum of 10 feet from the front façade of the stories below that height.</u>			
[3] <u>A minimum 20-foot setback must be provided for garages and carports facing a street. In the WHO-B, allowable projections into required setbacks are those listed in §17.044.070; in addition, awnings and canopies may project up to six feet into a required setback, and outdoor seating area shall be allowed in a required setback.</u>			
[4] <u>Where ground-floor residential units are proposed with adjoining ground-floor decks along a street frontage, a two-foot landscaped front or corner side setback shall be provided between the deck and the street property line.</u>			

- (A) Required building walls. Along Sir Francis Drake Boulevard, Bolinas Road, and Broadway, building walls shall be constructed along or within 10 feet of the front property line for a minimum of 70 percent of the primary street frontage and 40 percent on secondary street frontages. This requirement may be waived by the Planning Director upon finding that:
 - (1) Ground-floor residential uses are proposed, a minimum 15-foot setback will be provided, and substantial landscaping will be located between the build-to and ground-floor residential units as a buffer;
 - (2) Entry courtyards, plazas, entries, or outdoor eating areas are located between the build-to line and the building and buildings are constructed at the edge of the courtyard, plaza, or outdoor dining area; or
 - (3) The building incorporates an alternative entrance design that creates a welcoming entry facing the street.
- (B) Building entrances.
 - (1) Principal building entries shall front upon the primary street.
 - (2) Building entries shall be accented with features such as moldings, lighting, overhangs, canopies, or awnings.
 - (3) Where pedestrian paths or walkways cross parking areas or driveways, the paths shall incorporate landscaping and decorative paving to define the pedestrian space.
- (C) Required ground floor transparency for non-residential uses. Exterior walls for non-residential ground-floor uses facing and within 20 feet of a front or street side

property line shall include windows, doors, or other openings for at least 60 percent of the building wall area between 2 feet and 8 feet above the sidewalk. No street-facing wall shall run in a horizontal plane more than 25 feet without an opening.

- (1) Openings fulfilling this requirement shall have transparent glazing and provide views into display areas, sales areas, work area, lobbies or other active spaces, and window displays shall be at least 3 feet in depth.
- (2) Parking garages are not required to meet these transparency requirements.
- (3) Alternatives to the building transparency requirement may be approved by the Planning Commission for uses that have unique operational requirements making windows or doors infeasible or for street-facing building walls that exhibit architectural relief and detail with landscaping that creates visual interest at the pedestrian level.

(D) *Open spaces standards for residential and mixed use projects.* The open space requirements of the RM Multiple-Family Residential Zone in § 17.088.050 (B) for private areas and common areas shall apply to all proposed residential development and to residential units in mixed use development with the following modifications.

- (1) In the WHO-A Zone, the minimum amount of outdoor living area (private or common open space) is reduced to 150 square feet of open space for each dwelling unit, of which at least 36 square feet (60 square feet for ground-level units) shall be private open space serving at least 50 percent of the individual dwelling units.
- (2) In the WHO-B Zone, the minimum amount of outdoor living area (private or common open space) is reduced to 200 square feet of open space for each dwelling unit, of which at least 48 square feet (60 square feet for ground-level units) shall be private open space serving at least 50 percent of the individual dwelling units.
- (3) Common open space may be provided on rooftops in areas having minimum horizontal dimensions of 10 feet. Roof decks located within 12 feet of a residential zoning district shall be setback a minimum of 30 inches from the building edge.
- (4) Landscaped areas that are less than 10 feet in width and contiguous with and an integral part of the common open space or are connected to the common open space may be counted in determining compliance with the open space standards of this section provided they are at least five feet in width.
- (5) The minimum amount of required common open space may be reduced by 20 percent if a site abuts or is within one-quarter mile walking distance of a public park or playing field open to the public.
- (6) At least half of the residential units constructed without private open space (a deck or balcony) shall have a balconet (e.g., a Juliet balcony).

17.126.050 (RESERVED).**17.126.060 REVIEW PROCEDURES.**

- (A) *Preliminary review.* A developer requesting additional density above the minimum density allowed for the site shall submit an application for preliminary review, accompanied by the required application fee, for feedback prior to the submittal of any formal requests for approval of additional density. The purpose of the preliminary review is to determine whether the proposed development is in substantial compliance with applicable zoning regulations and objective development standards and to establish the basis and procedures for granting the additional density. The following information is required to be submitted for preliminary review in the form of a proposed affordable housing plan:
- (1) Evidence that the project includes the qualifying percentages of affordable units set forth in §17.126.020 (A) to justify the additional density requested;
 - (2) Calculations showing the minimum density and the density with the additional units proposed;
 - (3) Number and percentage of total units that are proposed to meet affordability criteria and the income level to which the units will be restricted; and
 - (4) A description of any proposed waivers or reductions of development standards or other zoning requirements, consistent with the provisions of Cal. Gov't Code § 65915 (k).
- (B) *Design review required.* All residential development or mixed use development with residential units in an WHO zone is subject to design review by the Planning Commission unless a project qualifies for ministerial review under Chapter 17.026; see paragraph (C) below. The purpose of this design review procedure shall be to determine compliance with the Town's objective design standards.
- (1) *Additional findings required for design approval.* The Planning Commission shall grant approval if it determines the project complies with the design criteria of §17.020.040 and the following additional findings:
 - (a) The proposed development meets the affordability criteria for the requested density in accordance with the requirements of §17.126.020 (A); and
 - (b) The increased density would not have a specific adverse impact, as defined in paragraph (2) of subdivision (d) of §65589.5 of the Cal. Gov't Code, upon public health and safety or the physical environment or on any real property listed in the California Register of Historic Resources.
 - (2) *Conditions of approval.* In granting a design approval, the Planning Commission has the authority to impose reasonable conditions that are related and proportionate to what is being requested by the applicant, as deemed necessary and appropriate to ensure that the provisions of the General Plan, any applicable specific plan adopted by the Town Council, and

this Title are met, including requirements for needed off-site public improvements. The Commission may require reasonable guarantees and evidence that such conditions are being, or will be, met.

- (C) Streamlined ministerial review. An applicant that qualifies for streamlined ministerial review under Cal Gov. Code § 65912.122 or other provisions of State law may request such review. Procedures for streamlined ministerial approvals are in Chapter 17.026. The additional Planning Commission findings listed above are not required.
- (D) Required affordable housing agreement for continued affordability and deed recorded restriction. Prior to the issuance of a building permit for any residential or mixed use development project with affordable housing units in an WHO zone, the applicant shall enter into a written agreement with the Town ensuring the continued affordability of the affordable dwelling units for a period of not less than 55 years or as long as the property is in residential use, whichever is greater, for rental units and 55 years for for-sale units. The terms and conditions of the agreement shall be binding upon the successor in interest of the developer and shall be recorded as a deed restriction or covenant in the office of the Marin County Assessor-Recorder-County Clerk and shall run with the land. The agreement shall be executed by the Town Manager, be in a form acceptable to the Town Attorney, and include provisions for the following:
- (1) The number and proportion of housing units affordable to moderate-income, low-income, and very-low income households by type, their location, and the number of bedrooms in each one;
 - (2) Standards for maximum qualifying household incomes and maximum rents or sale prices;
 - (3) Minimum home buyer payments and sources of funds for them;
 - (4) The party responsible for certifying rents and sales prices of affordable housing units and reporting this information to the Town;
 - (5) The process that will be used to certify incomes of tenants or purchasers of the affordable housing units;
 - (6) The manner in which vacancies will be marketed and filled, including the screening and qualifying of prospective renters and purchasers of the affordable units;
 - (7) Deed restrictions on the affordable housing units binding on property upon sale or transfer and any subsequent sale or transfer;
 - (8) Enforcement mechanisms to ensure that the affordable rental units are continuously occupied by eligible households and are not rented, leased, sublet, assigned, or otherwise transferred to non-eligible households, with reasonable allowances for inherited units and units initially occupied by very low income individuals who incomes may increase to a low income level; and

- (9) Project phasing, including the timing of completions, and rental or sale of the affordable housing units, in relation to the timing of the market-rate units.

17.26.070 Additional parking regulations.

An applicant proposing a mixed use development may request modifications to the parking standards for individual uses established in Chapter 17.052 as follows.

- (A) Reductions to the required number. An applicant may request, and the Planning Commission may grant a reduction in the amount of required parking for individual uses when one or more of the following conditions exist:
- (1) Multiple uses may use joint parking facilities when operations for the respective uses are not normally conducted during the same hours, or when hours of peak use differ. Requests for the use of shared parking must meet the following conditions:
 - (a) A parking demand study has been prepared which demonstrates that there will be no substantial conflicts between the subject uses with regard to principal hours of operation and periods of peak parking demand.
 - (b) The total number of parking spaces required for the subject uses does not exceed the number of parking spaces reasonably anticipated to be available at periods of maximum use.
 - (c) The proposed joint parking facility is not located further than four hundred feet from the uses which it serves.
 - (d) A written agreement by and between the Town of Fairfax and all other affected parties shall be executed and recorded with the county recorder, assuring the availability of the number of parking spaces designated for joint use, during the hours specified in the agreement, for the duration of the uses.
 - (2) The number of parking spaces required by Chapter 17.052 may be reduced if it can be demonstrated that the use will not utilize the required number of spaces due to the nature of the specific use, or the manner in which the specific use is conducted.
 - (3) A residential or mixed use development project located within 400 feet of a bus stop may reduce the number of required parking spaces by up to five percent.
 - (4) When an applicant can demonstrate on the basis of a parking demand study to the satisfaction of the Planning Commission that modifications in the number of spaces or the standards or dimensions otherwise required by this Chapter are warranted for affordable housing, an alternative parking area design and loading plan may be allowed with design approval. To grant such modifications, the Planning Commission shall make the following findings in addition to the findings otherwise required for a site approval:

- (a) That the applicant qualifies for reduced parking under § 65915 of the Cal. Gov't Code; or
- (b) That the applicant has convincingly demonstrated that the alternative plan is a superior solution and the requested modifications in the design and parking area layout standards are warranted to be able to reduce development costs and, as a consequence, provide the required affordable housing for the requested density; and
- (c) That the alternative parking arrangement will be in place at all times during operation and life of the principal uses to be served by the parking.

(B) Location and design of parking areas.

- (1) Parking spaces for multi-family dwellings shall be located within 150 feet, measured as a straight-line distance from the dwelling unit (front or rear door) for which the space is provided.
- (2) For residential development at densities exceeding 20 units per acre, including residential uses in mixed use development, required off-street parking located in the front half of a lot or within 25 feet of the side street on a corner lot shall be covered with a carport, garage or roofed structure. Other spaces may be uncovered if located in the rear half of the lot or site or when more than 25 feet from a side street. On sites with 10 or more dwelling units, uncovered spaces are allowed if setback at least 50 feet from a front property line and 25 feet from a street side property line and screened by a wall or landscaping so as not to be visible from a public street.

EXHIBIT C TO ORDINANCE
AMENDMENTS TO COMMERCIAL ZONES TO ALLOW RESIDENTIAL USE
SUBJECT TO A MINIMUM DENSITY AND MULTI-FAMILY HOUSING
DEVELOPMENT STANDARDS

CHAPTER 17.092: CL LIMITED COMMERCIAL ZONE

Section

- 17.092.010 Purpose
- 17.092.020 Generally
- 17.092.030 Design review
- 17.092.040 Principal permitted uses and structures
- 17.092.050 Conditional uses and structures
- 17.092.055 Procedure for Planning Director use determination
- 17.092.060 Accessory uses and structures
- 17.092.070 Building site requirements
- 17.092.080 Height
- 17.092.090 Yards
- 17.092.095 Driveway standards
- 17.092.100 Signs
- 17.092.110 Off-street parking and loading
- 17.092.120 Traffic impact permit
- 17.092.125 Variances
- 17.092.130 Formula businesses and restaurants

§ 17.092.010 PURPOSE.

- (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 or which may have difficulty in finding a proper location in the highway commercial zone.
- (B) The uses in the CL limited commercial zone are oriented to services rather than to the retail sale of commodities. Residential uses also are allowed.

...

§ 17.092.040 PRINCIPAL PERMITTED USES AND STRUCTURES.

Principal permitted uses and structures in the CL zone are as follows:

- (A) The uses shall be conducted entirely within a building and are restricted to the following:

- (1) Restaurants;
- (2) Hospitals, sanitariums and rest homes;
- (3) Clinics, medical and dental offices, laboratories, research facilities, physical and mental therapy establishments;
- (4) Professional offices;
- (5) Music, art, dance and physical culture studios and establishments; and
- (6) Day care facilities.
- (7) Multi-family dwelling units with a minimum density of 20 units per acre on housing opportunity sites as shown in the General Plan.

...

§ 17.092.050 CONDITIONAL USES AND STRUCTURES

The following conditional uses and structures in the CL zone may not be established, expanded, substantially modified or changed to another conditional use unless and until a conditional use permit is obtained:

- (A) Motels and hotels, ~~residential uses~~;
- (B) Private schools;
- (C) Private clubs;
- (D) Any principal permitted use not conducted entirely within a building;
- (E) Other uses determined by the Planning Commission as equivalent to those listed in divisions (A) through (D) above, or which are determined to be equivalent to those listed in § 17.092.040, but requiring regulation of location, extent or operation because of some unique characteristic;
- (F) Establishments or businesses which entertain customers or clientele by musicians, actors or singers or establishments which charge admission or entrance fees; and
- (G) Mechanical amusement device arcades subject to the following standards:
 - (1) Use permits shall be granted for periods of no more than six months initially. The Planning Commission may approve extensions. In approving use permits and extensions, findings must be made that the use will not or has not created or increased the incidence of excessive loitering, vandalism, pedestrian obstruction, noise or any other activity that may have an adverse effect on adjacent or vicinity properties, residences or businesses.
 - (2) Hours of operation shall be no later than 10:00 p.m. The Planning Commission may grant exceptions to this limitation for adults-only establishments or when it is demonstrated that the use is clearly ancillary to another use.
- (H) Residential uses such as live/work units or shopkeeper units located above the ground floor of a building (less than 20 dwelling units per acre permitted).

...

§ 17.092.060 ACCESSORY USES AND STRUCTURES.

Accessory uses in the CL zone are as follows:

- (A) Activities which are characteristic of and usually found in connection with a principal use on the same premises and which are subordinate to, dependent on and economically and operationally integrated into the principal use including, but not limited to the following:
- (1) Parking garages and lots;
 - (2) Storage for principal uses;
 - (3) Offices for principal uses;
 - (4) Accessory dwelling units;
 - (4 5) Signs; and
 - (5 6) Mechanical and electronic amusement devices, limited to two devices per establishment.
- (B) No detached non-residential accessory structure, whether permanent or temporary, fixed or movable, and regardless of the material contained therein, are shall be allowed, except by use permit.

§ 17.092.070 BUILDING SITE REQUIREMENTS.

Building site requirements in the CL zone are 20,000 square feet with a minimum width of 75 feet. All multi-family dwelling units shall comply with the design standards for multi-family housing in Article IV of Chapter 17.138, and all accessory dwelling units shall comply with the standards of Chapter 17.048.

...

CHAPTER 17.096: CH HIGHWAY COMMERCIAL ZONE

Section

- 17.096.010 Purpose
- 17.096.020 General restriction
- 17.096.030 Design review
- 17.096.040 Principal permitted uses and structures
- 17.096.050 Conditional uses and structures
- 17.096.060 Procedure for Planning Director use determination
- 17.096.070 Accessory uses and structures
- 17.096.080 Building site requirements
- 17.096.090 Height
- 17.096.100 Yards
- 17.096.105 Driveway standards
- 17.096.110 Signs
- 17.096.120 Off-street parking and loading
- 17.096.125 Variances
- 17.096.130 Traffic impact permit
- 17.096.140 Formula businesses and restaurants

§ 17.096.010 PURPOSE.

- (A) The purpose of the CH highway commercial zone is to allow a variety of service, retail and wholesale businesses with long operating hours, diversity of building size and type and short-term parking. Residential uses also are allowed.
- (B) The highway commercial zone is designed to cater to automobile traffic rather than to pedestrian traffic. The buildings are more dispersed than in the central commercial zone and allow greater vehicular access.

§ 17.096.020 GENERAL RESTRICTION.

...

§ 17.096.030 DESIGN REVIEW.

...

§ 17.096.040 PRINCIPAL PERMITTED USES AND STRUCTURES.

- (A) Uses within the CH zone shall be conducted entirely within a building (unless a business permit and encroachment permit are granted in accordance with Town Code § 5.58 and § 12.32.025 for parklet uses and/or parklet enclosures) and are restricted to the following:
 - (1) Animal grooming and supplies;

...

(47) Mail services;

(48) Multi-family dwelling units with a minimum density of 20 units per acre on housing opportunity sites as shown in the General Plan;

...

The remaining uses in this list to be renumbered, as required.

§ 17.096.050 CONDITIONAL USES AND STRUCTURES.

(A) The following uses may not be established, expanded, substantially modified or changed to another conditional use in the CH zone.

(B) A conditional use permit must be obtained:

(1) Permitted principal uses with minor and/or accessory fabrication or assembly activities limited to light manufacturing or processing activities, when the entirety of the use, both principal and accessory, is contained entirely within a building;

...

~~(9) Motels, hotels and residential uses on the second floor, at a density to be determined by the Planning Commission;~~

(33) Residential uses such as live/work units or shopkeeper units located above the ground floor of a building (less than 20 dwelling units per acre permitted).

...

§ 17.096.070 ACCESSORY USES AND STRUCTURES.

Accessory uses and structures in the CH zone are as follows:

(A) Activities which are characteristic of and usually found in connection with a principal use on the same premises and which are subordinate to, dependent on and economically and operationally integrated into the principal use, including, but not limited to the following:

(1) Parking garages and lots;

(2) Storage for principal use;

(3) Offices for principal use;

(4) Accessory dwelling units;

~~(45)~~ Mechanical amusement devices, limited to two devices per establishment; and

~~(5 6)~~ Signs.

(B) No detached non-residential accessory structure, whether permanent or temporary, fixed or movable, and regardless of the material contained therein, are shall be allowed, except by conditional use permit.

§ 17.096.080 BUILDING SITE REQUIREMENTS.

Building site requirements in the CH zone are: 7,500 square feet with a minimum of width of 50 feet. The maximum density for residential uses above the ground-level is 20 units per acre unless the building site is within a WHO zone in which case the density standards of that overlay zone apply. All multi-family dwelling units shall comply with the design standards for multi-family housing in Article IV of Chapter 17.138, and all accessory dwelling units shall comply with the standards of Chapter 17.048.

...

CHAPTER 17.100: CC CENTRAL COMMERCIAL ZONE

Section

Article I: Generally

- 17.100.010 Purpose
- 17.100.020 Generally
- 17.100.030 Design review
- 17.100.040 Principal permitted uses and structures
- 17.100.050 Conditional uses and structures
- 17.100.055 Procedure for Planning Director use determination
- 17.100.060 Accessory uses and structures
- 17.100.070 Building site requirements
- 17.100.080 Height
- 17.100.090 Yards
- 17.100.095 Driveway standards
- 17.100.100 Signs
- 17.100.110 Off-street parking and loading
- 17.100.120 Traffic impact permit
- 17.100.125 Variances
- 17.100.130 Formula businesses and restaurants

ARTICLE I: GENERALLY

§ 17.100.010 PURPOSE.

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 tend to be continuous and driveways, blank walls and other conflicts with or deterrents to foot traffic tend to be minimized. ~~Second-story~~ Residential uses provide both a nighttime population which is commercially desirable and affordable living facilities for owners, workers and those without automobiles.

§ 17.100.020 GENERALLY.

...

§ 17.100.030 DESIGN REVIEW.

...

§ 17.100.040 PRINCIPAL PERMITTED USES AND STRUCTURES.

- (A) Uses within the CC zone shall be conducted entirely within a building, (unless a business permit and encroachment permit are granted in accordance with Town Code § 5.58 and § 12.32.025 for parklet uses and/or parklet enclosures) and are restricted to the following:
- (1) Alternative birthing centers licensed by the state’s Department of Health Services unless the requirement is waived by the state;
 - ...
 - (43) Office machines and supplies;
 - (44) Multi-family dwelling units with a minimum density of 20 units per acre on housing opportunity sites as shown in the General Plan;

The remaining uses in this list to be renumbered, as required.

~~(54) Residential uses on the second floor;~~

...

§ 17.100.050 CONDITIONAL USES AND STRUCTURES.

...

- (G) Residential uses such as live/work units or shopkeeper units located on above the ground floor of a building (less than 20 dwelling units per acre permitted). ~~or as accessory uses or in accessory structures;~~

§ 17.100.055 PROCEDURE FOR PLANNING DIRECTOR USE DETERMINATION.

...

§ 17.100.060 ACCESSORY USES AND STRUCTURES.

Accessory uses and structures in the CC zone are as follows:

- (A) Activities which are characteristic of and usually found in connection with a principal use on the same premises and which are subordinate to, dependent on and economically and operationally integrated into the principal use, including but not limited to the following:
- (1) Parking garages and lots;
 - (2) Storage for principal uses;
 - (3) Offices for principal uses;
 - (4) Accessory dwelling units;
 - ~~(4 5)~~ Signs;
 - ~~(5 6)~~ Mechanical amusement devices, limited to two devices per establishment; and

- (~~6-7~~) Mechanical amusement device arcades which have a use permit issued under Chapter 17.032 of this title.
- (B) No detached non-residential accessory structure, whether permanent or temporary, fixed or movable, and regardless of the material contained therein, ~~are~~ shall be allowed, except by use permit.

§ 17.100.070 BUILDING SITE REQUIREMENTS.

The minimum density for residential uses is 20 units per acre unless the building site is within a WHO zone in which case the density standards of that overlay zone apply. No other building site requirements apply in the CC zone unless the building site is within a WHO zone in which case the standards of that overlay zone apply. All multi-family dwelling units shall comply with the design standards for multi-family housing in Article IV of Chapter 17.138, and all accessory dwelling units shall comply with the standards of Chapter 17.048.

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Exhibit D – Town of Fairfax Workforce Housing Overlay Map

