
Town of Tiburon

Title IV

Chapter 16 of the Municipal Code
(Zoning Ordinance)

Effective April 16, 2010

Town of Tiburon
Community Development Department
1505 Tiburon Boulevard
Tiburon, California 94920

TOWN OF TIBURON

MUNICIPAL CODE, TITLE IV, CHAPTER 16, ZONING ORDINANCE

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16-10 Purpose and Applicability of Zoning Ordinance

Section:

- 16-10.010 - Title
- 16-10.020 - Purpose of the Zoning Ordinance
- 16-10.030 - Responsibility for Administration
- 16-10.040 - Authority and Relationship to General Plan
- 16-10.050 - Applicability of Zoning Ordinance
- 16-10.060 - Partial Invalidation of Zoning Ordinance

16-10.010 - Title

This Chapter of the Tiburon Municipal Code (Title IV, Chapter 16) shall be known, and may be cited, as the Zoning Ordinance of the Town of Tiburon.

16-10.020 - Purpose of the Zoning Ordinance

This Zoning Ordinance is adopted to protect and promote the public health, safety, and general welfare. More specifically, the Zoning Ordinance is adopted in order to achieve the following objectives:

- A. To provide a framework for the physical development of the Town in such a manner as to preserve its essential residential character consistent with the Town of Tiburon General Plan;
- B. To foster a harmonious, convenient, and workable relationship among land uses;
- C. To promote the stability of existing land uses that conform with the Town of Tiburon General Plan and to protect them from inharmonious influences and harmful intrusions;
- D. To ensure that public and private lands ultimately are used for the purposes that are most appropriate and most beneficial to the Town as a whole;
- E. To prevent excessive population densities and overcrowding of the land with structures;
- F. To promote a safe, effective traffic circulation and transportation management system;
- G. To require the provision of adequate off-street parking and loading facilities;
- H. To facilitate the appropriate location of community facilities;
- I. To permit office and commercial activities in appropriate locations in compliance with the Town of Tiburon General Plan in order to strengthen the Town's economic base and to provide services for the community;

- J. To preserve the natural beauty of the Town's setting and to ensure conservation of its scenic, historic, recreational, and wildlife resources;
- K. To ensure that uses and structures enhance their sites and harmonize with the surrounding area;
- L. To ensure that new development will not overtax existing utilities systems or community facilities, or services, or alternatively that provision is made to supplement existing facilities or services where needed to accommodate new development;
- M. To provide a framework for implementation of the Town's adopted General Plan elements;
- N. To preserve and enhance the quality of the human and natural environment.

16-10.030 - Responsibility for Administration

This Zoning Ordinance shall be administered by the Town Council of the Town of Tiburon, hereafter referred to as the "Council"; the Tiburon Planning Commission, hereafter referred to as the "Commission"; the Director of Community Development or his designee, hereafter referred to as the "Director"; the Community Development Department, hereafter referred to as the "Department"; and the Design Review Board, hereafter referred to as the "Board," as provided in Section 16-60 (Administrative Responsibility).

16-10.040 - Authority and Relationship to General Plan

A. Authority. This Zoning Ordinance is enacted based on the authority vested in the Town of Tiburon by the State of California, including, but not limited to: the State Constitution, Sections 65800 and subsequent sections of the California Government Code, the California Environmental Quality Act, the Housing Act, the Health and Safety Code, and case law of the courts of California and the Supreme Court as they may all be modified from time to time.

B. Relationship to the Town of Tiburon General Plan.

1. This Zoning Ordinance carries out the policies of the Town of Tiburon General Plan, referred to as the "General Plan," by classifying and regulating the uses of land and structures within the Town, consistent with the General Plan. The Tiburon Town Council intends that all provisions of this Zoning Ordinance be consistent with the General Plan, and that any land use or development approved in compliance with these regulations will also be consistent with the General Plan (where applicable).

If the Director determines that a proposal is not in conformity with quantified policy standards established in the General Plan, the applicant shall be advised of the discrepancies in writing, and of the willingness of the Director to confer with the applicant to assist in bringing the material submitted into conformity. If the applicant does not desire to participate in such conference, and/or declines to revise the application, the Director shall not accept the application unless accompanied by an application for General Plan amendment that would achieve

conformity with the General Plan. The decision of the Director may be appealed as provided in Section 16-66 (Appeals).

16-10.050 - Applicability of Zoning Ordinance

- A. Applicability.** This Zoning Ordinance shall apply, insofar as legally permissible, to all property within the incorporated limits of the Town, including the public streets and waterways, public utility poles, lines, and underground facilities for primary distribution systems, whether such property is owned by the United States of America or any of its agencies, the State of California or any of its agencies or political subdivisions, any county or city including the Town or any of its agencies, any authority or district organized in compliance with the laws of the State of California, or private persons, firms, corporations, utilities, or organizations. The scope of this Zoning Ordinance is limited by certain preemptions set forth in State and/or federal law.
- B. Vested right exception.** Except in cases where a property owner can establish a vested right to be regulated by any prior ordinance or Town-recognized document, the provisions of this Zoning Ordinance shall apply to all property development in the Town.
- C. Master and precise plan exception.** Non-vested properties for which master and/or precise plans or their functional zoning permit equivalent have been adopted prior to December 26, 1990 shall continue to be governed by the provisions of those approvals, except that all such properties shall be subject to the floor area limit provisions of this Zoning Ordinance, where such provisions are more restrictive than the floor area limit provisions, if any, contained in the master and/or precise plans or their equivalent.
- D. New land uses, structures, and changes to them.** Compliance with the following requirements is necessary for any person or public agency to lawfully establish a new land use or structure, or to alter or replace any land use or structure:
- 1. Allowable use.** The proposed use of land shall be listed as an allowable land use in Article II of this Zoning Ordinance (Zones and Allowable Land Uses) within the zone that applies to the site;

Development standards. The proposed use of land or structure shall satisfy all applicable requirements of this Zoning Ordinance, including but not limited to minimum lot area, height limits, required yard and street setbacks, residential density, lot coverage, floor area limits, etc.; and
 - 3. Permit/approval requirements.** Any land use permit or other approval required by Article II (Zones and Allowable Land Uses) shall be obtained. The preparation, filing, and processing of land use permit applications shall comply with Article V (Zoning Permit Procedures).
- E. Issuance of building permits.** The Building Division may issue building permits only when:
- 1.** The proposed land use and/or structure satisfy the requirements of Subsection D above; and

2. The Director determines that the permit application contains all materials necessary to determine compliance with this Section.
- F. Continuation of an existing structure or land use.** An existing land use is lawful and not in violation of the Tiburon Municipal Code when operated and maintained in compliance with all applicable provisions of this Zoning Ordinance. However, the requirements of this Zoning Ordinance are not retroactive in their effect on a land use that was lawfully established before this Zoning Ordinance or any applicable amendment became effective. See Section 16-62 (Nonconforming Uses, Structures and Lots).
- G. Alteration or expansion of an existing structure or land use.** Any alteration, expansion or modification of an existing land use shall comply with all provisions of this Zoning Ordinance, specifically including Section 16-62 (Nonconforming Uses, Structures and Lots).
- H. Effect of Zoning Ordinance changes on projects in progress.** The enactment of this Zoning Ordinance or amendments to its requirements may impose different standards on new land uses than those that applied to existing development. For example, this Zoning Ordinance, or a future amendment, could require larger building setbacks for a particular land use than former Zoning Ordinance provisions. The following provisions determine how the requirements of this Zoning Ordinance apply to development projects in progress at the time requirements are changed.
1. **Projects with pending applications.** Zoning Permit applications that have been determined by the Department to be complete before the effective date of this Zoning Ordinance or amendment thereto, will be processed in compliance with the requirements in effect when the application was accepted as complete.

Approved projects not yet under construction. An approved project for which construction has not begun as of the effective date of this Zoning Ordinance or amendment thereto, may still be constructed as approved, as long as required building permits have been obtained before the expiration of any applicable Zoning Permit.
 3. **Approved projects not requiring construction.** An approved land use not requiring construction that has not been established by its Zoning Permit being exercised as of the effective date of this Zoning Ordinance or amendment thereto, may still be established in compliance with its approved permit, as long as establishment occurs before the expiration of the permit.
 4. **Projects under construction.** A structure that is being constructed in compliance with a valid building permit on the effective date of this Zoning Ordinance, or amendment thereto, need not be changed to satisfy any new or different requirements of this Zoning Ordinance.
- I. Other requirements may still apply.** Nothing in this Zoning Ordinance eliminates the need for obtaining any other permits required by the Town, or any permit, approval or entitlement required by other provisions of the Tiburon Municipal Code, the regulations of

any Town department, or any regional, State, or Federal agency.

- J. Conflicting permits to be void.** After the effective date of this Zoning Ordinance or any applicable amendment thereto, all permits shall be issued by the Town in compliance with the provisions of this Zoning Ordinance. Any permit or license issued in conflict with this Zoning Ordinance shall be void, except as provided in Subsection F above.

16-10.060 - Partial Invalidation of Zoning Ordinance

If any article, section, subsection, paragraph, subparagraph, sentence, clause, phrase or portion of this Zoning Ordinance is for any reason held to be invalid, unconstitutional or unenforceable, these decisions shall not affect the validity of the remaining portions of this Zoning Ordinance. The Tiburon Town Council hereby declares that this Zoning Ordinance and each article, section, subsection, paragraph, subparagraph, sentence, clause, phrase and portion thereof would have been adopted irrespective of the fact that one or more of portions of this Zoning Ordinance be declared invalid, unconstitutional or unenforceable.

16-12 Interpretation of Zoning Ordinance

Section:

16-12.010 - Purpose

16-12.020 - Authority and Procedures for Interpretation

16-12.030 - Rules of Interpretation

16-12.010 - Purpose

The purpose of Section 16-12 is to provide rules for resolving questions about the meaning or applicability of any part of this Zoning Ordinance. The provisions of Section 16-12 are intended to ensure the consistent interpretation and application of the requirements of this Zoning Ordinance.

16-12.020 - Authority and Procedures for Interpretation

The Director is assigned the authority to interpret any provision of this Zoning Ordinance, including the Zoning Map and the Planned Development Map. Whenever the Director determines that the meaning or applicability of any Zoning Ordinance requirement is subject to interpretation, the Director may issue an official interpretation. The Director's official interpretation may be appealed to the Council. The Director may also refer any issue of interpretation to the Commission for its determination at a public meeting and the Commission decision may be appealed to the Council.

16-12.030 - Rules of Interpretation

For the purposes of this Zoning Ordinance, certain grammatical forms used herein are construed as follows, unless the context of a particular provision clearly requires a different construction.

A. Language.

1. **Mandatory and permissive.** When used in this Zoning Ordinance, the words "shall," "must," "will," "is to," and "are to" denote mandatory provisions. "Should" is not mandatory but is strongly recommended; and "may" denotes permissive provisions.
2. **Tense.** The present tense includes the past and future tenses; and the future tense includes the present.
3. **Number.** The singular number includes the plural number, and the plural the singular, unless the natural construction of the word indicates otherwise.
4. **Include.** The words "includes" and "including" shall mean "including but not limited to . . ."
5. **Gender.** The masculine gender includes the feminine and the neuter.

6. **General Plan.** “General Plan” rather than “Town of Tiburon General Plan,” after Town of Tiburon General Plan is first used in the first Article.
 7. **Deny.** The word “deny” shall be used rather than “disapprove.”
 8. **Compliance.** “In compliance with . . .” shall be used, rather than “pursuant to,” “in accordance with,” “under,” etc.
 9. **Review Authority.** Review Authority means the Board; Commission; Council; Director; or designee acting on a Zoning Permit application.
 10. **Town.** Town shall be used rather than “Town of Tiburon”.
 11. **Municipal Code.** Municipal Code shall be used rather than “Tiburon Municipal Code.”
 12. **Zone.** Zone shall be used rather than “zoning district,” or “zone district.”
- B. Internal cross-references.** When a provision of this Zoning Ordinance refers to a requirement elsewhere, the subject of the cross-reference is assumed to be another Section, or Subsection of this Zoning Ordinance, or another provision within the same Section, unless the title of another document is provided. For example:
1. “See Section 16-90.020” means “See Section 16-90.020 of this Zoning Ordinance.”

“. . . in compliance with Subsection D.2,” means “. . . in compliance with Subsection D.2 of this Section”; and
 3. “See Article II” means “See Article II of this Zoning Ordinance.”
- C. State law requirements.** Where this Zoning Ordinance references applicable provisions of State law (for example, the California Government Code, Subdivision Map Act, or Public Resources Code), the reference shall be construed to be to the applicable State law provisions as they may be amended from time to time.
- D. Number of days.** Whenever a number of days is specified in this Zoning Ordinance, or in any permit, condition of approval, or notice issued or given as provided in this Zoning Ordinance, the number of days shall be construed as calendar days, unless business days are specified. Time limits will extend to the following business day where the last of the specified number of days falls on a weekend, a Town-observed holiday, or a day upon which Town Hall is closed to public business.
- E. Minimum requirements.** When the regulations of this Zoning Ordinance are being interpreted and applied, all provisions shall be considered to be minimum requirements, unless stated otherwise (e.g., height limits and site coverage requirements are identified as maximums, not minimums).

F. Calculations - Rounding. Where provisions of this Zoning Ordinance require calculations to determine applicable requirements, any fractional/decimal results of the calculations shall be rounded as provided by this Subsection.

- 1. Residential density.** When the number of housing units allowed on a site are calculated based on density limits established by a zone, any fraction of a unit of 0.9 or greater shall be counted as a whole unit; any fraction of a unit less than 0.9 shall be rounded down to the next lowest whole number.

Floor Area Ratio (FAR). When calculating the allowable floor area of a structure based on the FAR established by the applicable zone, the fractional/decimal results of calculations shall be rounded to the next highest whole number when the fraction/decimal is 0.5 or more, and to the next lowest whole number when the fraction is less than 0.5. For example, a maximum FAR of 0.35 applied to a lot of 7,456 square feet results in a maximum allowable floor area of 2,610 square feet ($7,456 \times .035 = 2,609.6$, rounded up to 2,610).

- 3. All other calculations.** Unless otherwise specified, for all calculations required by this Zoning Ordinance other than those described in Subsections F.1 and F.2 above, the fractional/decimal results of calculations shall be rounded to the next highest whole number when the fraction/decimal is 0.5 or more, and to the next lowest whole number when the fraction is less than 0.5.

16-14 Zoning Map

Section:

16-14.010 - Purpose

16-14.020 - Zoning Map and Zones

16-14.010 - Purpose

The purpose of Section 16-14 is to establish the zones applied to property within the Town and adopt the Town’s Zoning Map and Planned Development Map.

16-14.020 - Zoning Map and Zones

The Council hereby adopts the Town of Tiburon Zoning Map (hereafter referred to as the “Zoning Map”) and “Planned Development Map”, which are on file with the Department. The Zoning Map and Planned Development Map are hereby incorporated into this Zoning Ordinance by reference as though they were fully included here. The zones referred to herein and the boundaries of such zones shall be shown upon the Zoning Map.

- A. **Zones established.** The Town shall be divided into zones that implement the General Plan. The zones shown in Table 1-1 are hereby established, and shall be shown on the Zoning Map.

**TABLE 1-1
ZONES**

Zone Symbol	Name of Zone	General Plan Land Use Designation Conforming with Zone
R-1	Single-family residential zone	Medium High Density (MH)
R-1-B-A	Bel Aire single-family residential zone	Medium High Density (MH)
R-1-B-2	Modified single-family residential zone	Medium High Density (MH)
RO	Residential open zone	Medium Density (M) and Medium Low Density (ML)
R-2	Two-family residential zone	High Density (H)
R-3	Multifamily residential zone	Very High Density (VH)
RPD	Residential planned development zone	Low Density (L) and PD-R Planned Development Residential (PD-R)
RMP	Residential multiple planned zone	Very High Density (VH) and Very High Density/Affordable Housing Overlay (VH/AHO)
RMP/AHO	Residential multiple planned/affordable housing overlay zone	Very High Density/Affordable Housing Overlay (VH/AHO)
M	Marine zone	Marine (Marine)
O	Office zone	Office (O)
NC	Neighborhood commercial zone	Neighborhood Commercial (NC)
NC/AHO	Neighborhood commercial/affordable housing overlay zone	NC/AHO Neighborhood Commercial/Affordable Housing Overlay
VC	Village commercial zone	Village Commercial (VC)
P	Public/quasi-public zone	Public/Quasi-Public (P)
OS	Open space zone	Open Space (OS)
F	Flood hazard overlay zone	All
HPO	Historic protection overlay zone	All
P&R	Parks and recreation zone	Parks & Recreation (Park)

B. Zoning Map and Planned Development Map changes. If, in compliance with the provisions herein, changes are made in zone boundaries or other matter portrayed on the Zoning Map or Planned Development Map, such changes shall be made on the map or maps promptly after the amendment has been approved by the Council, together with an entry on the map or maps indicating the authority for such change and the date when such change became effective.

C. Interpretation of zone boundaries.

1. At all points on the Zoning Map where a zone is defined as being bounded by or running to a public street or highway, it shall be construed as being bounded by and running to the center of such street or highway. In like manner, the Zoning Map shall in all cases be construed as bounding each zone by the centerline of each street or highway upon which it shall abut, notwithstanding the fact that the demarcation of such zone shall be shown on the map as the sideline of such street. It is declared to be the intent and purpose of this Section to bound all zones by the centerline of the streets and highways upon which they abut, whether or not conveyances of abutting lands shall have gone to the centerlines of such streets or highways as provided in Section 1112 of the Civil Code.

If uncertainty exists in any boundary indicated on the Zoning Map or the Planned Development Map, the Director shall determine the location of such boundary pursuant to provisions of Subsection 16-12.020 (Authority for Interpretation).

3. Zone boundaries shall extend vertically upward and downward from the ground surface.
4. If there is uncertainty about the location of any zone boundary shown on the official Zoning Map, the following rules are to be used in resolving the uncertainty:
 - a. Where zone boundaries approximately follow lot, alley, or street lines, the lot lines and street and alley centerlines shall be construed as the zone boundaries;
 - b. If a zone boundary divides a lot and the boundary line location is not specified by distances printed on the Zoning Map, the location of the boundary will be determined by using the scale appearing on the Zoning Map;
 - c. Where a public street or alley is officially vacated or abandoned, the property that was formerly in the street or alley will be included within the zone of the adjoining property on either side of the centerline of the vacated or abandoned street or alley; and
 - d. Any property not clearly designated on the Zoning Map in any of the zones established by Article II (Zones and Allowable land Uses) shall hereby be designated as being in the RPD (Residential Planned Development) zone (Section 16-21.020.F.1 [RPD (Residential Planned Development) zone]).

Article II

Zones and Allowable Land Uses

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16-20 Requirements for Approval of Development and New Land Uses

Sections:

- 16-20.010 - Purpose
- 16-20.020 - General Requirements for Development and New Land Uses
- 16-20.030 - Allowable Land Uses and Zoning Permit Requirements
- 16-20.040 - Exemptions from Zoning Permit Requirements
- 16-20.050 - Conflicting Requirements

16-20.010 - Purpose

The provisions of Article II establish the zones applied to property within the Town, determine how the zones are applied on the official zoning maps, and provide general permit requirements for development and new land uses.

16-20.020 - General Requirements for Development and New Land Uses

Each land use and/or structure shall be established, constructed, reconstructed, altered, moved or replaced in compliance with the following requirements.

- A. **Allowable use.** The land use must be allowed by this Zoning Ordinance in the zone applied to the site. The basis for determining whether a use is allowable is described in Section 16-20.030 (Allowable Land Uses and Zoning Permit Requirements).
- B. **Limitation of uses.** The use of lands and structures in each zone is limited to the uses listed in the zone regulations for that particular zone as allowed by right or by approval of a conditional use permit, and to the similar or accessory uses which, in the determination of the Director pursuant to Section 16-20.030, are similar to that listed in each zone.
- C. **Permit and approval requirements.** Any Zoning Permit or other approval required by 16-20.030 (Allowable Land Uses and Zoning Permit Requirements) shall be obtained before the issuance of any required grading, building, or other construction permit, and before the proposed use is constructed, otherwise established or put into operation, unless the proposed use is listed in Section 16-20.040 (Exemptions from Zoning Permit Requirements).
- D. **Development standards, conditions of approval.** Each land use and structure shall comply with the development standards of this Article, the provisions of Article III (General Development Standards and Parking), and any applicable conditions imposed by a previously granted Zoning Permit.
- E. **Legal lot.** The site of a proposed development or new land use shall be a lot that was legally created in compliance with the Subdivision Map Act and/or the Town's Subdivision Ordinances.

16-20.030 - Allowable Land Uses and Zoning Permit Requirements

A. Allowable land uses. The uses of land allowed by this Zoning Ordinance in each zone are listed in Section 16-21, Table 2-1; Section 16-21.030; Section 16-22.030; Section 16-23.030; Section 16-24.030; Section 16-25.030; Section 16-26.030; Section 16-27.030; and Section 16-28.030 together with the type of Zoning Permit required. Specific land uses are defined in Article X (Definitions).

1. Establishment of an allowable use.

- a. Any one or more land uses identified by the sections listed under Subsection A as being allowable within a specific zone may be established on any lot within that zone, subject to the Zoning Permit requirements of Subsection B below and compliance with all applicable requirements of this Zoning Ordinance.
- b. Where a single lot is proposed for development with two or more of the land uses listed in sections identified in Subsection A. above, the overall project shall be subject to the permit requirements established by Subsection B for any individual use.

Use not listed.

- a. A land use that is not listed in the sections identified in Subsection A, and is determined by the Director to not be included in Article X (Definitions) under the definition of a listed land use, is not allowed within the Town, except as otherwise provided by Subsection A.3, or Section 16-20.040 (Exemptions from Zoning Permit Requirements).
- b. A land use that is not listed in the sections identified in Subsection A within a particular zone is not allowed within that zone, except as otherwise provided in Subsection A.3, or Section 16-20.040 (Exemptions from Zoning Permit Requirements).

3. Similar and compatible use may be allowed.

The Director may determine that a proposed use not listed in this Article is allowable as follows:

- a. **Required findings.** The Director may determine that a proposed use is similar to and compatible with a listed use and may be allowed only after first making all of the following findings:
 - (1) The characteristics of, and activities associated with, the use are similar to one or more of the listed uses and will not involve a greater intensity than the uses listed in the applicable zone;
 - (2) The use will be consistent with the purposes of the applicable zone;

- (3) The use will be consistent with the General Plan and any applicable specific plan, precise development plan or equivalent permit;
- (4) The use will be compatible with the other uses allowed in the zone; and
- (5) The use is not listed as allowable in another zone.

A determination that a use qualifies as a "similar use" and the findings supporting the determination shall be in writing.

- b. Applicable standards and permit requirements.** When the Director determines that a proposed, but unlisted, use is similar to a listed use when applying the Zoning Ordinance, the proposed use will be treated in the same manner as the listed use in determining where it is allowed, what permits are required, and what other standards and requirements of this Zoning Ordinance apply.
- c. Referral for determination.** The Director may refer the question of whether a proposed use qualifies as a similar and compatible use directly to the Commission for a determination at a public meeting.
- d. Appeal.** A determination of additional uses, similar or accessory to those allowed, may be may be appealed in compliance with 16.66 (Appeals).

B. Permit requirements. Section 16-21, Table 2-1; Section 16-21.030; Section 16-22.030; Section 16-23.030; Section 16-24.030; Section 16-25.030; Section 16-26.030; Section 16-27.030; and Section 16-28.030 provide for land uses that are:

- 1. Allowed subject to compliance with all applicable provisions of this Zoning Ordinance, including Site Plan and Architectural Review, where required, and subject to first obtaining any building permit or other permit required by the Municipal Code;

Allowed subject to the approval of a Conditional Use Permit (Section 16-52.040);
- 3. Not allowed in particular zones.

A land use authorized through the approval of a Conditional Use Permit may also require Site Plan and Architectural Review approval (16.52.020), a building permit, or other permit required by the Municipal Code. Uses listed as allowed by a Conditional Use Permit, as determined by the Director or Commission as conforming to the purposes of such zone, are not permitted in such zone unless a Conditional Use Permit has been granted.

16-20.040 - Exemptions from Zoning Permit Requirements

The Zoning Permit requirements of this Zoning Ordinance do not apply to the land uses, structures, and activities identified by this Section. These are allowed in all zones subject to compliance with this Section.

Exempt activities and land uses. The following are exempt from the Zoning Permit requirements of Section 16-21, Table 2-1; Section 16-21.030; Section 16-22.030; Section 16-23.030; Section 16-24.030; Section 16-25.030; Section 16-26.030; Section 16-27.030; and Section 16-28.030. The following are also exempt from Site Plan and Architectural Review in compliance with Section 16-52.020 (Site Plan and Architectural Review), unless otherwise noted.

1. **Decks and platforms less than 3 feet above grade; paths.** Decks and platforms and their associated components that do not constitute a “structure” as defined herein; paths that do not require a building or grading permit.

Fences and walls three and one-half feet (42 inches) or less in height. See Section 16-30.040 (Fences and Walls).
3. **Interior remodeling.** Interior alterations that do not increase the gross floor area of the structure, change the permitted use of the structure, or result in any physical exterior alterations to the structure.
4. **Repairs and maintenance.**
 - a. **Single-family and two-family dwellings.** Ordinary repairs to, and maintenance of single-family dwellings, provided that the work does not change the approved land use or structure or result in the loss of any dwelling unit.
 - b. **Multi-family dwellings, and non-residential structures.** Ordinary repairs to, and maintenance of multi-unit residential and non-residential structures, if:
 - (1) The work does not change the approved land use of the site or structure, or add to, enlarge or expand the land use and/or structure;
 - (2) Any exterior repairs employ the same design, materials, and color as the original construction; and
 - (3) The work does not result in the loss of any dwelling unit.
5. **Solar energy systems.** Per the requirements of State law, the addition of solar energy systems provided that the collectors comply with applicable height limit requirements.

6. **Minor Utilities.** The erection, construction, alteration, or maintenance by a public utility or public agency of minor utility lines intended to service existing or nearby approved developments shall be permitted in any zone. Minor utility lines include: water; gas; electric; supply or disposal systems; including wires, mains, drains, sewers, pipes, conduits, cables, fire-alarm boxes, police call boxes, traffic signals, hydrants, etc., but not including new transmission and distribution lines and structures. See Section 16-30.110 (Public Utility Lines) for utility undergrounding requirements. Satellite and wireless communications antennas are not exempt, and are instead subject to the provisions of Section 16-42 (Wireless Communication Facilities). Site Plan and Architectural Review is required for satellite dishes greater than one (1) meter in diameter and for the placement, replacement or modification of utility distribution poles and facilities, including, without limitation, lines, wires and boxes.

16-20.050 – Conflicting Requirements

- A. **Other Municipal Code provisions.** If conflicts occur between requirements of this Zoning Ordinance, or between this Zoning Ordinance and a Precise Development Plan or other regulations of the Town where a discretionary permit is applicable, the most restrictive provision shall apply.
- B. **Private agreements.** This Zoning Ordinance is not intended to interfere with, repeal, abrogate or annul any easement, covenant, or other agreement that existed when this Zoning Ordinance became effective. This Zoning Ordinance applies to all land uses and development regardless of whether it imposes a greater or lesser restriction on the development or use of structures or land than a private agreement or restriction, without affecting the applicability of any agreement or restriction. It is not the intent of this Zoning Ordinance to implement private land use standards, such as may be set forth in Covenants, Conditions and Restrictions (CC&Rs), which are generally administered and enforced outside the Town’s regulatory authority, unless otherwise specifically set forth in the CC&Rs or other private land use document.

16-21 Residential Zones

Sections:

16-21.010 - Purpose

16-21.020 - Purposes of the Residential Zones

16-21.030 - Residential Zones Allowable Land Uses and Permit Requirements

16-21.040 - Residential Zones Development Standards

16-21.010 - Purpose

The purpose of Section 16-21 is to establish the land uses that may be allowed within the residential zones established by Section 16-14.020 (Zoning Map and Zones), determine the types of Zoning Permit (if any) required for each use, and provide standards for site layout and building size.

16-21.020 - Purposes of the Residential Zones

The purpose of each Residential Zone is as follows.

- A. **R-1 (Single-Family Residential) Zone.** The R-1 zone is intended to promote and encourage the maintenance of a suitable environment for suburban family living on smaller single-family residential lots in older developed areas of the town. The R-1 zone conforms with General Plan land use designation Medium High Density (MH).

- B. **R-1-B Zones.** The R-1-B zones are comprised of properties formerly located in unincorporated Marin County that were annexed to the Town after incorporation in 1964. These properties were generally developed under County of Marin zoning districts with setbacks that do not correspond to other single-family residential zones in the Town. The R-1-B zones conform with General Plan land use designation Medium High Density (MH). R-1-B zones have modified setbacks in order to reduce the creation of nonconforming structures that would otherwise result from annexation of properties that were generally developed with different setback requirements.
 1. **R-1-B-A (Bel Aire Single-Family Residential) Zone.** The R-1-B-A zone serves the same purpose as the R-1 zone but is intended to reflect the different front and side yard setbacks historically found in the Bel Aire Estates neighborhood. The principal uses, conditional uses, and development standards for the R-1-B-A zone shall be the same as the R-1 zone with the exception of the front and side yard setbacks established in Section 16-21.040 (Residential Zones Development Standards).

2. **R-1-B-2 (Modified Single-Family Residential) Zone.** The R-1-B-2 zone serves the same purpose as the R-1 zone but is intended to reflect the different front and side yard setbacks with which the properties were developed. The principal uses, conditional uses, and the development standards for the R-1-B-2 zone shall be the same as the R-1 zone with the exception of the front and side yard setbacks established in Section 16-21.040 (Residential Zones Development Standards).
- C. **RO (Residential Open) Zone.** The RO zone is intended to promote and encourage the maintenance of a suitable environment for low-density, single-family development on lots larger than those typically found in the R-1 zone. There are two RO zones, RO-1 and RO-2, each having its own development standards. The permitted and conditional uses are the same for both zones. The RO-1 zone conforms with General Plan land use designation Medium Low Density (ML). The RO-2 zone conforms with General Plan land use designation Medium Density (M).
- D. **R-2 (Two-Family Residential) Zone.** The R-2 zone is intended to promote and encourage the establishment and maintenance of a suitable environment for suburban family living in areas appropriate by location and character for single-family and two-family dwellings. The R-2 zone conforms with General Plan land use designation High Density (H).
- E. **R-3 (Multifamily Residential) Zone.** The R-3 zone is intended to promote and encourage the establishment and maintenance of a suitable environment for residence in areas appropriate by location and character for multifamily dwellings. The R-3 zone conforms with General Plan land use designation Very High Density (VH).
- F. **Planned Residential Development Zones.** There are numerous planned developments where applicable zoning regulations have been previously established by adoption of master plans, precise plans, precise development plans, Conditional Use Permits, or similar Zoning Permits. These planned developments are depicted on the map entitled “Planned Development Map,” incorporated as Section 16-14.020 (Zoning Map and Zones). A current list of the applicable ordinances and/or resolutions governing the planned developments is on file at the Tiburon Community Development Department.
1. **RPD (Residential Planned Development) Zone.** The RPD zone is intended to protect and preserve open space land as a limited and valuable resource without depriving owners of a reasonable use of their property for residential purposes. The regulations of the zone are designed to insure, to the extent feasible, the conservation of natural resources and the retention of land in its natural or near natural state in order to, among other things, assist in the containment of urban sprawl and protect the community from the hazards of fire, flood, seismic and other catastrophic activity, and to otherwise implement the goals and policies of the General Plan. The RPD zone conforms with General Plan land use designation Low Density (L) and PD-R Planned Development Residential (PD-R).
- RMP (Residential Multiple Planned) Zone.** The RMP zone has the same purposes and shall be governed by the same regulations as the RPD zone (Subsection 1. above) except as otherwise provided herein. The RMP zone

conforms with General Plan land use designation Very High Density (VH) and Very High Density/Affordable Housing Overlay (VH/AHO).

16-21.030 - Residential Zones Allowable Land Uses and Permit Requirements

- A. General permit requirements.** Table 2-1 identifies the uses allowed by this Zoning Ordinance in each residential zone, and the Zoning Permit required to establish each use, in compliance with Section 16-20.030 (Allowable Land Uses and Zoning Permit Requirements). Permitted uses are shown as "P" uses in Table 2-1.
- B. Permit requirements for certain specific land uses.** Where the last column in Table 2-1 ("Specific Use Regulations") includes a section number, the referenced section determines whether the use requires a Conditional Use Permit. The referenced section may also refer to other requirements and standards applicable to the use.
- C. Additional uses.** Additional specific uses which are, in the determination of the Director, similar or accessory to those uses listed in Table 2-1 shall be permitted only when a Conditional Use Permit is granted therefore as provided in Section 16-52.040 (Conditional Use Permit) and shown as "U" uses in Table 2-1.
- D. Improvement requirements.**
- 1. R-2 zone.** Conversion of existing two-family or multi-family dwellings in the R-2 zone into single-family dwellings or buildings containing fewer dwelling units shall be subject to approval of a Conditional Use Permit as provided in Section 16-52.040 (Conditional Use Permit).

R-3 zone. All improvements proposed for the R-3 zone other than alterations, additions or other changes to existing structures are subject to approval of a Conditional Use Permit as provided in Section 16-52.040 (Conditional Use Permit).
 - 3. RPD and RMP zones.** Approval of a Precise Development Plan in compliance with the provisions of Section 16-52.060 (Precise Development Plan) is required prior to subdivision, grading, or improvements of any kind in the RPD and RMP zones.

TABLE 2-1 Allowed Land Uses and Permit Requirements for Residential Zones	P Permitted Use U Conditional Use Permit — Use not allowed							
	LAND USE (1)	PERMIT REQUIRED BY DISTRICT						
R-1		R-1-B	RO	R-2	R-3	RPD	RMP	

AGRICULTURAL & OPEN SPACE USES

Agriculture	U	U	U	U	U	U	U	
Botanical conservatories, outdoor nature laboratories, similar facilities	—	—	—	—	—	U	U	
Open space use	—	—	—	—	—	P	P	
Wildlife sanctuaries	—	—	—	—	—	U	U	

RECREATION, EDUCATION & PUBLIC ASSEMBLY USES

Equestrian facility (2)	U	U	U	—	—	U	U	Title VI, 20-5.1
Golf course/country club	U	U	U	—	—	U	U	
Library, museum	U	U	U	U	U	—	—	
Parochial or other nonprofit school - elementary, secondary, or college	U	U	U	U	U	U	U	
Philanthropic or charitable facility	U	U	U	U	U	U	U	
Private residential recreation facilities	U	U	U	U	U	U	U	
Public park	P	P	P	P	P	P	P	
Playground	U	U	U	U	U	U	U	
Publicly owned building or facility	U	U	U	U	U	U	U	
Religious places of worship	U	U	U	U	U	U	U	

RESIDENTIAL USES

Intermediate or community care facility (3)	P	P	P	P	P	P	P	
Multifamily dwelling	—	—	—	—	P	—	P	
Secondary dwelling unit	P	P	P	—	—	P	—	16-52.100
Single-family dwelling	P	P	P	P	—	P	P	
Single-family dwelling providing room/board for 1 paying guest	P	P	P	P	—	P	P	
Two-family dwelling, attached	—	—	—	P	—	—	P	
Two-family dwelling, detached	—	—	—	P(4)	—	—	—	16-40.020
Transitional, supportive housing	P	P	P	P	P	P	P	

Key to Zoning District Symbols

R-1	Single-Family Residential	R-3	Multifamily Residential
R-1-B	Modified Single Family Residential	RPD	Residential Planned Development
RO	Residential Open	RMP	Residential Multiple Planned
R-2	Two-Family Residential		

Notes:

- (1) See Article X (Definitions) for land use definitions.
- (2) The keeping of horses subject to licensing of each horse pursuant to the Tiburon horse license ordinance. Use permits for keeping horses shall automatically terminate upon revocation of license issued under horse license ordinance.
- (3) As defined by state law or any other residential care facility for the handicapped (as defined by the Fair Housing Act) located in a single-family dwelling. All such facilities shall be subject to all regulations of the California Health and Safety Code.
- (4) Provided that design review board has approved or conditionally approved a detached two-family dwelling exception, as set forth in Section 16-40.020. Detached two-family dwellings that lawfully existed on June 4, 2003 are deemed legal nonconforming structures subject to provisions of Sec. 16-62.

TABLE 2-1 (Continued) Allowed Land Uses and Permit Requirements for Residential Zones	P Permitted Use U Conditional Use Permit — Use not allowed							
	LAND USE (1)	PERMIT REQUIRED BY DISTRICT						
		R-1	R-1-B	RO	R-2	R-3	RPD	RMP

SERVICES - GENERAL

Bed and breakfast facility (B&B)	U	U	U	—	—	—	—	
Child day-care facilities, small family day-care homes – up to 8 children (5)	P	P	P	P	P	P	P	Health & Safety Code 1597.3 et seq.
Child day-care facilities, large family day-care homes - 9 to 14 children (5)	P	P	P	P	P	P	P	Health & Safety Code 1597.46 - 1597.465
Child day-care center - 15 or more children	U	U	U	U	U	U	U	
Medical Services - Hospital	U	U	U	U	U	U	U	
Real estate tract office	U	U	U	U	U	U	U	

TRANSPORTATION, COMMUNICATIONS & INFRASTRUCTURE

Public utility and communication equipment building	U	U	U	U	U	U	U	
Wireless communication facility, amateur or professional	U	U	U	U	U	U	U	Government Code 65850.6

Key to Zoning District Symbols

R-1	Single-Family Residential	R-3	Multifamily Residential
R-1-B	Modified Single Family Residential	RPD	Residential Planned Development
RO	Residential Open	RMP	Residential Multiple Planned
R-2	Two-Family Residential		

Notes:

- (1) See Article X (Definitions) for land use definitions.
- (2) The keeping of horses subject to licensing of each horse pursuant to the Tiburon horse license ordinance. Use permits for keeping horses shall automatically terminate upon revocation of the license issued under horse license ordinance.
- (3) As defined by state law or any other residential care facility for the handicapped (as defined by the Fair Housing Act) located in a single-family dwelling. All such facilities shall be subject to all regulations of the California Health and Safety Code.
- (4) Provided that design review board has approved or conditionally approved a detached two-family dwelling exception, as set forth in Section 16-40.020. Detached two-family dwellings that lawfully existed on June 4, 2003 are deemed legal nonconforming structures subject to provisions of Sec. 16-62.
- (5) When located in a single-family dwelling.

16-21.040 - Residential Zones Development Standards

A. Development Standards. Each subdivision shall comply with the minimum lot size requirements in Table 2-2. Subdividers are advised that 16.40 (Standards for Specific Land Uses) may require a specific land use to be on a lot larger than required by this Section. Larger lots may be required based on slope restriction, refer to Table 14-7.3 in Municipal Code Chapter 14 (Subdivision of Land) for calculations of minimum lot size based on slope.

**TABLE 2-2
RESIDENTIAL ZONES DEVELOPMENT STANDARDS**

Zone	Minimum Lot Area	Maximum Lot Coverage	Required Lot Width	Minimum Setback Requirements ¹			Height Limit		Maximum FAR
				Front	Sides	Rear	Primary	Accessory	
R-1	10,000 square feet (s.f.)	30%	40 ft.	15 ft.	8 ft.	20% depth of lot or 25 ft. (whichever is less)	30 ft.	15 ft.	See Section 16-52.020.1
R-1-B-A				20 ft.	6 ft.				
R-1-B-2				25 ft.	10 ft.				
RO-1	40,000 s.f.	15%	70 ft.	30 ft.	20 ft.				
RO-2	20,000 s.f.	15%	50 ft.	30 ft.	15 ft.	15 ft.	30 ft. ³	15 ft. ³	See Section 16-52.020.1
R-2	7,500 s.f. ²	35%	40 ft.	15 ft.	8 ft.				
	3,750 s.f. per dwelling ²								
R-3	10,000 s.f.	30%	--	15 ft.	8 ft.	8 ft.	30 ft. ³	15 ft. ³	.60
	3,500 s.f. per dwelling								
RPD]	Established by adopted master/precise plan or precise development plan for development						30 ft. ³	15 ft. ³	See Section 16-52.020.1
RMP	Established by adopted master/precise plan or precise development plan, or condominium plan for development								.30 ⁴

Notes:

1. Some older planned development approvals do not specify setback requirements, in which case appropriate setbacks are determined by Site Plan and Architectural Review.
2. In the R-2 zone, where a lot is contiguous with a submerged or tide lot that lies entirely or partially in the M zone, and all of such property is under the same ownership, the total area of such contiguous lots may be used in determining whether the minimum lot area requirements have been met. Notwithstanding any other provision of this Section to the contrary, no building or accessory building or part thereof shall extend seaward of the zone boundary line between the R-2 zone and the M zone other than as may be permitted in compliance with the regulations of the M zone (Section 16-25).]
3. Unless otherwise specified in a Precise Development Plan.
4. Unless otherwise specified in a Precise Development Plan.

B. Open space standards.

1. R-2 zone usable open space. Minimum required usable open space per dwelling unit in the R-2 zone is three hundred seventy five square (375) feet with a minimum dimension of not less than twelve feet.

2. **R-3 zone usable open space.** Minimum required usable open space per dwelling unit in the R-3 zone is as set forth below, with a minimum dimension of not less than twelve feet:
 - a. Per efficiency or studio apartment: one hundred fifty square feet;
 - b. Per one bedroom apartment: two hundred square feet;
 - c. Per two-bedroom apartment: two hundred fifty square feet;
 - d. Per three or more bedroom apartment: three hundred square feet.

C. Density standards.

1. **Undeveloped land.** Maximum residential densities for undeveloped land in the RPD and RMP zones shall be as established on the zoning map, and shall in no case exceed the density established in the General Plan.

RPD zone developed land. Maximum residential densities for developed land in the RPD zone shall be as established by the adopted master/precise plan, precise development plan, or equivalent zoning permit for the development, as finalized by the recorded subdivision map(s) for the development. Planned developments with recorded subdivision maps are considered to be fully subdivided and are not subject to further subdivision and shall not exceed allowable general plan density limits.

3. **RMP zone developed land.** Maximum residential densities for developed land in the RMP zone shall be as established by the adopted master and/or precise plans, precise development plans, or condominium plan for the development, as finalized by the recorded subdivision map, or condominium plan, for the development. Planned developments with recorded subdivision maps and/or condominium plans are considered to be fully subdivided and are not subject to further subdivision, and shall not exceed allowable general plan density limits. See Subsection 16-23.050.A (RMP/AHO Zone) for RMP affordable housing overlay development incentives.

16-22 Commercial Zones

Sections:

16-22.010 - Purpose

16-22.020 - Purposes of the Commercial Zones

16-22.030 - Commercial Zones Allowable Land Uses and Permit Requirements

16-22.040 - Commercial Zones General Development Standards

16-22.010 - Purpose

The purpose of Section 16-22 is to establish the land uses that may be allowed within the commercial zones established by Section 16-14.020 (Zoning Map and Zones), determine the types of Zoning Permit (if any) required for each use, and provide standards for site layout and building size.

16-22.020 - Purposes of the Commercial Zones

The purpose of each commercial zone is as follows.

- A. **NC (Neighborhood Commercial) Zone.** The NC zone is intended to primarily provide for resident-serving commercial and office uses, while allowing incidental residential uses and mixed-use commercial/residential projects in accordance with the General Plan. Predominantly tourism-oriented uses (i.e., souvenir shops) are strongly discouraged in this zone, and street-fronting ground floor office use restrictions apply to portions of the NC zone.
- B. **VC (Village Commercial) Zone.** The VC zone has the same permitted uses and conditional uses as those set forth in the NC zone, except souvenir shops are allowed. Street-fronting ground floor office use restrictions apply to portions of the VC zone (See Subsection 16-22.030.B).

16-22.030 - Commercial Zones Allowable Land Uses and Permit Requirements

A. NC Zone.

1. Permitted Uses in the NC Zone

- a. Use-for-use changes (e.g., restaurant to restaurant) or minor structural alterations when no intensification of use, as determined by the Director, is proposed; except as set forth in Subsection A.1.e below. Intensification of use shall be measured in terms of parking requirements, number of employees at maximum shift, total floor area occupied, vehicular trip generation, or other factors within the reasonable discretion of the Director.

- b. Lawfully existing uses established prior to December 26, 1990 shall be permitted to operate under the authority and limitations of applicable Zoning Permits.
- c. The Point Tiburon Plaza commercial area shall continue to be regulated by provisions of the Point Tiburon Precise Plan and Master Conditional Use Permit. Conditional Use Permits for new uses in the Point Tiburon commercial area may be issued in accordance with provisions herein provided that such approvals are consistent with the Point Tiburon Precise Plan and Master Use Permit.
- d. Drive-through restaurants, and restaurants that primarily offer fast-food and/or take-out service, are discouraged.
- e. Tiburon Boulevard-fronting ground floor office uses shall not be permitted in newly-constructed or redeveloped buildings located along “Upper Tiburon Boulevard”, as that area is defined in the Tiburon General Plan Downtown Element on Diagram 4.4-1, without the granting of a Conditional Use Permit in compliance with Section 16-52.040 (Conditional Use Permits) and an exception in compliance with Subsection 16-22.040.B.1 (Exception for street-fronting ground floor office use in the NC zone).
- f. Emergency shelters in compliance with Section 65582 of the California Government Code (see Section 16-40-060 [Emergency shelters]).

2. Conditional Uses Permitted in the NC Zone. The following uses shall be permitted only when a Conditional Use Permit is granted, as provided in Section 16-52.040 (Conditional Use Permit). Additional uses, similar or accessory to those listed below, may be conditionally permitted by resolution of the Commission.

Artist supply stores	Newsstands
Banks	Nursery for the propagation and/or sale of plants, shrubs and trees
Blueprint and photocopying shops	Office building
Bus depot	Off-street parking facilities; commercial and public
Business and professional offices	Opticians and optometrist shops
Business services including: addressing, duplicating, mailing and stenographic	Outdoor eating and drinking area
Candy stores	Paint and wallpaper stores
Clothing and costume rental establishments	Pet shops
Commercial place of amusement	Photographic supply stores
Dry goods stores	Photography studios
Dwelling units	Picture framing
Florists	Printing shops
Establishment serving any alcoholic beverage for consumption on the premises	Radio and TV sales and service stores
Furniture stores, new and unfinished	Restaurant
Garden supply stores	Service station
Grocery stores	Shoe stores
	Sporting good stores
	Stamp and coin stores

- | | |
|---------------------------------|--|
| Hobby stores | Stationary stores |
| Hotels and motels | Tailor and dressmaking shops |
| Household appliance stores | Theaters and playhouses |
| Interior decorating shops | Toy stores |
| Jewelry stores | Travel bureaus |
| Leather goods and luggage shops | Upholstery shops |
| Liquor or drug stores | Watch and clock repair shops |
| Locksmiths | Wireless communication facility, radio, microwave, and TV transmitter and broadcasting station, including amateur and professional |
| Meeting hall | |
| Mortuary | |
| Music stores | |
| Newspaper publishing | |

B. VC Zone. The VC zone has the same land and structure regulations as those set forth in the NC zone (See Subsection A. above), except as following:

1. Souvenir shops are allowed in the VC zone.

Street-fronting ground floor office uses shall not be permitted on Main Street, covering street addresses 1 through 100 Main Street inclusive. See Subsection 16-22.040.B.2 (Exception for street-fronting ground floor office use in the VC zone).

16-22.040 - Commercial Zones General Development Standards

A. General standards. Subdivisions, new land uses and structures, and alterations to existing land uses and structures, shall be designed, constructed, and/or established in compliance with the requirements in Table 2-3 in addition to the applicable development standards (e.g., landscaping, parking and loading, etc.) in Article III (General Development Standards and Parking). The goals and principles of the Downtown Tiburon Design Handbook shall be consulted in the review of substantive improvements for properties in Downtown Tiburon.

**TABLE 2-3
COMMERCIAL ZONE DEVELOPMENT STANDARDS**

Zone	Minimum Lot Area	Height Limit		Maximum FAR
		Primary	Accessory	
NC	10,000 s.f.	30 ft. ²		0.37 ¹
VC				0.28 ¹
Notes:				
1. Unless a transfer of intensity has been approved in compliance with General Plan Downtown Element policies or the building is reconstructed pursuant to General Plan Downtown Element policies.				
2. For Downtown properties with frontage on Tiburon Boulevard, 38 feet and no more than three stories.				

B. Exceptions.

1. **Exception for street-fronting ground floor office use in the NC zone.** An exception may be granted to allow street-fronting ground floor office use otherwise prohibited by Section 16-22.030 (Commercial Zones Allowable Land Uses and Permit Requirements), provided that the Review Authority finds that the applicant has provided substantial and compelling evidence that retail, restaurant, or personal service use is not economically viable in the proposed location.
2. **Exception for street-fronting ground floor office use in the VC zone.** An exception may be granted to allow street-fronting ground floor office use otherwise prohibited by Section 16-22.030 (Commercial Zones Allowable Land Uses and Permit Requirements), provided that a Conditional Use Permit is secured and one or more of the following findings is made by the Review Authority:
 - a. The space proposed for the office use is not physically suitable for retail, restaurant, or personal service use.
 - b. The applicant has provided substantial and compelling evidence that retail, restaurant, or personal service use is not economically viable in the proposed location.

C. Minor Floor Area Additions. Minor floor area additions to properties exceeding FAR limits may be approved without the need for a General Plan or Zoning Ordinance amendment. Minor floor area additions are those that do not materially increase parking demand (as defined in Section 16-32 [Parking and Loading Standards]) or traffic generation. A finding must be made by the Review Authority that there will be no material adverse effects from the granting of the minor floor area addition.

D. Approval of a Conditional Use Permit. Approval of a Conditional Use Permit in compliance with the provisions of Section 16-52.040 (Conditional Use Permit) is required prior to:

1. New construction or subdivision of land;
2. Additions to existing structures;
3. Reconstruction of existing structures; and/or
4. Grading of undeveloped or cleared land.

16-23 Overlay Zones

Sections:

- 16-23.010 - Purpose
- 16-23.020 - Purposes of the Overlay Zones
- 16-23.030 - Affordable Housing Overlay Zones Allowable Land Uses and Permit Requirements
- 16-23.040 - Affordable Housing Overlay Zones General Development Standards
- 16-23.050 - Affordable Housing Overlay Zones Development Incentives
- 16-23.060 - Historic Protection Overlay Zone Allowable Land Uses and General Development Standards

16-23.010 - Purpose

The purpose of Section 16-23 is to establish the land uses that may be allowed within the overlay zones established by Section 16-14.020 (Zoning Map and Zones), and determine the types of Zoning Permit (if any) required for each use.

16-23.020 - Purposes of the Overlay Zones

The purpose of each overlay zone is as follows.

A. F (Flood Hazard Overlay) Zone. The purpose of the F zone is to limit and protect construction of structures in areas that are liable to flooding, in compliance with Federal Flood Insurance Programs.

1. Construction in identified F zones shall be regulated by provisions of Municipal Code Chapter 13D (Flood Damage Prevention). F overlay zones shall correspond to those areas defined as special flood hazard areas in Municipal Code Chapter 13D.

Municipal Code Chapter 13D designates the Town Engineer as the floodplain administrator of the Town.

3. Special flood hazard areas are depicted on Flood Insurance Rate Maps of the National Flood Insurance Program, effective May 4, 2009, or the most current successors thereto, and are incorporated and made a part herein. Refer to current flood insurance rate maps and utilize North American Vertical Datum (1988) for elevation data.

B. RMP/AHO (Residential Multiple Planned/Affordable Housing Overlay) Zone. The purpose of the RMP/AHO zone is to encourage and direct, through the provision of town development incentives, the construction of projects containing substantial numbers of affordable housing units on those sites identified in the Tiburon General Plan Housing Element as affordable housing opportunity sites. Potential applicants are strongly advised

to meet with Town Staff in advance of project design to discuss any potential project.

- C. NC/AHO (Neighborhood Commercial/Affordable Housing Overlay) Zone.** The purpose of the NC/AHO zone is to encourage and direct, through the provision of a Town density bonus and other development incentives, the construction of well-designed, mixed-use residential/nonresidential projects, containing substantial numbers of affordable housing units, on those commercial sites identified in the Tiburon General Plan Housing Element as affordable housing opportunity sites. Potential applicants are strongly advised to meet with Town Staff in advance of project design to discuss any potential project.
- D. HPO (Historic Protection Overlay) Zone.** The purpose of the HPO zone is to protect, maintain and enhance historic structures in the downtown area that are included in the Town’s Local Historic Inventory of Buildings Located in Downtown Tiburon (“Inventory”), as adopted by resolution of the Town Council and amended from time to time. The HPO zone is intended to:
1. Safeguard the Town’s heritage as embodied and reflected in the buildings listed in the Inventory;
 2. Encourage public knowledge, understanding and appreciation of the Town’s past;
 3. Encourage the preservation of diverse and harmonious architectural styles and design preferences reflecting phases of the Town’s history in its Downtown area;
 4. Foster community pride and a sense of identity based upon the recognition and use of historic buildings;
 5. Promote enjoyment and use of historic buildings;
 6. Protect and enhance the Town’s historical attraction to visitors; and
 7. Identify and resolve conflicts between the preservation of historical resources and alternative land uses.

Inclusion of the buildings within the Inventory in the HPO acknowledges the protection of historic resources as provided by the California Environmental Quality Act and allows application of the California State Historic Building Code to the buildings included therein.

16-23.030 – Affordable Housing Overlay Zones Allowable Land Uses and Permit Requirements

- A. RMP/AHO Zone.**
1. **Permitted Uses in the RMP/AHO Zone**
 - a. Multifamily dwellings;
 - b. Two-family dwellings;

- c. Single-family dwellings;

B. NC/AHO Zone.

1. Permitted Uses in the NC/AHO Zone

- a. Multifamily dwellings;
- b. Two-family dwellings;

- 2. Nothing in this Section shall be deemed to prohibit or not allow the uses permitted in the underlying neighborhood commercial (NC) zone.

C. Conditional Uses Permitted. No Conditional Use Permit shall be required for the qualifying affordable residential components.

D. Qualification. In order to qualify for the benefits of these overlay zones, a residential development project shall comply with all of the following:

- a. Include a minimum of twenty percent very low-income, twenty percent low-income, and twenty percent moderate-income housing units, as defined in Section 16-70.030 (General Inclusionary Requirements).
 - i. Units not meeting the definition of an affordable unit, as defined in Article X (Definitions), shall not exceed forty percent of the total number of units.
 - ii. Moderate-income rental units shall not be counted as affordable units in the above calculations.
- b. Ensure that affordable units are deed-restricted for a period of not less than fifty-five years, and in perpetuity if possible, to ensure affordable resale and rents.
- c. Provide a percentage of units for special needs populations in compliance with Section 16-70.030 (General Inclusionary Requirements)

E. Application. Sections 16-23.030 through 16-23.050 shall not apply if an applicant requests a state-mandated density bonus in compliance with Section 16-70.110 (State-mandated Density Bonus), with the exception of the RMP/AHO zone density (see Table 2-4), for which a base density of 15.3 units per acre shall be established for projects requesting a state-mandated density bonus.

16-23.040 – Affordable Housing Overlay Zones General Development Standards

General standards. Proposed development within the affordable housing overlay zones shall be designed and constructed in conformity with the development standards in Table 2-4 (Overlay Zones Development Standards). The goals and principles of the Downtown Tiburon Design Handbook shall be used in the review of improvements for all properties in Downtown Tiburon.

**TABLE 2-4
OVERLAY ZONES DEVELOPMENT STANDARDS**

Zone	Maximum Lot Coverage	Minimum Setback Requirements			Maximum Height Limit		Maximum FAR	Density
		Front	Sides	Rear	Primary	Accessory		
RMP/AHO	Determined through Site Plan and Architectural Review approval			3 stories or 38ft. (whichever is less)		--	12.4 to 24.8 units per acre	
NC/AHO	Determined through Conditional Use Permit and/or Site Plan and Architectural Review approval					--	12.9 to 20.7 units per acre	

16-23.050 – Affordable Housing Overlay Zones Development Incentives

A. RMP/AHO Zone. The following development incentives are available to qualifying affordable residential developments in the RMP/AHO zone:

1. **Density/regulations.** Higher density and relaxation and/or flexibility in the development standards in Section 16-23.040 (Affordable Housing Overlay Zones General Development Standards). Densities toward the top of the range may be appropriate where units are significantly smaller and would have fewer impacts than the market norm.

Architectural design. Affordable units within a mixed affordable/market rate development shall be allowed to vary in design and square footage from nonaffordable units as long as the project remains architecturally harmonious. Attached units, smaller (in square footage) units and other design variations from market rate units shall be permitted within reason by the Review Authority to reduce costs of providing affordable units.

3. **Parking standards.** Parking standards shall be reduced within reason by the Review Authority depending on project characteristics and availability of on-street parking.
4. **Interior amenity.** The interior amenity level of affordable units may be reduced within reason by the Review Authority to reduce costs of providing affordable units.
5. **Fees.** The Town shall waive or reduce certain Town application and development

fees for the affordable units in a qualifying development.

6. **Priority processing.** The Town shall give qualifying projects the highest processing priority, and efforts will be made by Staff and decision-makers to:
 - a. Provide technical assistance to potential affordable housing developers in processing requirements, including participation in community involvement;
 - b. Consider project funding and timing needs in the processing and review of the application;
 - c. Provide the fastest turnaround time possible in determining application completeness.
- B. NC/AHO Zone.** In order to promote well-designed, affordable mixed-use residential/nonresidential projects in commercial zones, the following incentives are offered to facilitate mixed-use development on properties located in the NC/AHO zone:
1. **Density/regulations.** Higher density and relaxation and/or flexibility in the development standards in Section 16-23.040 (Overlay Zone and General Development Standards). Densities toward the top of the range may be appropriate where units are significantly smaller and would have fewer impacts than the market norm.

Architectural design. Affordable units within a mixed affordable/market rate development shall be allowed to vary in design and square footage from nonaffordable units as long as the project remains architecturally harmonious. Attached units, smaller (in square footage) units and other design variations from market rate units shall be permitted within reason by the Review Authority to reduce costs of providing affordable units.
 3. **Parking standards.** Parking standards shall be reduced within reason by the Review Authority depending on project characteristics and availability of on-street parking. In addition, parking shall be counted as shared between commercial and residential uses to the extent reasonable.
 4. **Interior amenity.** The interior amenity level of affordable units may be reduced within reason by the Review Authority to reduce costs of providing affordable units.
 5. **Fees.** The Town shall subsidize hook-up fees or other fees charged by special districts up to one hundred percent for affordable units. The Town shall waive or reduce certain town application and development fees for the affordable units in a qualifying development.
 6. **Priority processing.** The Town shall give qualifying projects the highest processing priority, and efforts will be made by Staff and decision-makers to:

- a. Provide technical assistance to potential affordable housing developers in processing requirements, including participation in community involvement;
- b. Consider project funding and timing needs in the processing and review of the application;
- c. Provide the fastest turnaround time possible in determining application completeness.

16-23.060 – Historic Protection Overlay Zone Allowable Uses and General Development Standards

- A. Permitted Uses.** Uses permitted in the HPO zone shall be the same as those permitted in the underlying neighborhood commercial (NC) and village commercial (VC) zones.
- B. General Standards.** Subdivisions, new land uses and structures, and alterations to existing land uses and structures, shall be designed, constructed, and/or established in compliance with the requirements in Table 2-3 (Commercial Zones Development Standards) in addition to the applicable development standards (e.g., landscaping, parking and loading, etc.) in Article III (General Development Standards and Parking).
- C. Permits required and guiding principles.** Any exterior alterations or modifications to an existing building in the HPO zone shall require approval by the Director of a Site Plan and Architectural Review application for Minor Alterations. In reviewing such applications for Site Plan and Architectural Review, the Director shall consider the following principles as they may apply:
 1. Any new use of an existing building in the HPO zone shall maximize the retention of materials, exterior design features and spaces related to the historic significance of the building and property outlined within the Local Historic Inventory of Buildings Located in Downtown Tiburon, as adopted by Town Council Resolution 07-2001, as may be amended from time to time (see Section 16-22-020[D]).
 2. The design of any construction, additions, repairs or replacement of a building in the HPO zone shall be in harmony with the general architectural, craftsmanship and historical characteristics of the building as outlined in the Inventory and shall reflect the guiding themes of consistency, compatibility and authenticity set forth in the Downtown Tiburon Design Handbook. This shall include windows, doors, trim, roof types, exterior building materials and colors.
 3. Repainting of existing structures shall not require a permit if the Director determines that the color conforms to the Benjamin Moore Historical Colors palette.
 4. Deteriorated historic features associated with buildings in the HPO zone shall be repaired rather than replaced where possible. Where the severity of deterioration requires replacement of a distinctive feature, the new feature shall match the old in design, color, texture and other visual qualities and, where possible, material.

Replacement of missing features shall be substantiated by evidence of previous existence at the time of submittal for building permit.

5. The goals, principles and recommendations of the Downtown Tiburon Design Handbook shall be considered in the review of applications involving properties in the HPO zone.

16-24 Office Zone

Sections:

16-24.010 - Purpose

16-24.020 - Purpose of the Office Zone

16-24.030 - Office Zone Allowable Land Uses and Permit Requirements

16-24.040 - Office Zone General Development Standards

16-24.010 - Purpose

The purpose of Section 16-24 is to establish the land uses that may be allowed within the Office zone established by Section 16-14.020 (Zoning Map and Zones), determines the types of Zoning Permit (if any) required for each use, and provides basic standards for site layout and building size.

16-24.020 - Purpose of the Office Zone

The O (Office) zone is intended to provide for the establishment and maintenance of office facilities without any retail component in areas properly located in relation to residential and commercial facilities.

16-24.030 - Office Zone Allowable Land Uses and Permit Requirements

- A. Permitted Uses in the O Zone.** Public or private office uses (not including medical and dental offices uses) and their related parking facilities when no intensification of use is proposed above and beyond existing use. Intensification of use shall be measured in terms of parking requirements, number of employees at maximum shift, and total floor area occupied.
- B. Conditional Uses Permitted in the O Zone.** The following uses shall be permitted only when a Conditional Use Permit is granted therefor, as provided in Section 16-52.040 (Conditional Use Permit).
- a. Nursery school, child day-care center, or preschool;
 - b. Colleges;
 - c. Parking structures or parking lots;
 - d. Wireless communication facility, radio, microwave, and TV transmitter and broadcasting station, including amateur and professional;
 - c. Real estate tract office.

16-24.040 - Office Zone General Development Standards

- A. General standards.** Proposed development within the Office zone shall be designed and constructed in conformity with the Office Zone Development Standards in Table 2-5 (Office Zone Development Standards).

**TABLE 2-5
OFFICE ZONE DEVELOPMENT STANDARDS**

Zone	Maximum Lot Coverage	Required Lot Width	Minimum Setback Requirements			Maximum Height Limit		Maximum FAR
			Front	Sides	Rear	Primary	Accessory	
O	50%	60 ft.	30 ft.	8 ft.	10 ft.	30 ft.	15 ft.	1.00 ¹
Notes:								
1. Including associated parking structures.								

- B. Approval of a Conditional Use Permit.** Approval of a Conditional Use Permit in compliance with the provisions of Section 16-52.040 (Conditional Use Permit) is required prior to:

1. Establishment of uses listed in Section 16-24.030 (B);
New construction or subdivision of land;
3. Additions to existing structures;
4. Reconstruction of existing structures; and/or
5. Grading of undeveloped or cleared land.

16-25 Marine Zone

Sections:

16-25.010 - Purpose

16-25.020 - Purposes of the Marine Zone

16-25.030 - Marine Zone Allowable Land Uses and Permit Requirements

16-25.010 – Purpose

The purpose of Section 16-25 is to establish the land uses that may be allowed within the Marine zone established by Section 16-14.020 (Zoning Map and Zones) and determines the types of Zoning Permit (if any) required for each use.

16-25.020 - Purpose of the Marine Zone

The M (Marine) zone is intended to ensure the retention of certain water and shoreline areas by limiting use to certain restricted activities in conformance with the General Plan. This zone is intended to include all submerged land, and partially submerged land up to the mean high tide line on the property, utilizing North American Vertical Datum (1988) for elevation data, unless designated in a different zone on the zoning map.

16-25.030 - Marine Zone Allowable Land Uses and Permit Requirements

A. Permitted Uses in the M Zone.

1. Floats or dolphins for private pleasure craft (see Article X [Definitions]);
Boating, swimming and fishing;
3. Parks when in conformance with the General Plan.

B. Uses Permitted with a Tidelands Permit in the M Zone. The following uses shall be permitted only when a Tidelands Permit is granted therefore, as provided in Section 16-52.080 (Tidelands Permit).

1. Piers, docks boat lifts and similar facilities;

Berthing, mooring and landing facilities for boats, except that facilities for yacht and boat clubs, yacht and boat sales, maintenance, haul-outs and similar facilities shall not be allowed.
3. Decks, balconies and similar features extending off buildings.

16-26 Public/Quasi-Public Zone

Sections:

16-26.010 - Purpose

16-26.020 - Purpose of the Public/Quasi-Public Zone

16-26.030 - Public/Quasi-Public Zone Allowable Land Uses and Permit Requirements

16-26.040 - Public/Quasi-Public Zone General Development Standards

16-26.010 - Purpose

The purpose of Section 16-26 is to establish the land uses that may be allowed within the Public/Quasi-Public zone established by Section 16-14.020 (Zoning Map and Zones), determines the types of Zoning Permit (if any) required for each use, and provides basic standards for site layout and building size.

16-26.020 - Purpose of the Public/Quasi-Public Zone

The P (Public/Quasi-Public) zone is intended to provide for public and quasi-public uses, and to recognize existing public and quasi-public uses and facilities that are expected to remain in a similar use in the foreseeable future. The permitted uses and conditional uses listed below are qualified by the existence of preemptions for certain uses as set forth in Section 53091 or successor section(s) of the California Government Code and by other preemptions contained in state or federal law.

16-26.030 – Public/Quasi-Public Zone Allowable Land Uses and Permit Requirements

A. Permitted Uses in the P Zone. The following uses are allowed by right in the P zone.

1. Parks and ancillary improvements thereto;
Open spaces and ancillary improvements thereto.

B. Conditional Uses Permitted in the P Zone. The following uses shall be permitted only when a Conditional Use Permit is granted, as provided in Section 16-52.040 (Conditional Use Permit). Other uses which, in the opinion of the Director, are similar or accessory to uses listed above, may also be conditionally permitted.

1. Buildings or facilities operated by public/nonprofit agencies;
Recreational buildings or facilities;
3. Utility buildings or facilities;
4. Governmental buildings or facilities;

5. Wireless communication facility, radio, microwave, and TV transmitter and broadcasting station, including amateur and professional;
6. Additional specific uses that are, in the opinion of the Director, similar or accessory to those uses listed above.

16-26.040 – Public/Quasi-Public Zone General Development Standards

A. General standards. Proposed development within the public/quasi-public zone shall be designed and constructed in conformity with the Public Zone Development Standards in Table 2-6 (Public Zone Development Standards).

**TABLE 2-6
PUBLIC ZONE DEVELOPMENT STANDARDS**

Zone	Maximum Lot Coverage	Minimum Lot Area	Minimum Setback Requirements			Maximum Height Limit		Maximum FAR
			Front	Sides	Rear	Primary	Accessory	
P	50%	10,000 s.f.	--			30 ft.		1.00 ¹
Notes:								
1. Including associated parking structures.								

B. Approval of a Conditional Use Permit. Approval of a Conditional Use Permit in compliance with the provisions of Section 16-52.040 (Conditional Use Permit) is required prior to:

1. Uses listed in Section 16-26.030 (B);
2. New construction or subdivision of land;
3. Additions to existing structures;
4. Reconstruction of existing structures; and/or
5. Grading of undeveloped or cleared land.

16-27 Open Space Zone

Sections:

16-27.010 - Purpose

16-27.020 - Purposes of the Open Space Zone

16-27.030 - Open Space Zone Allowable Land Uses and Permit Requirements

16-27.040 - Open Space Zone General Development Standards

16-27.010 - Purpose

The purpose of Section 16-27 is to establish the land uses that may be allowed within the Open Space zone established by Section 16-14.020 (Zoning Map and Zones), determines the types of Zoning Permit (if any) required for each use, and provides basic standards for site layout and building size.

16-27.020 - Purpose of the Open Space Zone

The purpose of the OS (Open Space) zone is to preserve those lands within the Town set aside for permanent open space. While much of the open space land in Tiburon is publicly owned, a considerable portion is privately held with recorded use restrictions limiting the property to open space use.

16-27.030 - Open Space Zone Allowable Land Uses and Permit Requirements

- A. Permitted Uses in the OS Zone.** Passive recreational and open space uses for public and private enjoyment such as hiking, picnicking, and other activities that support the preservation of the natural environment.
- B. Conditional Uses in the OS Zone.** The uses listed below shall be permitted only when a Conditional Use Permit is granted, as provided in Section 16-52.040 (Conditional Use Permit).
1. Improvement or installation of trails or other improvements intended to enhance the enjoyment of nature while minimizing impacts on the natural qualities of the land;

Other uses which, in the opinion of the Director, are similar or accessory to uses listed above.

16-27.040 - Open Space Zone General Development Standards

There shall be no new structures allowed on open space lands. Existing structures may be maintained or reconstructed as provided in Section 16-62 (Nonconforming Uses, Structures, and Lots) when consistent with the General Plan.

16-28 Parks and Recreation Zone

Sections:

16-28.010 - Purpose

16-28.020 - Purposes of the Parks and Recreation Zone

16-28.030 - Parks and Recreation Zone Allowable Land Uses and Permit Requirements

16-28.040 - Parks and Recreation Zone General Development Standards

16-28.010 - Purpose

The purpose of Section 16-28 is to establish the land uses that may be allowed within the Parks and Recreation zone established by Section 16-14.020 (Zoning Map and Zones), determines the types of Zoning Permit (if any) required for each use, and provides basic standards for site layout and building size.

16-28.020 - Purpose of the and Parks and Recreation Zone

The purpose of the P&R (Parks and Recreation) zone is to recognize those lands within the Town used or intended for parks and recreational use. While most of the parks and recreational land in Tiburon is publicly owned, some portions are privately held with use restrictions limiting the property to parks and/or recreational use.

16-28.030 - Parks and Recreation Zone Allowable Land Uses and Permit Requirements

A. Permitted Uses in the P&R Zone.

1. Public parks and the activities and structures allowed therein by rules and regulations adopted by the town council;
2. Conservation of natural resources;
3. Restoration of native habitats;
4. Wildlife sanctuaries;
5. Passive recreational uses such as hiking, picnicking, and the enjoyment of nature;
6. Improvement or installation of trails, paths or other similar improvements intended to enhance the enjoyment of nature while minimizing impacts on the natural qualities of the land

B. Conditional Uses Permitted in the P&R Zone. The uses listed below shall be permitted only when a Conditional Use Permit is granted, as provided in Section 16-52.040 (Conditional Use Permit):

1. Construction of, or additions to, buildings that support parks or recreational activities;

Organized educational facilities, activities or programs intended to promote knowledge and enjoyment of natural resources;
3. Public utility facilities;
4. Construction of minor structures and ancillary facilities and improvements consistent with parks and recreational uses;
5. Other uses which, in the opinion of the Director, are similar to uses listed above.

16-28.040 - Parks and Recreation Zone General Development Standards

General standards. Proposed development within the P&R zone shall be designed and constructed in conformity with the development standards in Table 2-7 (Parks and Recreation Zone Development Standards).

**TABLE 2-7
PARKS AND RECREATION ZONE DEVELOPMENT STANDARDS**

Zone	Maximum Lot Coverage	Minimum Setback Requirements			Maximum Height Limit		Maximum FAR	Density
		Front	Sides	Rear	Primary	Accessory		
P&R	10%	Determined through Conditional Use Permit and/or Site Plan and Architectural Review approval			30 ft.	15 ft.	0.10	--

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ARTICLE III

General Development Standards and Parking Standards

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16-30 Standards for All Development and Land Uses

Sections:

- 16-30.010 - Purpose
- 16-30.020 - Applicability
- 16-30.030 - Setback Requirements and Exceptions
- 16-30.040 - Fences and Walls
- 16-30.050 - Height Limits and Exceptions
- 16-30.060 - Children Play Structures/Sports Courts
- 16-30.070 - Lighting
- 16-30.080 - Recyclable Materials Collection and Loading
- 16-30.090 - Storage and Debris Boxes
- 16-30.100 - Submerged and Partially Submerged Land
- 16-30.110 - Public Utility Lines
- 16-30.120 - Lot Legality and Coverage

16-30.010 - Purpose

The provisions of Section 16-30 are intended to ensure that the construction of new development and the establishment of new and modified uses contribute to the maintenance of a stable and healthy environment, that new development is harmonious in character with existing and future development, and that the use and enjoyment of neighboring properties are protected, as established in the General Plan.

16-30.020 - Applicability

- A. The regulations of Section 16-30 apply to any zone wherever the specified circumstances exist.
- B. Uses referred to in this Zoning Ordinance include the structures ordinarily devoted to such use.
- C. No buildings or structures shall be erected, reconstructed, moved, converted, or structurally altered in any manner, nor shall any buildings, other structures, or land be used for any purpose or in any manner other than as permitted by and in conformance with the General Plan and this Zoning Ordinance.

16-30.030 - Setback Requirements and Exemptions

- A. **Purpose.** This Section provides standards for the use and minimum size of setbacks. Setbacks provide open areas around structures for: visibility and traffic safety; access to and around structures; access to natural light, ventilation and direct sunlight; separation between incompatible activities; and space for privacy, landscaping, and recreation. Setbacks can also provide a sense of low density, spaciousness, and aesthetic pleasure.

- B. Setback requirements.** Unless exempted in compliance with Subsection E. below, all structures shall conform with the setback requirements established for each zone by Article II (Zones and Allowable Land Uses), and with any special setbacks established for specific uses by this Zoning Ordinance, except as otherwise provided by this Section.
- C. Measurement of setbacks.** Required setbacks shall be measured horizontally from the front, side or rear property line as appropriate to the measurement, to a line parallel thereto at the nearest point of a structure on the site. On a site that is not rectangular or approximately rectangular in shape, required setbacks shall be determined by the Director, and a record of such determination kept in the Town building file.

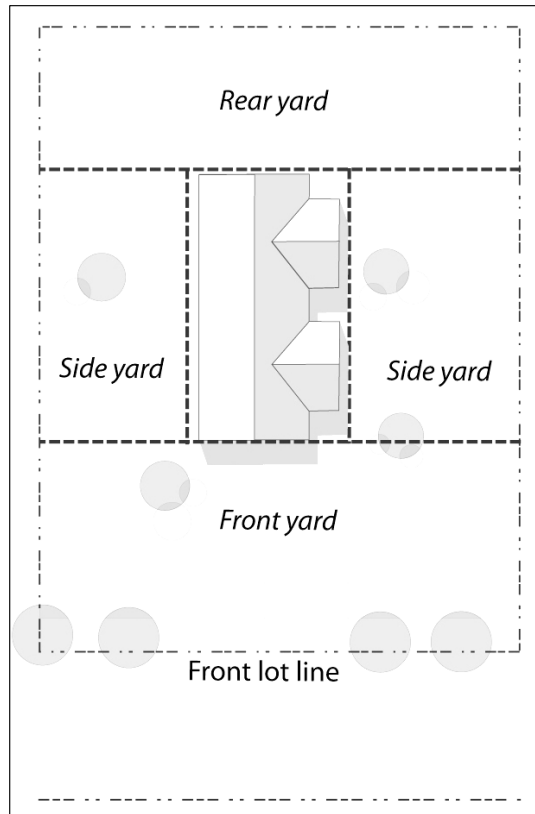


Figure 3-1. Yards

- D. Front setback reduction.** Where more than half the lots on one block in the same zone have been improved with buildings, the required front setback on that block is the average of the front setbacks on improved lots, but need not exceed the minimum required front setback in that zone.

E. Limitations on the use of setbacks.

1. **Accessory structures.** Required front and side setbacks shall not be used for the placement or erection of any accessory building in any zone. Detached accessory buildings not exceeding twelve feet in height may be located on a rear yard, provided that such buildings do not occupy more than twenty-five percent of the area of the rear yard. Swimming pools and spas may also be located on a rear yard, but not within a front or side yard.

Fences. See Section 16-30.040 (Fences and Walls).

3. **Landscaping.** Landscape features such as patios, open grills, water features (other than swimming pools and spas), trellises, entry pergolas, and similar features may occupy any required setback. But in no case shall any obstruction be located in a public right-of-way without issuance of an Encroachment Permit.
4. **Parking.** The parking or storage of operable or inoperable vehicles in areas other than on an improved parking surface, as defined in Article X (Definitions), is prohibited.
5. **Additional requirements.**
 - a. Required setbacks shall not be encroached upon by movement or alteration of an existing main building;
 - b. Required accessory structure setbacks shall not be less than the minimum for any new main building, except as noted in Subsection 1 above.
 - c. Required setbacks shall not be considered as yard space for more than one main building.

F. Allowed projections into setbacks. Attached architectural features and certain detached structures may project into or be placed within a required setback in compliance with the following requirements.

1. The ordinary projection of sills, bay windows, cornices, architectural features and eaves may extend beyond the wall of the structure and into the front, side and rear setbacks; provided, however, that none shall project into a minimum setback more than three feet. In no case shall such projection encroach to within three feet of any property line.

The extension of structures such as chimneys, fire escapes, landing places, outside stairways and uncovered balconies, decks and porches may extend beyond the wall of the structure and into the front, side and rear setbacks; provided, however, that none shall extend into a required side setback more than three feet, nor into a required front or rear setback more than six feet. In no case shall such structures extend to within three feet of any property line.

- G. Restrictions on the use of front yard setbacks in residential zones.** In any residential zone, a front setback shall not be used for the storage of junk materials as described in Article X (Definitions) under the definition of “junkyard.”
- H. Vehicle entry gates.** Vehicle entry gates shall be set back at least fifteen feet from any private or public roadway, shared driveway, curb, gutter or sidewalk.

16-30.040 - Fences and Walls

- A. Applicability.** The requirements of this Section apply to all fences and walls, including fence/wall combinations, unless otherwise stated.
- B. Height limits.** Fences and walls may occupy any required setback, provided that:
1. A fence, wall, or retaining wall greater than three and one-half feet in height shall not be erected without Site Plan and Architectural Review approval as provided in Section 16-52.020 (Site Plan and Architectural Review).

A fence, wall, or retaining wall shall not exceed six feet in height in any setback, with the following exceptions:

 - a. A fence, wall or retaining wall may exceed six feet in height if all of the following conditions are met:
 - i. The fence and/or wall is located along a private residential property line shared with another private residential property;
 - ii. There is a difference in surface elevation between the two adjoining properties along the property line upon which the proposed fence and/or wall is to be located;
 - iii. The fence and/or wall would have a maximum height of six feet on the upper side of the structure; and a maximum height on the lower side of the structure of six feet plus the difference in surface elevation between the adjoining yard areas at the property line, but in no instance more than nine feet;
 - iv. The Review Authority determines that a fence and/or wall with a height of six feet on the lower side of the structure would not provide an effective privacy screen for the adjoining properties; and
 - v. The Review Authority determines that the proposed fence would not result in significant view obstruction or visual impacts on properties in the vicinity.
 - b. A safety railing on top of a retaining wall as required by the Town’s Building Code shall not count toward the measured height of the retaining wall if the building official determines that the location of the railing is

necessary for safety purposes. Site Plan and Architectural Review approval shall be required for such railings and walls as provided in Section 16-52.020 (Site Plan and Architectural Review). Such railings are encouraged to be constructed either of transparent materials or be otherwise visually open in design.

3. Fences (including walls used as fences) shall not be located, designed, or constructed so as to impair safe vision from vehicles or of pedestrians.
4. If two or more fences and/or walls are constructed with a separation of three feet or less between the faces of the structures, the height of the respective structures shall be combined to determine the total wall or fence height. If the fences and/or walls are separated by a horizontal distance greater than three feet, the heights of the fences and/or walls shall be calculated separately.

16-30.050 - Height Limits and Exceptions

- A. **Purpose.** Height limits are important measures to protect privacy and views; to promote the adequate provision of sunlight, air, and visual safety; and to prevent the vertical overbuilding of properties.
- B. **Maximum height.** No building or structure shall be erected or altered to exceed the height limit established for the zone in which the structure is located. The height limit is a maximum, and is subject to reduction through the Site Plan and Architectural Review process, through Precise Development Plan approvals, or through other permit approvals issued by the Town.
- C. **Height measurement.** Height is the plumb vertical distance, measured using a plane, established by the lower of the natural or finished grade at the perimeter of the exposed exterior surface of the building, structure, fence, or wall. No point of the roof edge, fence, wall, parapet, mansard, structure, or other building feature shall extend above the plane established by the maximum height line from grade, except as specifically excluded below. Refer to Figure 3-2 below.

On lots in subdivisions where there is an approved grading plan that has been implemented and accepted as complete by the Town, the elevation established by the subdivision grading shall be considered the natural ground elevation.

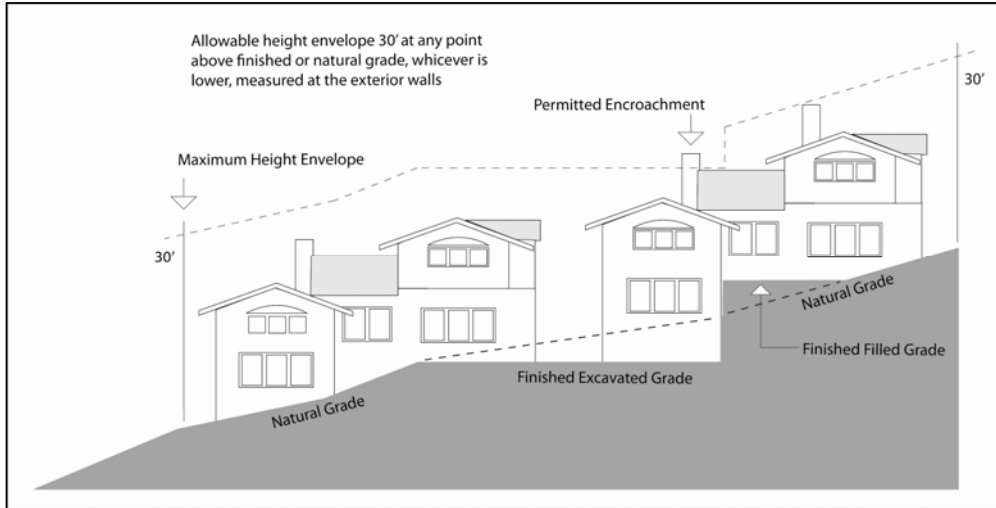


Figure 3-2. Height Measurement

D. Exceptions to height limits.

1. Elevator and stairwell roof enclosures, roof equipment enclosures, skylights, chimneys, flues, vents, and similar features may exceed the maximum height to provide for the normal function of a facility, provided that they are of minimum height and bulk.

Spires, flag poles, radio and television towers or antennas, and similar features, of minimal area and bulk, may exceed maximum height limits by up to three feet or as required by the California Building Code. The height restrictions shall not apply to antennas for wireless communication facilities licensed by the Federal Communications Commission when a Conditional Use Permit has been obtained for that use in compliance with Section 16-52.040 (Conditional Use Permit) and Section 16-42 (Wireless Communications Facilities).

3. The footing portion of a retaining wall (below grade) shall not be included in the measurement of height.
4. Height limitations specified in this Section shall not apply to public utility distribution and transmission lines that are under the jurisdiction of the State Public Utilities Commission.

- E. Height limit at street intersections.** For visual safety reasons at all street intersections, it is unlawful to install or maintain any sign, fence, hedge, vegetation, or any other view obstructions that extend more than thirty inches above the street level of any adjacent intersection, within that area between the property line and a diagonal line joining points on the property lines that are thirty-five feet from their intersection, as extended. Refer to Figure 3-3 below.

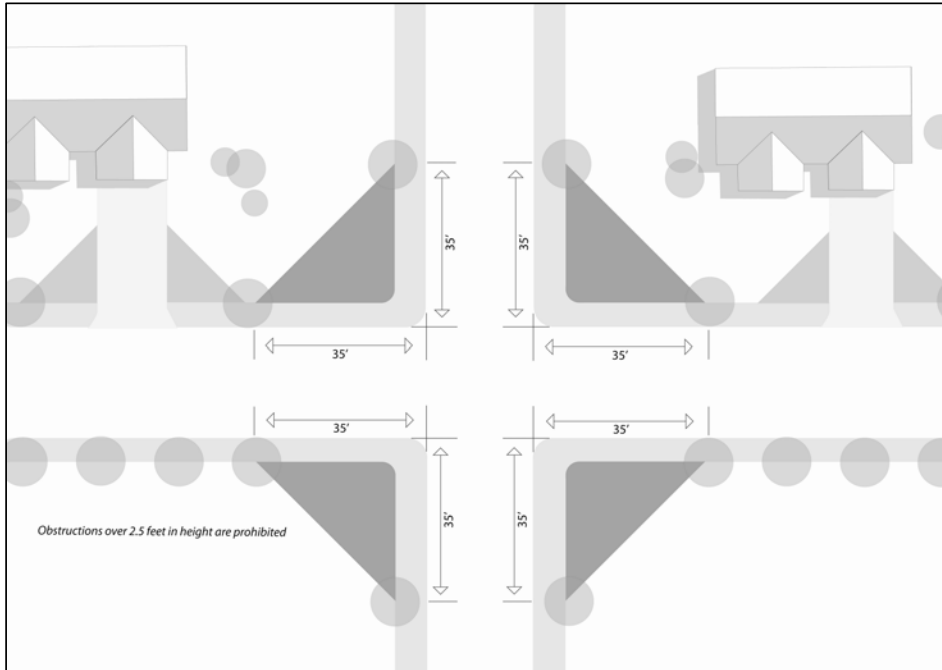


Figure 3-3. Sight Distance at Intersections.

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The above provision shall also apply to lots on sharp curves of streets, where, in the opinion of the Police Chief, Town Engineer or Superintendent of Public Works, sight distances are impaired. In such cases, the thirty-five-foot distance shall be measured from the outermost point on the curve.

16-30.060 - Child Play Structures/Sports Courts

- A. **Purpose.** This Section provides regulations for play structure and sports courts improvements that require permits from the Town.
- B. **Pre-application recommendations.** Prior to the installation of sports courts, play equipment or structures, or similar improvements, applicants should consult Town Staff regarding the design of such facilities. Applicants are advised to provide informal noticing to neighbors about proposed plans before an application is submitted to the Town and prior to construction, to prevent potential problems during public review.
- C. **General.** Sports courts, play structures and similar improvements shall not be located on or over public utilities or easements of record without express written permission from the easement holder(s).

D. Review and permitting. The following items require Site Plan and Architectural Review in compliance with Section 16-52.020 and Building Permits.

1. A sports court, only when accompanied with the items listed below.
 - a. Fences or walls over forty-two inches in height.
 - b. Exterior lighting poles or mounts over forty-two inches in height.
 - c. Non-portable (fixed in place) basketball standards or other similar structures.
2. Non-portable playhouses, play structures, or secure playground equipment (such as swings and seesaws) on residential property, on public property subject to regulation by the Town, on private school property, or at a commercial child day-care center.

E. Site Plan and Architectural Review exceptions. The following items do not require Site Plan and Architectural Review but do require Building Permits:

1. Fences or walls forty-two inches or less in height.

Flat surface work, including tennis and basketball court surfaces, if constructed on top of a deck that is more than thirty inches above grade.

16-30.070 - Lighting

General lighting design and development shall comply with the following standards:

- A. Exterior lighting shall not invade the privacy of other properties, or produce glare or light pollution; yet shall provide adequate illumination for safety and security purposes.
- B. All proposed exterior lighting shall be shielded downlighting.
- C. All skylights shall be bronzed or tinted and shall not utilize frosted glass, and no lights shall be placed in or directed up into the wells.
- D. Baffles, shields or other structural elements may be required to limit light pollution from exterior lights and skylights.

16-30.080 - Recyclable Materials Collection and Loading

The design and location of all collection and loading areas for recyclable materials shall comply with the requirements of Municipal Code Chapter 16C, also known as the Recyclables Collection Area Ordinance.

16-30.090 - Storage and Debris Boxes

- A. Purpose.** The purpose of this Section is to regulate the placement of storage and debris boxes on public and private property.
- B. General.** Site Plan and Architectural Review (Section 16-52.020) approval shall be obtained for any storage or debris box not associated with an active Building Permit. In addition, an Encroachment Permit shall be obtained if the storage or debris box is not associated with an active Building Permit and is located on public property.
- C. Site Plan and Architectural Review exceptions.** Storage or debris boxes are exempt from the Site Plan and Architectural Review (Section 16-52.020) and Encroachment Permit process as long as the following criteria are met:
1. The storage or debris box is associated with construction on a property for which there is an active Building Permit.

Debris boxes shall be on private property and off the street, unless there is no practical location for the debris box off-street as determined by the Director.
 3. Storage boxes in all cases shall be located on private property and off the street.

16-30.100 - Submerged and Partially Submerged Land

- A.** Wholly submerged lands, and underwater portions of lands that are partially submerged, shall be considered conservation areas subject to the regulations of the M (Marine) zone (Section 16-25), and of the San Francisco Bay Conservation and Development Commission (BCDC).
- B.** The area of such lots that is below the mean high tide line shall not be used in the determination of gross lot area, minimum lot area, lot area per dwelling unit, lot coverage, or any other land and structure regulation of the zone in which it is located. See Table 2-2 in Section 16-21.040 (Residential Zones Development Standards) for an exception.
- C.** Land use changes in submerged and partially submerged land as allowed by Subsection 16-25.030.B (Uses Permitted with a Tidelands Permit in the M Zone) shall require Tidelands Permit review in compliance with Section 16-52-080 (Tidelands Permit).

16-30.110 - Public Utility Lines

- A. Public utility lines requirements.** Public utility distribution lines, both overhead and underground, are permitted in all zones, subject to obtaining normal permits (see Section 16-52.020 [Site Plan and Architectural Review]), except where routine maintenance and repairs on existing lines are required, in which case no Zoning Permit is required.
- B. Undergrounding of utilities.** The Town requires undergrounding of utility connections for new construction and for remodel of existing structures, in compliance with Municipal Code Chapter 12A (Underground Utility Districts--Extensions). The locations of new

power transmission lines are to be approved by the Town through Site Plan and Architectural Review (Section 16-52.020).

16-30.120 - Lot Legality and Coverage

A. Legality of lots and lot area requirements

- 1. Legality of lots required for improvement.** No building or structure shall be constructed on a lot that is not legally recognized. The purpose of this provision is to prevent the construction of improvements on lots that have been illegally subdivided or otherwise illegally created. This provision does not apply to improvements on any of the following:
 - a. A lot created by a valid recorded subdivision map;
 - b. A legal lot of record, provided that the lot is not subject to merger provisions of the State Subdivision Map Act;
 - c. A lot divided and conveyed by valid deed, written contract of sale, or similar means, executed prior to June 24, 1964 (when the Town's Subdivision Ordinance was adopted), provided that the lot is not subject to merger provisions of the State Subdivision Map Act;
 - d. A lot recognized by a recorded certificate of compliance wherein all conditions (if any) of said certificate of compliance are satisfied.
- 2. Lot area requirements.**
 - a. Newly created lots shall have not less than the minimum area required by the land and structure regulations for the zone in which they are located. Any lot on which dwelling units are proposed shall also comply with any minimum lot area per unit requirement of its zone.
 - b. No existing lot shall be reduced in area so as to be smaller than required by this Zoning Ordinance, nor shall it be divided to create lots smaller than required by this Zoning Ordinance; if already smaller in dimension or area, it shall not be further reduced or divided.
- 3. Water and sewer requirements.** Newly-created lots and unimproved lots shall be served for domestic purposes by the public water system, or in accordance with Municipal Code Chapter 13F (Water Well Construction and Use); and by the public sewer system unless specifically exempted by the Council.

B. Lot coverage.

1. Lot coverage measures the proportion of a lot that is covered by structures. Lot coverage limits help to promote the aesthetic qualities of spaciousness and privacy. Lot coverage limits can also help reduce excessive run-off and help provide usable yard spaces by restricting the horizontal overbuilding of properties. In traditional zones (R-1, R-1-B, R-2, R-3, RO), the percentage of any lot that may be covered by structures is specified in the land and structure regulations for that zone (see Article II [Zones and Allowable Uses]). Lot coverage in planned developments is usually established by the Precise Development Plan or associated document.
2. Lot coverage is calculated by dividing the area occupied by the exterior limits of all structures exceeding three feet in height above the natural or finished ground surface, whichever is lower, by the total lot area, and multiplying by one hundred.
3. Lot coverage shall include buildings, accessory buildings, and carports; one-half the area of all decks higher than three feet above grade; cantilevered elements, porches, canopies, chimneys, fire escapes, balconies, and similar features that are higher than three feet above grade; and eaves that project more than four feet.
4. Lot coverage shall not include the area of uncovered and unenclosed off-street parking spaces, walks, patios, in-ground swimming pools or pools that do not extend more than three feet above grade, uncovered decks three feet or less above grade, landscape features, and eaves projecting four feet or less.

16-32 Parking and Loading Standards

Sections:

- 16-32.010 - Purpose
- 16-32.020 - Applicability
- 16-32.030 - General Parking Regulations
- 16-32.040 - Number of Parking Spaces Required
- 16-32.050 - Disabled/Handicapped Parking Requirements
- 16-32.060 - Bicycle Parking
- 16-32.070 - Motorcycle Parking
- 16-32.080 - Parking Design and Development Standards
- 16-32.090 - Loading Berths
- 16-32.100 - Multiple Uses
- 16-32.110 - Change in Use - Additions and Enlargement
- 16-32.120 - In Lieu Payments

16-32.010 - Purpose

The requirements in Section 16-32 are intended to ensure that no building or structure shall be constructed, modified, remodeled or changed in use allowed unless spaces for parking and/or truck loading and unloading are permanently provided and maintained for the benefit of residents, employees, customers and visitors, within or outside of buildings or in a combination of both, in compliance with all the requirements of Section 16-32. The Town discourages providing parking in excess of that required by the standards herein except where good cause can be demonstrated.

16-32.020 - Applicability

Each land use and structure, including a change or expansion of a land use or structure, shall provide continuously maintained off-street parking and loading areas in compliance with Section 16-32. A land use shall not be commenced and a structure shall not be occupied until the improvements required by Section 16-32 are satisfactorily completed.

16-32.030 - General Parking Regulations

A. Location.

1. **Parking.** The required parking shall be provided on site, except that required parking may be provided on another lot providing that the lot is in a commercial zone within the Town and is reasonably convenient to the subject lot, as determined and approved by the Review Authority.

If the building, structure, use, or improvement requiring parking space is located on one lot and the required parking is on another lot, partially or wholly, then one of the following shall apply:

- a. There shall be recorded with the county recorder of Marin County a covenant by the owner or owners of such lots for the benefit of the Town, in a form approved by the Town, that the owner or owners will continue to maintain the required number of parking spaces so long as the building, structure, use or improvement is maintained within the Town. The covenant shall stipulate that the title to and right to use the lot or lots upon which the parking spaces are to be provided shall be subservient to the title to the premises upon which the building has been or is to be erected and that it is warranted that such lot or lots are not and will not be made subject to any other covenant or contract for use without prior written consent of the Town.
 - b. The Town may permit required parking spaces to be secured by a lease agreement. The terms of any such lease agreement shall be reviewed and approved by the Town prior to establishment of the use to determine whether the provisions of Section 16-32 are satisfied. A copy of any such lease shall be maintained in the files of the Town. It shall be understood that the loss of required parking spaces secured by such method shall be valid cause for revocation of a Conditional Use Permit, or other Zoning Permit, allowing such use.
2. **Loading.** The required loading shall be permanently available, marked, and maintained for loading purposes for the use it is intended to serve. Loading spaces shall be located as required in Section 16-32.090 (Loading Berths).

B. Recreation vehicle, trailer and truck parking.

1. It is unlawful for any person to place, keep or maintain, for dwelling purposes on any property, any travel trailer, automobile, truck, recreation vehicle, camper, boat or other temporary or movable facility (excluding mobile homes).

Parking or storage of trucks having gross weights of less than five thousand pounds (two and one-half tons), trailers, boats and campers for periods in excess of seventy-two hours is permitted without a Conditional Use Permit in accordance with Section 16-52.040 (Conditional Use Permit) in completely enclosed structures or when not plainly visible from any public right-of-way.

3. Public agency or utility company vehicles for emergency responders on official business or when assigned by the agency or company to an employee as a “company car” may be kept or placed in residential zones.

- C. Parking log and map.** The Town may maintain a log and map of all parking lots in commercial zones, noting the buildings and/or uses assigned to each. However, it shall be the responsibility of the property owner and/or applicant to demonstrate the availability and adequacy of parking for a use or building.

16-32.040 - Number of Parking Spaces Required

- A. Parking requirements.** The minimum number of parking stalls established in Subsection B. below shall be required to serve the uses or buildings listed. The ratios listed shall apply to normal occupancy densities and uses. Higher or lower ratios may be used for other than normal occupancy densities and uses, availability of public transportation and other special conditions, as determined by the Review Authority.
- B. Minimum number of parking stalls.** It is the intent of the Town that parking areas be adequate but not excessive. When units of measurement determining the number of required parking spaces result in the requirement of a fractional space, any fraction of over one-half shall be rounded up to the next parking space. In the case of any use that is not specifically mentioned in Table 3-1 below, the provisions for a use that is so mentioned and is similar, or as determined by the Director if no similar uses are mentioned in Table 3-1, shall apply, with the Review Authority having final approval authority.

**TABLE 3-1
MINIMUM NUMBER OF PARKING STALLS**

General	
Single-family, two-family, or multifamily dwelling units.	1.5 spaces per dwelling unit, with a minimum of 2 required
Bed and Breakfast Inn	One for each guest room plus 2 covered spaces for resident family
Place of assembly	One for each four seats of maximum seating capacity; or one for each forty square feet of assembly area, whichever is more
Restaurants	One for each four seats of maximum seating capacity; for restaurants with no or nontraditional seating, 1 per 60 sq.ft. of the floor area (less kitchen and service area); bars: 1 per 30 sq.ft. of public (non-service area) floor area
Retail sales	1 for each 250 sq.ft. of gross floor area
Offices, banks	1 for each 300 sq.ft of net floor area, excluding non-occupiable areas such as mechanical area, corridors, toilets, and the like
Real estate offices	1 for each 250 sq.ft. of gross floor area
Medical	
Medical and dental offices, clinics, labs	1 for each 250 sq.ft. of gross floor area
Extended care convalescent hospitals, nursing homes	1 per each 4 patients, plus 1 for each two employees on the maximum shift
Services	
Self-service laundry and dry cleaning	1 for each three washing machines
Dry cleaning and laundry, pickup	3 spaces
Beauty shops	2 per operator station
Barber shops	1 per barber chair
Massage therapy	1 for each 250 sq.ft. of gross floor area
Repair services	1 for each 600 sq.ft. of working area, three minimum
Day spa, fitness center or health club	1 for each 250 sq.ft. of gross floor area
Nursery or garden center	1 for each 250 sq.ft. of gross floor area
Kennel or animal boarding facility	1 for each 400 sq.ft. of gross floor area
Animal hospital	1 for each 300 sq.ft. of gross floor area
Service station	5 minimum, 1 of which shall be large enough to accommodate a towing vehicle
Employee parking	In addition to the clientele parking listed above for service uses, and for other bulk storage, wholesale, packing, fabricating, processing, and similar uses, 1 parking stall shall be provided for each 1.5 employees on the maximum working shift

**TABLE 3-1
MINIMUM NUMBER OF PARKING STALLS**

Hotel, motel, rooming or boarding house	1 per guest room plus 1 space for each 2 employees on the maximum working shift
Hospital, sanitarium, rest home	One for each four beds plus one space for each two employees of the maximum shift
Harbor or marina	1 for each 2 berths, slips, or moorings except that none are required for berths reserved for visiting boats
Educational, child care, libraries, exhibition	
Child day-care centers	3 minimum, plus 1 for each 10 children over the first 15
Libraries	1 for each 500 sq.ft. of gross floor area
Exhibition spaces, museums	1 for each 100 sq. ft. of gross floor area open to the public
Adult education	1 for each 4 seats of maximum session

16-32.050 - Disabled/Handicapped Parking Requirements

Parking spaces for the disabled shall be provided in compliance with the Federal Accessibility Guidelines, and/or California Code of Regulations Title 24, as applicable. Parking spaces required for the disabled shall count toward compliance with the number of off-street parking spaces required by Section 16-32.040 (Number of parking spaces required).

16-32.060 - Bicycle Parking

For all uses except single-family and two-family dwellings, bicycle racks or stands shall be provided at the rate of one bicycle per fifteen required parking stalls. Bicycle racks or stands shall be located off-street so as to avoid undue interference with pedestrians and vehicular traffic, and shall have adequate provision for secure locking of bicycles.

16-32.070 - Motorcycle Parking

Motorcycle parking shall be provided for all commercial uses at a rate of one space per twenty-five required parking stalls.

16-32.080 - Parking Design and Development Standards

- A. The layout of parking stalls, loading berths, parking aisles, landscaping, lighting and other required information shall be submitted with the application for the applicable land use permits and shall comply with all the requirements specified below, which shall be completed prior to occupancy.
1. The required parking stalls, loading berths and parking aisles may not be located on any street right-of-way;

The required parking stalls, loading berths and parking aisles, if outdoors, may be located on the required side and rear setbacks, and within the required front setbacks up to three feet from the street right-of-way;
 3. Each parking stall and loading berth shall have vehicular access to the street, accessway, or alley, without passing over other parking stalls;

4. Each parking stall shall have vehicular access to the street without backing into it or another stall, except where conditions of terrain or siting in the case of single- and two-family dwellings makes this infeasible, as determined by the Review Authority. Access driveways shall not be arranged so as to unduly increase hazards to traffic or pedestrians;
 5. Each parking stall, aisle and driveway shall be graded, drained and surfaced so as to prevent dust, mud or standing water, to the satisfaction of the Town Engineer. For non-residential lots and uses, all parking stalls, aisles, circulation directions, small car spaces, pedestrian spaces, no-parking spaces and the like shall be clearly marked with durable traffic paint. Raised wheel stops or similar devices acceptable to the Town Engineer, shall be provided to protect adjacent walks, fences, walls, landscaping and the like but shall not be installed in locations that may unduly increase hazards to pedestrians, such as between parking stalls;
 6. Landscaping, including trees and shrubs for shading and visual buffering, shall be required and shown as part of the parking layout. Large paved areas shall be given visual relief by the interspersion of landscaping within the paved area, as well as around the perimeter. Potentially unsightly areas such as trash storage shall be screened from public view and other properties by opaque fences or walls. Landscaping shall be water-conserving types and shall be properly irrigated and maintained. Defective or dead landscaping shall be promptly replaced;
 7. Sufficient lighting shall be provided to protect the public in a parking area during the time it is accessible to the public after daylight; glare shall be shielded from other properties.
- E. Each parking lot stall and aisle shall comply with the minimum dimension requirements in Figure 3-4, Figure 3-5, and Table 3-2.

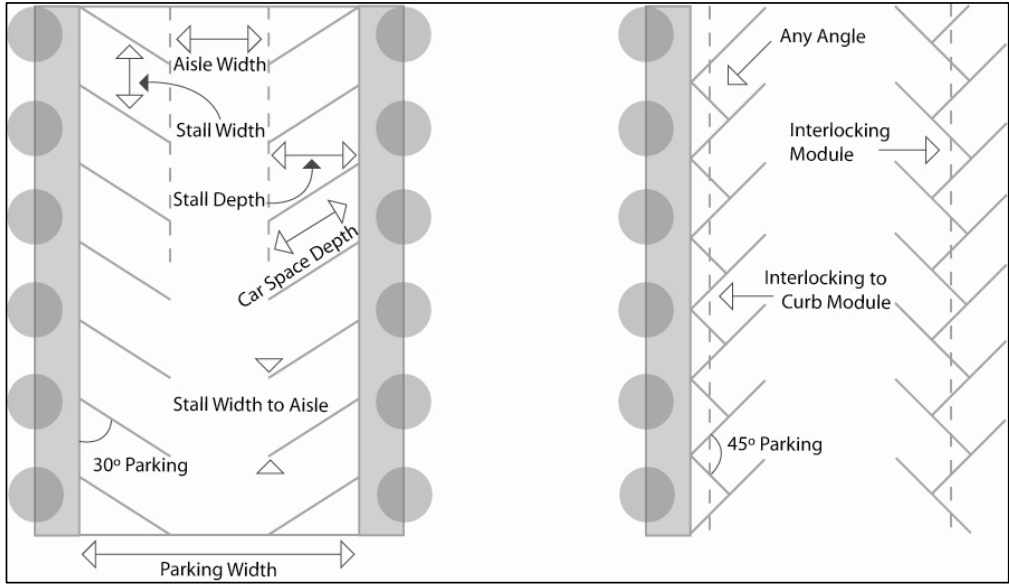


Figure 3-4. Parking Dimensions Diagram, 30 and 45 degrees

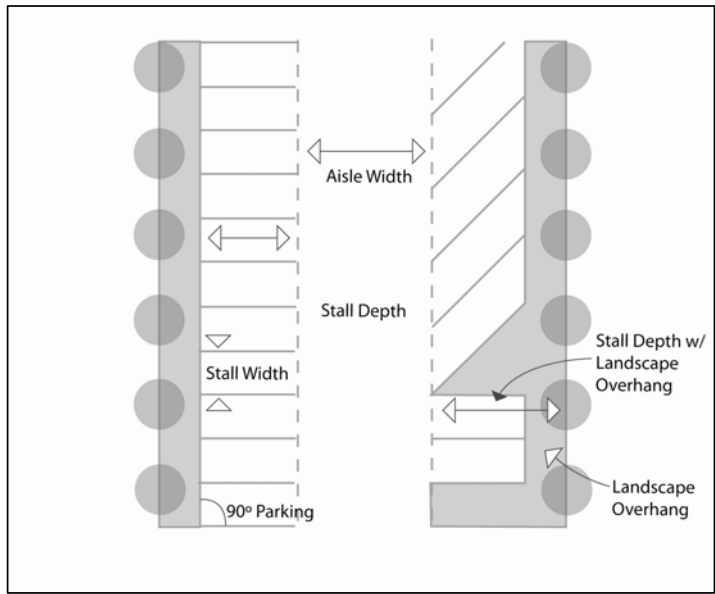


Figure 3-5. Parking Dimensions Diagram, 90 degrees

For parking spaces constrained by walls or other physical barriers on one side, one foot shall be added to the width required in Table 3-2, and for parking spaces

**TABLE 3-2
PARKING DIMENSIONS DIAGRAM [16-5.8.13]**

Angle in Degrees	Stall Width	Aisle Width	Stall Depth	Car Space Depth	Stall Width to Aisle	Module Wall-to-Wall	Module Interlock	Stall Depth w/ Landscape Overhang
	A	B	C	D	E	F	G	H
Standards Size Stalls								
0	8.5	12	8.5	22	22.0	29.0	29.0	29.0
30	8.5	12	16.4	18	17.0	44.7	37.4	15.4
35	8.5	12	17.3	18	14.8	46.6	39.6	16.2
40	8.5	12	18.1	18	13.2	48.2	41.7	16.8
45	8.5	12	18.7	18	12.0	49.5	43.5	17.3
50	8.5	14	19.3	18	11.1	52.5	47.0	17.7
55	8.5	16	19.6	18	10.4	55.2	50.4	18.0
60	8.5	18	19.8	18	9.8	57.7	53.4	18.1
65	8.5	20	19.9	18	9.4	59.8	56.2	18.1
70	8.5	22	19.8	18	9.0	61.6	58.7	18.0
90	8.5	24	18.0	18	8.5	60.0	60.0	16.0
Handicapped Stalls								
30	14.0	12	21.1	18	28.0	54.2	42.1	20.1
45	14.0	12	22.6	18	19.8	57.2	47.3	21.2
60	14.0	18	22.6	18	16.2	63.2	56.2	20.9
90	14.0	24	18.0	18	14.0	60.0	60.0	16.0

constrained on both sides, two feet shall be added to the width required in Table 3-2.

16-32.090 - Loading Berths

Off-street loading spaces shall be provided as required by this Section. The Director may modify these requirements if the Director first determines that the operating, shipping, and delivery characteristics of the use do not require the number or size of loading berths as required by this Section.

- A. A minimum of one loading berth shall be required for each building or related group of buildings on a property containing more than five thousand square feet of floor area used for the storage, receipt, distribution, processing, or display of goods, materials or merchandise.
- B. Loading berths shall be no less than twelve feet by thirty-five feet wide with fourteen feet minimum height clearance.
- C. Loading berths shall be located off-street and arranged to avoid undue interference with parking, pedestrians, street traffic, and other properties. Berths may be open or covered.

16-32.100 - Multiple Uses

Parking required for multiple uses shall be the sum of the requirements for each individual use; provided that parking spaces required for one use or time may utilize the same spaces required for another use or time upon Commission approval, by means of appropriate conditions, of such dual parking. The Commission shall not grant such approval unless it is able to, and does, make the following findings:

- A. That the uses or times for which overlapping parking is being requested do not have overlapping hours of operations sufficient to result in a deficiency of parking spaces;
- B. That the parking lot in question is within a reasonable distance from the uses for which parking requirements are to be overlapped.

Failure to abide by the conditions of the approval shall be cause for revocation of such approval for all uses involved, regardless of previous approvals.

16-32.110 - Change in Use - Additions and Enlargement

Whenever on any lot or site there is a change in use, or increase in floor area or in the number of employees, or other unit of measurement specified above to calculate the number of required off-street parking spaces, then additional off-street parking spaces shall be provided on the basis of the increase in floor area or number of employees, or in such other applicable unit of measurement. The effects of additions, enlargements and changes in use shall be cumulative in regard to off-street parking requirements.

16-32.120 - In Lieu Payments

In lieu of furnishing the parking spaces required by the provisions herein, the Town may permit the requirements to be satisfied by the payment to the Town, prior to the issuance of the Building or Occupancy Permit, of a sum equivalent to the estimated normal current cost to the Town of providing required parking spaces to serve the contemplated uses. The amount of payment for each required parking space shall be fixed by the Council by resolution. An application for permission to make such in lieu payments shall be filed with the Town and set for public hearing before the Council within forty-five days of filing. The Council may waive all or part of the parking normally required, and require payment in lieu thereof and impose conditions when the facts demonstrate that granting the application:

- A. Will not result in an unreasonable burden on parking facilities serving the area in which the subject use is to be located;
- B. Will not materially adversely affect the use and enjoyment of property in the vicinity; and
- C. Will be consistent with the general purpose and intent of this Zoning Ordinance and the General Plan.

Article IV

Standards for Specific Land Use Activities

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16-40 Standards for Specific Land Uses

Section:

- 16-40.010 - Purpose and Applicability
- 16-40.020 - Exceptions for Detached Two-family Dwelling Unit
- 16-40.030 - Secondary Dwelling Unit
- 16-40.040 - Home Occupations
- 16-40.050 - Bed and Breakfast Inns (B&Bs)
- 16-40.060 - Seasonal Rental Units
- 16-40.070 - Child Day-Care Facilities
- 16-40.080 - Emergency Shelters

16-40.010 - Purpose and Applicability

- A. Purpose.** The provisions of Section 16-40 provide site planning, development, and/or operating standards for certain land uses that are allowed by Article II (Zones and Allowable Land Uses) within individual or multiple zones, and for activities that require special standards to mitigate their potential adverse impacts.
- B. Applicability.** The land uses and activities covered by Section 16-40 shall comply with the provisions of the Sections applicable to the specific use, in addition to all other applicable provisions of this Zoning Ordinance.
- 1. Where allowed.** The uses that are subject to the standards in Section 16-40 shall be located only where allowed by Article II (Zones and Allowable Land Uses).

Development standards. The standards for specific uses in Section 16-40 supplement and are required in addition to those in Articles II (Zones and Allowable Land Uses) and III (General Development Standards and Parking Standards).

- a. The applicability of the standards in Section 16-40 to the specific land uses listed is determined by Article II (Zones and Allowable Land Uses).
- b. In the event of any conflict between the requirements of Section 16-40 and requirements of Articles II (Zones and Allowable Land Uses) or III (General Development Standards and Parking), the requirements of Section 16-40 shall control.

16-40.020 - Exceptions for Detached Two-family Dwelling Unit

This Section provides exceptions for detached two-family dwelling units, as defined in Article X (Definitions), where allowed by Article II (Zones and Allowable Land Uses).

- A. General.** Attached two-family dwelling units primarily exist in the R-2 zone. The R-2 zone is located exclusively in the Old Tiburon/Lyford's Cove neighborhood. This

neighborhood was created by a subdivision in the nineteenth century and generally has been characterized by densely developed small lots, steep slopes, narrow winding streets, and inadequate parking.

Attached two-family dwellings are, and have historically been, the predominant form of two-family dwelling allowed in the R-2 zone. An unregulated proliferation of detached two-family dwellings could substantially alter the existing development pattern and character of the Old Tiburon neighborhood in that detached units on small lots create a de facto single-family residential land use pattern on significantly smaller lots than is allowed in any single-family residential zone in the Town.

The Town recognizes that limited instances may occur where a detached two-family dwelling may be a preferable land development solution due to physical characteristics of an individual lot or due to the specific nature of a lot's immediately surrounding pattern of development.

- B. Purpose and authority.** The purpose of the detached two-family dwelling exception is to limit approval of such uses to lots where the applicant has successfully addressed land use compatibility issues and neighborhood impacts, and where the detached units will result in a demonstrably superior site planning solution as compared to a probable attached two-family dwelling.

The Review Authority may grant a detached two-family dwelling exception for any lot in the R-2 zone that meets the “minimum lot area” and “minimum lot area per dwelling unit” land and structure regulations for the R-2 zone as set forth in Section 16-21.040 (Residential Zones Development Standards).

- C. Application and fee.** The application for a detached two-family dwelling exception shall be filed in conjunction with a Site Plan and Architectural Review application for the project in compliance with Section 16-50.030 (Application Preparation and Filing), and shall be accompanied by the appropriate additional filing fee.

- D. Information required.** Lists of information and materials that are required for a complete detached two-family dwelling exception application are available from the Tiburon Planning Division. The Director may require additional information, plans, drawings, or other documents if needed to assist in making an informed decision on the application.

- E. Notice and hearing required.** A hearing as prescribed in Section 16-64 (Public Hearings) shall be held to consider every application for a detached two-family dwelling exception. Notice shall be given in compliance with Section 16-64.030 (Notice of Hearing).

- F. Criteria for review and approval.** The Design Review Board shall consider the following criteria prior to taking action on an application for a detached two-family dwelling exception:

1. The lot area is adequate to reasonably accommodate two detached units in a functional site layout that substantially meets the land and structure regulations of the R-2 zone;

Physical conditions exist on the lot that render impractical or difficult the construction of attached units; or the site planning superiority and land use compatibility benefits of detached units are clearly demonstrated for the lot;

3. Two dwelling units in two detached buildings would likely reduce visual, environmental, privacy or other impacts as compared to a probable attached two-family dwelling on the lot;
4. The permit history of the lot has been researched and provides no evidence of self-created hardship, self-created nonconformity, or other pattern of activity that would act to circumvent the purpose of this Section;
5. All vehicular access shall be convenient, shall comply with industry standards for ingress and egress, and shall not result in adverse impacts on neighboring properties and/or streets.

In conducting its evaluation of the criteria, the Review Authority shall also review the lot for evidence that its physical limitations are of such severity that a single-family dwelling may be the appropriate level of development for the lot, and shall consider any such evidence in its deliberations.

G. Required condition. The following condition shall be imposed on any approval for a detached two-family dwelling:

“Prior to issuance of a Certificate of Occupancy for the project, Owner shall record a deed restriction prohibiting future condominiumization or subdivision of the property for the duration that the Detached Two-Family Dwelling remains in existence. Said deed restriction shall be reviewed and approved by the Town Attorney prior to recordation, and following recordation, a recorded copy shall be transmitted to the Town for its permanent record.”

The Town finds this condition is necessary to avoid de facto upzoning of property and to protect the Town’s existing stock of rental housing.

H. Recommended conditions. The Review Authority shall consider the application of conditions to the approval of a detached two-family dwelling exception, including but not limited to the following:

- a. At least four on-site non-tandem standard-sized residential parking spaces shall be provided. No more than three of these spaces may be side-by-side, as viewed from any street open to use by the public;
- b. One unit shall be significantly smaller than the other; with a minimum sixty percent to forty percent ratio floor area split between the two units;
- c. No floor area exception shall be allowed for the project;
- d. No lot coverage variance shall be allowed for the project;

- e. No height variance shall be allowed for the project;
- f. No side yard or rear yard setback variances shall be allowed for the project.

I. Action by Review Authority. The Review Authority may approve, approve with conditions, or deny any application for a detached two-family dwelling exception. In taking its action, the Review Authority shall make findings based on evidence in the record. The burden rests with the applicant to convince the board that the project has met the criteria necessary for approval.

J. Appeal--Expiration--Reapplication

- a. The decision of the Review Authority may be appealed to the Council in compliance with the provisions of Section 16-66 (Appeals).
- b. Detached two-family dwelling exceptions shall expire and become null and void three years after the date of approval unless a Building Permit has been issued before the date of expiration.
- c. Following the denial of an application for a detached two-family dwelling exception, no application for the same or substantially the same exception shall be filed within one year of the date of denial unless the denial is made without prejudice.

16-40.030 - Bed and Breakfast Inns (B&Bs)

This Section establishes standards for the development and operation of Bed and Breakfast Inns (B&Bs), where allowed by Article II (Zones and Allowable Land Uses). The intent of these provisions is to ensure that compatibility between the B&Bs and any adjoining zone or use is maintained or enhanced.

- A. Permit requirement.** B&Bs are allowable in the zones and with the permit requirements determined by Articles II (Zones and Allowable Land Uses) and V (Zoning Permit Procedures).
- B. Site requirements.** Except for minimum lot size requirements, the proposed site shall conform to all standards of the applicable residential zone.
- C. Appearance.** The exterior appearance of the structure used for the B&Bs shall be outwardly indistinguishable from that of a single family residence.
- D. Limitation on services provided.** Service shall be limited to the rental of bedrooms or suites and meal/beverage service shall be provided for registered guests only. Separate/additional kitchens for guests are not allowed. No receptions, private parties, retreats, or similar activities, for which a fee is paid, shall be allowed.
- E. Occupancy by permanent resident required.** All B&Bs shall be occupied by at least one permanent resident.

- F. Signs.** Signs shall be installed/maintained in compliance with Municipal Code Chapter 16A (Signs).
- G. Fire safety.** A B&B shall comply with applicable Fire District regulations.
- H. Parking.** On-site parking shall be provided in compliance with Section 16-32 (Parking and Loading Standards). One parking space shall be provided for each guest room plus two covered spaces for the resident family.
- I. Business license.** A B&B shall have a valid business license from the Town.

16-40.040 – Seasonal Rental Units

This Section establishes standards for the seasonal rental of a dwelling unit in any residential zone. The intent of these provisions is to ensure compatibility between seasonal rental units and adjoining zones or uses.

General criteria. Prior to its establishment and/or operation, a seasonal rental unit shall be required to obtain a Home Occupation Permit, tailored to seasonal rental purposes, pursuant to the requirements of Section 16-52.110, including Subsections D & F, except that the following general criteria shall be used instead of the general criteria and operating standards contained in Section 16-52.110 (B & C):

- 1. Signs.** Signs shall be installed/maintained in compliance with Municipal Code Chapter 16A (Signs).
- 2. Parking.** On-site parking shall be provided as required for a single-family dwelling unit in compliance with Section 16-32 (Parking and Loading Standards).
- 3. Fire safety.** The seasonal rental unit shall comply with applicable Fire District regulations.
- 4. Outdoor space.** The use of outdoor yard areas, open decks, pools and the like shall not result in the production of excessive off-site noise, odor and other external disturbances. Said determination to be based on the judgment of the Director. Approval of the seasonal rental unit may be conditioned upon the installation of screening, fencing, plantings and/or other such installations and conditions to help ensure compatibility of the seasonal rental unit with the surrounding area.
- 5. Limitations.** In no event shall the owner of the seasonal rental unit or their agent rent an individual room in the seasonal rental unit to a person, family, or other group of persons.
- 6. Business license.** A seasonal rental unit shall have a valid business license from the Town.

16-40.050 - Child Day-Care Facilities

- A. Applicability.** Where allowed by Article II (Zones and Allowable Land Uses) child day-care facilities shall comply with the standards of this Section. As provided by State law (Health and Safety Code Sections 1596.78, et seq.), small and large family day-care homes are allowed within any single-family residence located in a residential zone.

These standards apply in addition to the other provisions of this Zoning Ordinance and requirements imposed by the California Department of Social Services (DSS), or successors thereto. DSS Licensing is required for all child day-care facilities. A DSS License for a child day-care facility shall be obtained and evidence of the license shall be presented to the Department prior to establishing any child-care facility.

- B. Definitions.** Definitions of large and small family day care facilities regulated by this Section can be found in Article X (Definitions) under “Child day-care facilities” and “Child day-care center”.

- C. Child day-care centers (15 or more children).** Child day-care centers are allowed in the zones as set forth in Article II (Zones and Allowable Land Uses), subject to Conditional Use Permit approval in compliance with Section 16-52.040 (Conditional Use Permit), and all of the standards in Subsection D, below.

- D. Standards for child day-care facilities.** Child day-care facilities are subject to the following standards:

- 1. Standards for a large family day-care home.** As allowed by Health and Safety Code Sections 1597.46 et seq., a large family day care home shall be approved if it complies with the following standards:

- a. Location requirements.** No residential property shall be bordered on more than one side by a large family day-care facility. The Director shall also determine that the proposed facility will not result in an over concentration of child-care facilities to the detriment of the neighborhood.

- b. Passenger loading area.** A drop-off and pick-up area shall be established to ensure that children are not placed at risk and street traffic is not unduly interrupted. The driveway may serve as a drop-off area, provided that the driveway is not required to remain available for resident or employee parking.

- c. Parking.** Adequate off-street parking shall be available to accommodate residents of the site and all employees, staff and/or volunteers engaged at the child-care facility. On-street parking may be substituted for the required off-street parking for employees and/or volunteers if the applicant can demonstrate to the satisfaction of the Director that there is adequate on-street parking for this purpose in the immediate area without creating a parking problem for adjacent uses.

- d. Signs.** All signs shall be in compliance with Municipal Code Chapter 16A

(Signs).

2. **Standards for child day-care centers.** The following standards apply to child day-care centers in addition to the standards in Subsection D.1, above.
 - a. **Fencing.** A six-foot high fence or wall shall be constructed on all property lines or around the outdoor activity areas, except in the front yard or within a traffic safety visibility area. All fences or walls shall provide for safety with controlled points of entry in compliance with 16-30.040 (Fences and Walls).
 - b. **Outdoor lighting.** On-site exterior lighting shall be allowed for safety purposes only, shall consist of low wattage fixtures, and shall be directed downward and shielded, subject to the approval of the Director.
 - c. **Swimming pools/spas prohibited.** No swimming pool/spa shall be installed on the site after establishment of the child day-care center, due to the high risk and human safety considerations. Any pool/spa existing on the site prior to application for approval of a child day-care center shall be removed prior to establishment of the use, unless the Director determines that adequate, secure separation exists between the pool/spa and the facilities used by the children.

16-40.060 - Emergency Shelters

- A. **Applicability.** Where allowed by Article II (Zones and Allowable Land Uses) emergency shelter facilities shall comply with the standards of this Section.
- B. **Performance Standards.** An Emergency Shelter shall meet the following development and performance standards:
 1. On-site management and on-site security shall be provided during hours when the emergency shelter is in operation.

Adequate external lighting shall be provided for security purposes. The lighting shall be stationary, directed away from adjacent properties and public rights-of-way, and of intensity compatible with the surrounding area.
 3. The development may provide one or more of the following specific common facilities for the exclusive use of the residents and staff:
 - a. Central cooking and dining room(s).
 - b. Recreation room.
 - c. Counseling center.
 - d. Child care facilities.

- e. Other support services.
4. Parking and outdoor facilities shall be designed to provide security for residents, visitors, employees and the surrounding area.
 5. A refuse storage area shall be provided that is completely enclosed with masonry walls not less than five feet high with a solid-gated opening and that is large enough to accommodate a standard-sized trash bin adequate for use on the parcel, or other enclosures as approved by the Review Authority. The refuse enclosure shall be accessible to refuse collection vehicles.
 6. The agency or organization operating the shelter shall comply with the following requirements:
 - a. Temporary shelter shall be available to residents for no more than six months. No individual or household may be denied emergency shelter because of an inability to pay.
 - b. Staff and services shall be provided to assist residents to obtain permanent shelter and income.
 - c. The provider shall have a written management plan including, as applicable, provisions for staff training, neighborhood outreach, security, screening of residents to insure compatibility with services provided at the facility, and for training, counseling, and treatment programs for residents.
 7. No emergency shelter shall be located within three hundred feet of another emergency homeless shelter site.
 8. The facility shall be in, and shall maintain at all times, good standing with Town and/or State licenses, if required by these agencies for the owner(s), operator(s), and/or staff on the proposed facility.
 9. The maximum number of beds or clients permitted to be served (eating, showering and/or spending the night) nightly shall not exceed ten persons.

16-42 Wireless Communications Facilities

Section:

- 16-42.010 - Purpose
- 16-42.020 - Definitions
- 16-42.030 - Applicability
- 16-42.040 - Permit Requirements for Wireless Communication Facilities
- 16-42.050 - Amateur Radio Antennas
- 16-42.060 - Correction of Interference Problems
- 16-42.070 - Removal of Discontinued Facilities Required
- 16-42.080 - Nonconforming Facilities
- 16-42.090 - Maintenance of List and Map of Wireless Communication Facilities

16-42.010 - Purpose

The purpose of Section 16-42 is to establish a comprehensive set of zoning requirements for antennas and wireless communication facilities (hereinafter “WCFs”). These regulations are intended to provide for the managed location and development of antennas and WCFs in a manner that recognizes and enhances the community benefits of wireless communication technology and reasonably accommodates the needs of citizens and wireless communication service providers in accordance with federal and state rules and regulations, while at the same time protecting neighbors from potential adverse impacts of such facilities, preserving the visual and other characteristics of the established community and the natural beauty of hillsides and ridgelines.

16-42.020 - Definitions

The technical terms and phrases used in Section 16-42 are defined in Article X (Definitions) under "Wireless Communications Facilities."

16-42.030 - Applicability

Exemptions. The requirements imposed by this Section shall not apply to certain antennas or antenna structures, as set forth in this Subsection, unless otherwise specified herein. Each such exempt facility listed in this Subsection shall fully comply with any other applicable requirements of the Municipal Code to the extent not specially exempted in this Subsection, including but not limited to the California Building Code, California Electrical Code, California Plumbing Code, California Mechanical Code, and California Fire Code.

1. Direct broadcast satellite (DBS) antennas and multipoint distribution services (MDS) antennas measuring one meter or less in diameter (or diagonal measurement);

Television broadcast system (TVBS) antennas provided: (1) the antenna is located entirely on and/or above the subject property; and (2) no portion of any ground-mounted antenna is within a required front yard setback for the main building, in

front of the main building, within a required side yard setback of a corner lot, or adjacent to a street. All TVBS antennas greater than three feet in height shall require Site Plan and Architectural Review and Building Permits in compliance with the Municipal Code for review of placement to ensure that maximum safety is maintained;

3. Satellite earth station (SES) antennas measuring two meters or less in diameter (or diagonal measurement) located on a property within any commercial office or public zone, provided that: (1) the antenna is located entirely on and/or above the subject property; and (2) no portion of any ground-mounted antenna is within a required front yard setback for the main building, in front of the main building, within a required side yard setback of a corner lot, or adjacent to a street. All SES antennas measuring more than one meter in diameter shall require Site Plan and Architectural Review and Building Permits in compliance with the Municipal Code for review of placement to ensure that maximum safety is maintained;
4. Antennas and antenna structures constructed by or for Federal Communications Commission (FCC)-licensed amateur radio operators shall require a Conditional Use Permit in compliance with Section 16-52.040 (Conditional Use Permits), Site Plan and Architectural Review if required under Subsection 16-52.020.B (Approval Required), and shall be subject to provisions of Section 16-42.050 (Amateur Radio Antennas), but shall not be subject to review under the Town of Tiburon Wireless Communication Facilities Standards;
5. A proposed facility shall be exempt from the provisions of this Section if and to the extent that rules and regulations of the FCC or the provisions of a permit issued by the California Public Utilities Commission (CPUC) specifically provide that the facility is exempt from Town regulation.

16-42.040 - Permit Requirements for Wireless Communication Facilities

A. Public notice of application filing. Within fifteen days after the filing of a Conditional Use Permit application for a WCF with the Town, the Town shall give written notice of such filing to all property owners within a six-hundred-foot radius of the proposed facility, to a newspaper of general circulation within Tiburon, and to the presidents or their designees for receipt of notices of each of the affected homeowners associations as determined by the Director. Notice of the filing of the application shall also be posted by the Planning Division on the Town's web site and on the public notice bulletin board outside Town Hall within fifteen days of the date of the filing of the application, and such notice shall remain in such location for a period of at least thirty days thereafter. For applications on land owned by a public agency other than the Town of Tiburon, written notice and a copy of the Town of Tiburon's WCF regulations shall be provided to the public agency within fifteen days of filing of the application.

B. Review and approval.

1. Any person who proposes to install or operate a WCF shall first obtain approval of a Conditional Use Permit in compliance with Section 16-52.040 (Conditional Use Permit), unless the facility is exempt from securing such permit under Section 16-

42.030 (Applicability). The Review Authority may approve a Conditional Use Permit for a WCF only upon making the finding that the project is consistent with this Section and is in substantial compliance with applicable requirements of the most current Tiburon Wireless Communication Facilities Standards adopted by resolution of the Town Council.

Any person who proposes to install or operate a WCF shall first obtain Site Plan and Architectural Review approval in compliance with Subsection 16-52.020 (Site Plan and Architectural Review), unless the facility is exempt from securing such permit under Section 16-42.030 (Applicability).

3. **Exceptions.** The Review Authority may grant an exception to any requirement of Section 16-42 or any mandatory standard contained within the Wireless Communication Facilities Standards upon making findings that: (1) strict compliance precludes the reasonable accommodation of the communication needs of the operator as set forth in federal and/or state rules and regulations; (2) there are no other feasible alternatives; and (3) either State or federal law requires the Town to issue the exception or the exception will serve the public interest despite the conflict with the mandatory standards.

C. Co-location. An applicant for a WCF may file a formal written request for waiver of the requirements for a Conditional Use Permit with the Director. It is the responsibility of the applicant to establish evidence in support of the waiver criteria required by this Section. The Director may waive the requirements for a Conditional Use Permit and instead require Site Plan and Architectural Review only for WCFs that meet the following criteria:

1. **Co-location.** The new facility or equipment is co-located on or adjoining an existing WCF;
2. **Preferred location.** The facility that is located on a property developed predominantly with commercial land uses;
3. **Stealth Design.** The WCF is designed or located in such a way that the facility is not readily recognizable as wireless communications equipment to an average person;
4. **Prior approval and compliance.** The existing WCF was subject to Conditional Use Permit approval and complies with the Town's policies and regulations; and
5. **Existing environmental compliance.** The existing WCF has a certified environmental impact report or adopted negative declaration or mitigated negative declaration, and the existing facility has incorporated the required mitigation measures. The new equipment or structures does not constitute a substantial change in the project or new information as outlined in Public Resources Code Section 21166.

D. Length of permit--Mandatory review/renewal.

1. A Conditional Use Permit for a WCF approved on or after January 1, 2007 shall be valid for an initial period of ten years after final discretionary approval, unless a shorter duration is approved on the bases of public safety reasons or substantial land use reasons. At least ninety days prior to expiration of the ten-year period approval, the permit holder shall file an application for review/renewal of the WCF Permit. The permit holder shall be solely responsible for timely filing of, and for all costs associated with, the processing of applications for mandatory reviews/renewals.

A Conditional Use Permit for a WCF approved prior to January 1, 2007 shall be subject to the specific conditions of the permit with respect to duration and periodic mandatory review/renewal. At least ninety days prior to expiration of the permit, the permit holder shall file an application for review/renewal of the WCF Permit. The Review Authority shall conduct a public hearing for the purposes of verifying continued compliance with the findings and conditions of approval under which the application was originally approved, as well as compliance with other applicable provisions in the Municipal Code. Permit review/renewals are required every five years, unless a longer time period is approved by the Review Authority, or another time period is set forth in the permit conditions. The permit holder shall be solely responsible for timely filing of, and for all costs associated with, the processing of applications for mandatory reviews/renewals.

16-42.050 - Amateur Radio Antennas

- A. Amateur radio antennas and associated antenna structures shall be the minimum height and size necessary to reasonably accommodate the operator's communication needs, in accordance with FCC regulations as set forth in FCC order "PRB-1" and Section 97.15 of title 47 of the Code of Federal Regulations, and in accordance with California Government Code Section 65850.3, or the respective successor sections thereto.
- B. No portion of any amateur radio antenna, associated support structure, or related equipment shall overhang a property line that is not part of the subject site at any time.
- C. Retractable monopoles may be required for amateur radio antenna structures over thirty feet in height that are in or within three hundred feet of any residential zone, as set forth in Section 16-14.020 (Zoning Map and Zones). At times when not in operation, the monopole may be required to be retracted to the lowest elevation possible in order to maintain a safe clearance above any nearby building, accessory structure, overhead utility, landscaping and/or any other site improvements.
- D. No amateur radio antenna or facility shall be sited or operated in such a manner that it poses, either by itself or in combination with other WCFs, a potential threat to the public health. To that end, no facility or combination of facilities shall produce at any time power densities in any inhabited area that exceed the FCC's maximum permissible exposure (MPE) limits for electric and magnetic field strength and power density for transmitters or any applicable more restrictive standard subsequently adopted by the Town, county, State

or federal government. Absolute compliance with FCC Office of Engineering Technology (OET) Bulletin 65 or any successor document thereto, is mandatory, and any violation shall be grounds for the Town to immediately terminate any permit granted hereunder, or to order the immediate service termination of any noncomplying facility within the Town.

16-42.060 - Correction of Interference Problems

To the extent allowed or required under applicable federal rules and regulations, the operator of a WCF shall correct interference problems experienced by any person or entity with respect to such person's or entity's equipment, including but not limited to television, radio, computer, and telephone reception or transmission, when such interference is caused by the WCF. If a federal agency with jurisdiction over such matters finds that a WCF is operating in violation of federal standards regarding interference, the operator shall bring the WCF into conformance with such standards within the conformance period established by the federal agency. In the event that the federal agency does not establish a conformance period, the operator shall bring the WCF into conformance within thirty days of notification by the federal agency. The operator shall provide the Director with a copy of any notice of such violation issued by any federal agency within fifteen days of receipt. Any violation of the provisions of this Section shall be grounds for the Town to terminate any permit granted hereunder and/or to order the immediate termination of service from the WCF. The operator shall be responsible for all labor and equipment costs for determining the source of the interference, all costs associated with eliminating the interference, (including but not limited to filtering, installing radio frequency cavities, installing directional antennas, powering down systems and engineering analysis), and all costs arising from third party claims against the Town attributable to such interference.

16-42.070 - Removal of Discontinued Facilities Required

Antennas, support structures, and related equipment shall be removed within one hundred eighty days of the discontinuation of the use of a WCF and the site shall be restored to its previous condition. The service provider shall provide the Director with a notice of intent to vacate the site a minimum of thirty calendar days prior to vacation. For facilities located on Town property, this requirement shall be included in the terms of the lease, license, or other such agreement. For facilities located on other sites, the property owner shall be responsible for removal of all antennas, structures, and related equipment within one hundred eighty days of the discontinuation of the use. A monetary security, in a form and amount acceptable to the Town attorney, shall be required as a guarantee for WCF removal and site restoration.

16-42.080 - Nonconforming Facilities

Any WCF in existence prior to December 2, 2005 that is nonconforming to the provisions of this Section 16-42 may continue to be used. Such nonconforming facilities may continue to be operated, repaired, and maintained but shall not be enlarged, expanded, relocated, or modified in any material manner, as determined within the reasonable discretion of the Director, without conforming to provisions of Section 16-42. Notification of nonmaterial modifications shall be provided within thirty days to the Review Authority by the Director.

16-42.090 - Maintenance of List and Map of Wireless Communication Facilities

The Town shall maintain a map and list of the location of all WCFs within the Town permitted under this Section and shall make this information readily available to the public through a combination of methods such as availability at the Department and posting on the Town's website. The map and list shall refer interested parties to the Department for additional information.

ARTICLE V

Zoning Permit Procedures

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16-50 Application Filing and Processing

Section:

- 16-50.010 - Purpose
- 16-50.020 - Authority for Land Use and Zoning Decisions
- 16-50.030 - Application Preparation and Filing
- 16-50.040 - Application Fees
- 16-50.050 - Initial Application Review
- 16-50.060 - Staff Evaluation and Report
- 16-50.070 - Story Poles

16-50.010 - Purpose

The provisions of Section 16-50 provide procedures and requirements for the preparation, filing, and initial processing of the Zoning Permit applications required by this Zoning Ordinance.

16-50.020 - Authority for Land Use and Zoning Decisions

Table 5-1 (Review Authority, below) identifies the review authority responsible for reviewing and making decisions on each type of permit, entitlement, or amendment, as well as the proper authority to administer appeals.

Table 5-1 - Review Authority

Type of Permit or Decision	Role of Review Authority ¹			
	Director	Design Review Board	Planning Commission	Town Council
Site Plan and Architectural Review		Decide		Appeal Action
Site Plan and Architectural Review (Minor Alterations)	Decide	Appeal Action		
Variance, Site Plan and Architectural Review-related		Decide		Appeal Action
Variance, Other			Decide	Appeal Action
Conditional Use Permit			Decide	Appeal Action
Condominium Use Permit			Decide	Appeal Action
Precise Development Plan			Recommend	Decide
Secondary Dwelling Unit Permit	Decide			Appeal Action
Zoning Ordinance Text Amendment ²			Recommend	Decide
Rezoning or Prezoning ²			Recommend	Decide

Table 5-1 - Review Authority

Type of Permit or Decision	Role of Review Authority ¹			
	Director	Design Review Board	Planning Commission	Town Council
Home Occupation Permit	Decide ³		Appeal Action ³	
Temporary Use Permit	Decide ³		Appeal Action ³	
Tidelands Permit (minor and incidental)	Decide		Appeal Action	
Tidelands Permit			Decide	Appeal Action
Minor changes to an approved project	Decide ⁴			
<p>Notes:</p> <ol style="list-style-type: none"> 1. "Recommend" means that the review authority makes a recommendation to a higher decision-making body; "Decision" means that the authority makes the final decision on the matter; "Appeal Action" means that the review authority may consider and decide upon appeals to the decision of an earlier decision-making body, in compliance with Section 16-66 (Appeals). 2. If the Planning Commission denies an application for a Precise Development Plan amendment, Zoning Text Amendment, Rezoning or Prezoning, that decision is final unless appealed to the Town Council. 3. The Director may refer any such application to the Planning Commission for review and action, in which case the Town Council will be the appeal body. 4. An appeal of the Director's decision shall be heard by the original project's Review Authority, whose decision shall be final. 				

16-50.030 - Application Preparation and Filing

A. Application procedures.

1. Applications for permits governed by this Zoning Ordinance shall be made on forms furnished by the Planning Division. The owner of the property for which any application is submitted, or the agent or authorized representative of the owner, shall file the application with the Division. Potential applicants are encouraged to consult with Division Staff prior to application.
2. Applications shall be full and complete, including all information required for the presentation of necessary facts for the permanent record and to assist in determining the merits of the application. Handouts and instructions listing submittal requirements shall be obtained from the Division.
3. The application shall be accompanied by a written statement of the property owner, or his/her legally appointed representative, agreeing that if the Town of Tiburon grants the approval, with or without conditions, and that action is challenged by a third party, the property owner/applicant will be responsible for defending against this challenge. The property owner/applicant shall also agree to defend, indemnify and hold the Town harmless from any costs, claims or liabilities arising from the approval, including, without limitations, any award of attorney's fees that might result from the third party challenge. The Town will impose this requirement as a condition to all project approvals or conditional project approvals.

- B. Subsequent filing of inconsistent application.** When an application has been filed for a lot, the subsequent filing of a different and inconsistent application for the same lot, or substantially the same lot, shall constitute a withdrawal of the original application and such original application shall not be further processed. Provided, however, that this Section shall not apply to the filing of incidental applications that are a part of, or necessary to, a pending application.
- C. Conformity with General Plan.** If the Director determines that a proposal is not in conformity with a quantified policy standard or standards established in the General Plan, the applicant shall be advised of the discrepancies in writing, and of the willingness of the Department to confer with the applicant to assist in bringing the material submitted into conformity. If the applicant does not desire to participate in such conference, and/or declines to revise the application, the Director shall not accept the application unless accompanied by an application for General Plan amendment. The decision of the Director may be appealed as provided in Section 16-66.020.C.2 (Appeal on Error).
- D. Applications outside scope of this Zoning Ordinance.** In cases where the Director considers the reasons and conditions as set forth on the application do not come within the scope of the provisions or procedures of this Zoning Ordinance, the applicant shall be so informed. If the application is thereafter filed and fees paid, the fact that the applicant was so informed shall be noted on the application. Acceptance of an application does not constitute an indication of approval.

16-50.040 - Application Fees

- A.** The Council shall, from time to time, by resolution, fix the amounts of fees for applications, permits, and appeals required or authorized by this Zoning Ordinance. Before accepting for filing any application herein mentioned, the Director shall charge and collect, or cause to be charged and collected, a fee in the amount so fixed.
- B.** The Council shall, from time to time, by resolution, fix the amount of fees for transcripts of public hearings to be charged when such a transcript is requested. The Director shall charge and collect a fee in the amount so fixed for a transcript of a public hearing.
- C.** Before accepting for filing any application herein mentioned, the Director may charge and collect the estimated cost of any special reports or consultant fees that may be required to process the application. Any actual cost that is more than the estimated cost collected shall be paid by the applicant prior to the issuance of the permit, and any collected estimated costs that exceed the actual costs shall be returned to the applicant at the time of issuance of the permit, or within sixty (60) days of permit issuance.
- D.** Any fees required in compliance with this Zoning Ordinance may be waived or reduced in compliance with fee waiver policies adopted by resolution of the Council.

16-50.050 - Initial Application Review

- A. Determination of completeness.** For development applications, the Town shall determine whether an application is complete or incomplete within thirty days following its receipt by the Town. The determination of completeness shall be based upon a list of submittal

requirements for each application available from the Planning Division. Applications that are deemed complete shall be processed, and a decision issued, within the time limits specified in Section 65940 of the California Government Code, where applicable. The Town may request the applicant to clarify, amplify, correct, or otherwise supplement the information required for the application, even after it is deemed complete.

- B. Incomplete applications.** If the Town determines that an application is incomplete, notice of the incompleteness shall be sent to the applicant along with a list specifying what materials or additional information is necessary to make the application complete. Applications which are deemed incomplete pending receipt of additional materials or information shall be deemed automatically withdrawn if such information has not been received within sixty (60) days following notice of incompleteness, unless a longer response time has been indicated in the notice of incompleteness, or unless a written request for additional time is granted by the Director.
- C. Appeal of Determination of Completeness.** Pursuant to Government Code Section 65943, any applicant may file a written appeal of the Director's determination on completeness of an application to the Planning Commission, whose decision shall be final. The Planning Commission shall hear and render a written decision on the appeal within sixty (60) calendar days of the appeal filing, unless the Town and applicant have mutually agreed upon a time extension. The filing fee for the appeal shall be collected as part of the application fee charged for the permit.
- D. Hearing.** Upon receipt of a complete application for which a hearing is required, the Director shall set a reasonable time and place for a hearing before the appropriate Review Authority and the hearing shall be held in compliance with the procedures and requirements set forth in this Article.
- E. Appeal from decision.** The decision of any Review Authority that has been issued but is not yet final (i.e., the applicable appeal period has not yet expired) may be appealed to the Review Authority holding action appeal authority for that type of application as set forth in Table 5-1, in accordance with the provisions of Section 16-66 (Appeals).

16-50.060 - Staff Evaluation and Report

- A. Staff evaluation.** The Department shall review each Zoning Permit application filed in compliance with this Article to determine whether it complies and is consistent with the provisions of this Zoning Ordinance, other applicable provisions of the Municipal Code, the General Plan, and any applicable Zoning Permit. Applications shall also be reviewed in compliance with Town of Tiburon Environmental Review Guidelines.
- B. Staff report.** Where this Article requires Review Authority action on an application, the Director shall provide a written recommendation to the applicable review authority on the disposition of the application.
- C. Report distribution.** Each staff report shall be furnished to the applicant and property owner at the same time as it is provided to the review authority prior to consideration of the application.

16-50.070 - Story Poles

- A. Purpose.** Story poles help to identify the scope of a proposed construction project at the project site.
- B. Application.** Story Poles are required for all Board-reviewed applications, and as required by the Director for Commission-reviewed applications and Staff-level design review applications, except where the Town determines that erection of story poles would be a meaningless act.
- C. Timing.** Story Poles and connecting material shall be installed at least ten days prior to the date of the hearing. Failure to install the poles and materials in a timely manner may result in continuance of the hearing date.
- D. Certification letter.** A certification letter is required from a licensed surveyor or civil engineer for all story poles for new residences and commercial buildings. The certification letter shall be provided to the Town prior to the hearing.
- E. Story pole modifications.** When modifications are made to a project design after the story poles are first installed, the applicants shall modify the poles to reflect the revised project design and shall verify in writing that the story poles have been altered accordingly. Story poles reflecting modifications to a project proposing a new residential or a new commercial building shall be installed and re-certified consistent with the provisions of Subsection D above.
- F. Story pole connection.** Story poles for appeals before the Council shall be connected by means of ribbons, caution tape, rope or other similar highly visible materials clearly discernable from a distance of at least three-hundred feet. The Director may require connecting materials for other zoning permit applications. A story pole plan showing the poles to be connected, including location and elevations of poles and connections, shall be submitted, reviewed, and accepted as adequate by Division Staff prior to installation of the poles and connections.
- G. Removal.** Story poles shall be removed no later than thirty (30) days after the Review Authority takes final action on the application, unless specifically authorized in writing by the Director to remain for a longer period.

16-52 Permit Review and Decisions

Section:

- 16-52.010 - Purpose and Applicability
- 16-52.020 - Site Plan and Architectural Review
- 16-52.030 - Variance
- 16-52.040 - Conditional Use Permit
- 16-52.050 - Condominium Use Permit
- 16-52.060 - Precise Development Plan
- 16-52.070 - Conceptual Master Plan
- 16-52.080 - Tidelands Permit
- 16-52.090 - Temporary Use Permit

16-52.010 - Purpose and Applicability

- A. Purpose.** The provisions of Section 16-52 provide procedures for the final review and approval or denial of the Zoning Permit applications and other review requirements established by this Zoning Ordinance.
- B. Application filing and initial processing.** Where applicable, the procedures of Section 16-52 are carried out after those described above in Section 16-50 (Application Filing and Processing), for each application.
- C. Applicability.** The provisions of Section 16-52 shall apply to the following development applications:
 - 1. Site Plan and Architectural Review;
 - 2. Variances;
 - 3. Conditional Use Permits;
 - 4. Condominium Use Permits;
 - 5. Precise Development Plans;
 - 6. Conceptual Master Plan;
 - 7. Tidelands Permit.
- D. Subdivision review procedures.**
 - 1. All subdivision proceedings shall be subject to the rules and regulations of Municipal Code Title IV, Chapter 14 (Subdivision of Land), and the State Subdivision Map Act (Government Code Title 7, Division 2), as amended.

2. For all development projects that require the division of a lot, the filing and processing of the subdivision application shall not occur until after the Precise Development Plan, when one is required, has been approved by the Review Authority as provided in Section 16-52.060 (Precise Development Plan).

16-52.020 - Site Plan and Architectural Review

A. Purpose. The Purpose of Site Plan and Architectural Review is to ensure that the design of proposed construction and new land uses assists in maintaining and enhancing the Town’s distinctive character. The Site Plan and Architectural Review process:

1. Ensures that new uses and structures enhance their sites and are compatible with the highest standards of improvement in the surrounding neighborhood;
Retains and strengthens the visual quality and attractive character of the Town;
3. Ensures that landscaping emphasizes drought tolerant native species and protects mature vegetation;
4. Recognizes the interdependence of land uses and circulation, and provides for an efficient and interconnected system of streets and pedestrian ways throughout the Town;
5. Assists project developers in understanding the Town’s concerns for the aesthetics of construction; and
6. Ensures that construction complies with all applicable Town standards and guidelines, and does not adversely affect community health, safety, aesthetics, or natural resources.

B. Approval required. Site Plan and Architectural Review approval shall be required prior to any of the following actions (the placement of signs does not require Site Plan and Architectural Review, but does require a “Sign Permit,” in compliance with Municipal Code Chapter 16A [Signs]):

1. Construction or erection of any “structure,” defined in Article X (Definitions) of this Zoning Ordinance, as follows:

“Structure” means anything that is built or constructed and requires a location on the ground, including a building, accessory building, or edifice of any kind; or any piece of work artificially built up or composed of parts. Structure does not include a fence or a wall used as a fence three and one-half feet or less in height; nor landscaping features, decks, or pavement wherein no part of such landscaping features, decks, or pavement extends more than three feet above grade;

Physical exterior alteration of, or addition to, any existing structure, where the alteration or addition requires issuance of a Building Permit;

3. Placement or installation of swimming pools and/or spas; installation or relocation of exterior air conditioning or heating (HVAC) units, generators or similar noise-generating mechanical equipment; satellite dishes greater than one meter in diameter; skylights; and/or devices of a similar nature, as determined by the Director;
 4. Grading, excavation, filling, or earth movement that involves more than fifty cubic yards or which requires a Grading Permit in compliance with the applicable Uniform Building Code regulations;
 5. The placement, replacement or modification of utility distribution poles and facilities, including, without limitation, lines, wires and boxes;
 6. Modifications to the layout or design of parking lots located in a non-residential zone, or in any parking lot or parking area containing more than ten parking spaces that is located in an R-3 or RMP zone. This excludes simple repainting of existing stall lines absent any substantive modifications;
 7. The creation, installation, or establishment of any driveway or of any open parking space (or other area capable of being used as a parking space) on an improved parking surface.
 8. Sports court features, which include fences over 42 inches in height, exterior lighting poles or mounts over 42 inches in height, and non-portable (i.e. fixed in place) basketball standards or other similar structures.
- C. Application and information required.** Application shall be made in compliance with the provisions of Section 16-50.030 (Application Preparation and Filing). Information and materials necessary to adequately describe the proposed project, as appropriate to the proposed size, scale, and nature of the project, and as deemed necessary by the Director, shall accompany each application. Lists of information and materials that are typically required for a complete application are available in the Planning Division.
- D. Notices.** The Director shall mail courtesy (i.e., not required by state or local law) notices of all applications for Site Plan and Architectural Review to owners of property, as shown on the latest equalized Marin County assessment roll, located within three hundred feet of the subject property. Courtesy notices for Minor Alteration projects as set forth in Subsection F. may be mailed only to contiguous property owners, but may include other property owners as determined by the Director. Failure of any party to receive a courtesy notice shall not invalidate the proceedings. Notices shall not be mailed for projects approved in accordance with Subsection G. below.
- E. Design Review Board as Review Authority.**
1. The Design Review Board (Board) shall be the Review Authority for all applications for Site Plan and Architectural Review, except as otherwise provided in Subsection F. Meetings and actions of the Review Authority shall be as set forth in Section 16-64 (Public Hearings).

The Board shall meet and act on applications for Site Plan and Architectural Review within time limits in compliance with State law. The Review Authority shall determine from the reports and data submitted, supplemented by on-site inspections as the Review Authority may deem appropriate, whether the use and structures will meet the requirements herein, and shall, upon making affirmative findings, approve the application.

3. If, from the information submitted, the Board finds that the requirements and principles herein would not be achieved, it shall deny the application or approve it subject to specified conditions or modifications.
4. The Board may impose such reasonable conditions it determines are necessary to allow it to make the required findings and which insure that the principles, guidelines and standards will be met. Conditions required by the Review Authority must be implemented prior to final inspection and occupancy, unless otherwise stipulated.
5. For green building projects, each approval for a “covered project”, as defined in Section 16-90 (Green Building), shall include a condition of approval that the project shall comply with the applicable green building standards for compliance as set for by resolution of the Council. Failure to explicitly impose the condition on an approval shall not release a project from otherwise meeting applicable requirements of Section 16-90.

F. Director as Review Authority on applications for Minor Alteration Project. Site Plan and Architectural Review applications for the following items are considered to be Minor Alterations and may be acted upon by the Director in lieu of the Design Review Board:

1. Residential additions less than five hundred square feet in floor area;
Accessory buildings or structures less than five hundred square feet in floor area;
3. Fences, walls, and/or retaining walls;
4. Minor exterior alterations such as windows, decks, skylights, awnings, satellite dishes, and similar items as determined by the Director;
5. Re-roofs;
6. Swimming pools;
7. Spas;
8. Installation or relocation of exterior air conditioning or heating (HVAC) units, generators or similar noise-generating mechanical equipment;
9. Modifications to approved Site Plan and Architectural Review Permits when determined to be minor in nature;

10. Driveways and minor modifications to the layout or design of parking lots; and
 11. Other minor applications that the Director determines to be appropriate for Staff action.
- G. Exception.** An especially minor project may be ministerially approved by over-the-counter review by the Director if it does not result in a change to floor area or involve skylight installation and has the approval of affected neighbors. Any such application shall include signatures of consent from neighboring property owners as determined by the Director, along with all required submittal materials in compliance with Subsection C. above. Such approval is not subject to appeal.
- H. Guiding principles in the review of applications.** In reviewing applications for Site Plan and Architectural Review, the Review Authority shall consider the following principles as they may apply:
1. **Site plan adequacy.** Proper relation of a project to its site, including that it promotes orderly development of the community, provides safe and reasonable access, and will not be detrimental to the public health, safety, and general welfare.

Site layout in relation to adjoining sites. The location of proposed improvements on the site in relation to the location of improvements on adjoining sites, with particular attention to view considerations, privacy, location of noise-generating exterior mechanical equipment, adequacy of light and air, and topographic or other constraints on development imposed by particular site conditions.
 3. **Neighborhood character.** The height, size, and/or bulk of the proposed project bears a reasonable relationship to the character of existing buildings in the vicinity. A good relationship of a building to its surroundings is important. For example, in neighborhoods consisting primarily of one-story homes, second-story additions shall be discouraged, or permitted with increased setbacks or other design features to minimize the intrusion on the neighborhood.
 4. **Floor area ratio.** The relationship between the size and scale of improvements and the size of the property on which the improvements are proposed. This concept is known as floor area ratio (See Subsection I. below).
 5. **Grading and tree removal.** The extent to which the site plan reasonably minimizes grading and/or removal of trees, significant vegetation, or other natural features of the site such as rock outcroppings or watercourses.
 6. **Compatibility of architectural style and exterior finish.** The architectural style and exterior finish are harmonious with existing development in the vicinity and will not be in stark contrast with its surroundings.
 7. **Landscaping.** Proposed landscaping, insofar as it is used appropriately to prevent erosion; to protect the privacy of adjoining sites; and to mitigate the visual and noise impacts of the proposed project. Applicants are encouraged to use native and drought-resistant landscaping. Proposed landscaping shall be used which will, at

maturity, minimize primary view obstruction from other buildings. A cash deposit or other monetary security may be required to ensure the installation and/or maintenance for a one-year period of any and all landscaping. Projects that are subject to provisions of Title IV, Chapter 13E (Water Efficient Landscape) of the Tiburon Municipal Code shall comply with the Marin Municipal Water District regulations regarding water-efficient landscaping adopted by reference therein.

8. **Lighting.** Proposed lighting, insofar as it should not invade the privacy of other properties, or produce glare or light pollution; yet provide adequate illumination for safety and security purposes. All proposed exterior lighting shall be shielded downlighting.
9. **Overall property improvement.** In order to allow the gradual upgrading of existing improvements, upgrades may be required to be made to existing buildings and the site as a whole. The review of applications for additions or modifications to existing development may include conditions requiring changes and/or modifications to existing buildings and site improvements for the entire property to the extent that there is a reasonable relationship between the requested project and the changes and/or modifications required.
10. **Appropriate use of building envelope.** In planned residential (RPD and RMP) zones, building envelopes are generally intended to provide a larger-than-needed area for flexibility in the appropriate siting of a main structure and its accessory structures. The building envelope should not generally be interpreted as an area intended to be filled by a main structure and its accessory structures.
11. **Green building.** For residential covered projects, as set forth in Section 16-90.020 (Covered Projects), the project design includes features that foster renewable energy and/or resource conservation, and the overall project appears to meet or exceed the applicable green building standard for compliance as set forth by resolution of the Town Council.
12. **Conformance with zoning requirements.** All modifications and site improvements shall conform with the setback, parking, and height requirements established for each zone by Article II (Zones and Allowable Land Uses), and with any special requirements including recycling (see Municipal Code Chapter 16C [Recyclables Collection Area]) and screening guidelines established for specific uses by this Zoning Ordinance.

I. **Floor area ratio guidelines.**

1. **Purpose.** The purpose of this Subsection is to provide a community yardstick for appropriate residential size and scale, measured in gross square footage, in relation to the overall size of property on which the improvements are proposed. It is the intent of the Town to reasonably apply residential floor area ratios with regard to specific site characteristics and the surrounding pattern of development.

The floor area ratio (FAR) guideline is intended to discourage overbuilding of property, as often occurs with “tear-downs” and extensive remodel/additions on

infill sites, and with first-time residential construction. The floor area ratio guideline for a lot is not intended as a target to be achieved, but is intended to indicate a reasonable maximum. The Town may authorize less than the maximum square footage indicated by the floor area ratio guideline when necessary to achieve compatibility with surrounding development, to maintain the neighborhood character, or for other good cause.

Calculations. Floor area is calculated using the definition contained in Article X (Definitions) under “Floor area, gross.” Floor area ratio includes accessory buildings as well as any main building.

3. **FAR guidelines.** Residential development standards are as shown in Table 2-2 in Section 16-21.040 (Residential Zones Development Standards). FAR guidelines for single-family and two-family residential zones (R-1, R-1-B, RO, R-2, and RPD) are shown in Table 5-2 below.

Table 5-2 - Floor Area Ratio Guidelines

R-1, R-1-B, RO, R-2, and RPD¹ Zones	
Area of Property	Gross Floor Area Maximum
Less than 7,500 sq. ft.	35% of the property area, plus an additional 600 sq. ft. of garage or carport
7,500 sq. ft. through 60,000 sq. ft.	10% of the property area plus 2,000 sq. ft. plus an additional 600 sq. ft. of garage or carport
More than 60,000 sq. ft.	8,000 sq. ft. plus an additional 750 sq. ft. of garage or carport.
R-3 and RMP Zones	
Zone	Gross Floor Area Maximum
R-3	.60, unless otherwise specified in a Precise Development Plan or equivalent permit
RMP	.30, unless otherwise specified in a Precise Development Plan or equivalent permit
Notes:	
1. Unless otherwise specified by Precise Development Plan or equivalent permit.	

a. **Examples.** The following are some examples to illustrate the floor area ratio guideline concept:

- (1) **Example No. 1.** A 7,400 square foot lot generally could achieve a reasonable size and scale of residential construction with a maximum of 2,590 square feet (.35 x 7,400) of gross floor area, not including up to 600 sq. ft. of garage or carport.
- (2) **Example No. 2.** A 10,000 square foot lot generally could achieve a reasonable size and scale of residential construction with a

maximum of 3,000 square feet $((.10 \times 10,000) + 2,000)$ of gross floor area, not including up to 600 sq. ft. of garage or carport.

- (3) **Example No. 3.** A 20,000 square foot lot (approximately half-acre) generally could achieve a reasonable size and scale of residential construction with a maximum of 4,000 square feet $((.10 \times 20,000) + 2,000)$ of gross floor area, not including up to 600 sq. ft. of garage or carport.
- (4) **Example No. 4.** A 40,000 square foot lot (approximately one acre), generally could achieve a reasonable size and scale of residential construction with a maximum of 6,000 square feet $((.10 \times 40,000) + 2,000)$ of gross floor area, not including up to 600 sq. ft. of garage or carport.
- (5) **Example No. 5.** A 60,000 sq. ft. lot (and any lot larger in size) generally could achieve a reasonable size and scale of residential construction with a maximum of 8,000 square feet of gross floor area, not including up to 750 sq. ft. of enclosed garage space, provided that the lot is at least 60,000 sq. ft. in area.

4. Floor Area Exception. Residential construction in excess of the floor area guidelines may be granted through a floor area exception if the following findings are made:

- a. The applicant has demonstrated that the visual size and scale of the proposed structure is compatible with the predominant pattern established by existing structures in the surrounding neighborhood; and
- b. The applicant has demonstrated that the proposed structure is compatible with the physical characteristics of the site. The characteristics include, but are not limited to, shape and steepness of the lot, ease of access, and the presence of natural features worthy of retention, such as trees, rock outcroppings, stream courses and landforms.

J. Design review guidelines. In reviewing applications for Site Plan and Architectural Review, the Review Authority shall also apply goals and principles, as appropriate to the project, set forth in the Hillside Design Guidelines, Downtown Tiburon Design Handbook, and any other guidelines adopted by Council, copies of which are available from the Planning Division.

K. New construction projects versus remodel projects. The Town occasionally sees projects that are proposed and presented as remodel projects, but which during implementation essentially become total or near total demolitions followed by new construction. Since the Review Authority might reach different conclusions on an application if presented as a remodel project as opposed to a new construction project, the following provisions are established.

- 1. Remodel applications for Site Plan & Architectural Review must include a

statement, calculations, and demolition plan drawing of sufficient detail to demonstrate the percentage of existing exterior wall framing and roof structure to be removed as part of the project. The project shall be deemed new construction, with the expectation that the building is to conform with the appropriate zoning standards for new construction, if either of the following occurs:

- a. The roof is removed and more than 50% of the existing exterior wall framing on the upper level is removed. A single-story dwelling is considered to be the upper story for purposes of this clause.
 - b. All or most of the roof remains, but more than 50% of the exterior wall framing is removed.
2. If an application is filed and approved as a remodel project, but prior to or during construction expands to become a new construction project as defined herein, all related Zoning and Building Permit approvals shall become null and void. The applicant shall be required to resubmit applications for Site Plan and Architectural Review approval and Building Permits as a new construction project. The Director shall have authority to waive this requirement in cases where the public safety and necessity require the additional demolition, or in de minimis cases.

L. Roof height increases. Under certain circumstances, an increase in roof height or other changes to a roof design may result in potentially significant view obstruction impacts on neighboring homes, and may affect homes farther from the project site than is typical for Minor Alteration projects. Therefore, it is appropriate that wider notifications and enhanced visual aids are required for Minor Alteration projects that propose substantive roof height, roof location, or increased visual roof mass.

1. Applicants shall be required to erect story poles for all Minor Alteration projects (Site Plan and Architectural Review) applications that involve modifications that would materially increase the height, location or visual mass of the roof of a structure.

Courtesy notices for such applications are to be mailed to all property owners within three hundred feet of the boundaries of the subject site. Story poles shall be erected prior to the date courtesy notices are mailed for the application.

M. Staff conformance check. Following Site Plan and Architectural Review approval, upon submittal by the applicant for a Building Permit, the Director shall review the Building Permit submittal for substantial conformance with the Site Plan and Architectural Review approval. No Building Permit shall be issued until such conformance has been demonstrated. Determinations of substantial conformance are ministerial in nature and not subject to appeal.

N. Appeals. Decisions of the Review Authority on applications for Site Plan and Architectural Review may be appealed as provided in Section 16-66 (Appeals), except that an appeal of a Director's decision pursuant to Section 16-52.020 (F) must be appealed within five business days of the decision.

- O. Expiration of Site Plan and Architectural Review approval.** Site Plan and Architectural Review approval shall expire and become null and void three years after the date of approval unless a Building Permit has been issued before the date of expiration.

16-52.030 - Variance

A. Purpose and authorization.

1. Where a strict or literal interpretation and enforcement of certain requirements herein would cause practical difficulties or unnecessary physical hardships inconsistent with the objectives herein, the Design Review Board and Planning Commission are empowered to grant Variances according to their respective permit review authority. (See Sections 16-60.020 [Design Review Board] and 16-60.030 [Planning Commission]).
2. The above-mentioned practical difficulties or unnecessary physical hardships may result from the size, shape, or dimensions of a site or the location of existing structures thereon; from geographic, topographic, or other physical conditions on the site or in the immediate vicinity; or from population densities, street locations, or traffic conditions in the immediate vicinity of the site. Cost to the applicant of strict or literal compliance with a regulation may be given consideration, but shall not be the sole reason for granting a Variance.
3. The Review Authority may grant Variances to the regulations prescribed by this Zoning Ordinance, in compliance with the procedures prescribed in this Section, with respect to fences, walls, screening, landscaping, site area, width, setbacks, coverage, height of structures, distances between structures, usable open space, off-street parking and off-street loading, frontage on a public street or other quantitative standard. Use Variances are prohibited.
4. When a proposed project requires the granting of a Variance or Variances in conjunction with another entitlement, the Review Authority shall review both simultaneously and shall attempt to eliminate the need for a Variance by reasonable modifications to the project.

- B. Application and fee.** The application for a Variance shall be made in compliance with the provisions of Section 16-50 (Application Filing and Processing). The application shall be accompanied by the required fee.

- C. Information required.** Lists of information and materials which are normally necessary for a complete Variance application are available from the Planning Division. The Director may require additional information, plans, drawings, or other documents if needed to enable a determination as to whether the circumstances prescribed for the granting of a Variance or Variances exist, or to assist in making the findings prescribed in Subsections E. and F.

- D. Public hearing and notice required.** A public hearing as prescribed in Section 16-64 (Public Hearings) shall be held to consider every application for a Variance. Notice shall be given in compliance with Government Code Section 65091 and as otherwise required in

Section 16-64.030 (Notice of Hearing).

E. Findings by Review Authority. In order to approve or conditionally approve an application for a Variance, the Review Authority shall, on the basis of the application and the evidence submitted, make all of the following findings:

1. Because of special circumstances applicable to the property, including size, shape, topography, location, or surroundings, the strict application of this Zoning Ordinance will deprive the applicant of privileges enjoyed by other properties in the vicinity and in the same or substantially the same zone;

The Variance will not constitute a grant of special privileges, inconsistent with the limitations upon other properties in the vicinity and in the same or substantially the same zone;

3. The strict application of this Zoning Ordinance would result in practical difficulty or unnecessary physical hardship. Self-created hardships may not be considered among the factors that might constitute special circumstances. A self-created hardship results from actions taken by present or prior owners of the property that consciously create the very difficulties or hardships claimed as the basis for an application for a Variance; and
4. The granting of the Variance will not be detrimental to the public welfare or injurious to other property in the vicinity.

The applicant shall have the burden of demonstrating the existence of any special circumstances. The Review Authority must find that facts and evidence exist in support of the findings.

F. Findings for Variances from off-street parking or off-street loading regulations.

1. In addition to making the findings required by Subsection E. above, where the application is for a Variance from regulations for off-street parking or off-street loading, the Review Authority shall also make the following findings:
 - a. Neither present nor anticipated future traffic volumes generated by the use of the site or the uses of the sites in the vicinity reasonably require strict or literal interpretation and enforcement of the specified regulation;
 - b. Granting of the Variance will not result in the parking or loading of vehicles on public streets in such a manner as to interfere with the free flow of traffic on the streets, or other private property, or on open space; and
 - c. Granting of the Variance will not create a safety hazard or any other condition inconsistent with the objectives of this Zoning Ordinance.

In compliance with Government Code Section 65006.5, a variance may be granted from parking requirements in order that some or all of the required parking spaces

be located offsite or that in-lieu fees be provided instead of the required parking spaces, if both the following conditions are met:

- a. The variance will be an incentive to, and a benefit for, the nonresidential development.
- b. The variance will facilitate access to the nonresidential development by patrons of public transit facilities.

G. Action by Review Authority. Upon making the findings required hereunder, the Review Authority may approve an application for a Variance as submitted or as modified. If the Review Authority cannot make the findings required hereunder, the Review Authority may deny the Variance. A Variance may be revocable and may be granted subject to such conditions as may reasonably be imposed.

H. Appeals. The action may be appealed in compliance with the provisions of Section 16-66 (Appeals).

I. Expiration of Variance.

1. Any Variance that is approved with an associated Zoning Permit shall expire and become null and void at the same time as the associated permit shall expire. For Variances without an associated Zoning Permit, the Variance shall expire and become null and void three years after its effective date unless it has been exercised.

A Variance, once exercised, runs with the land unless revoked.

J. Cause and procedure for revocation. Upon written notice to the holder of a Variance, and a public hearing, the Review Authority may revoke or modify any Variance, on any one or more of the following grounds:

1. That the approval was based on false information submitted by the applicant;

That the Variance granted is being or recently has been exercised contrary to the terms or conditions of such approval, or in violation of any statute, ordinance, law or regulation; or
3. That circumstances have changed in a manner that renders the continuation of the Variance to be inconsistent with Town regulations or policies, or inappropriate or incompatible with surrounding development.

16-52.040 - Conditional Use Permit

A. General. The Planning Commission may grant a Conditional Use Permit to authorize a specific use and/or structure devoted to such use on a specific lot within a zone where such use and/or structure is allowed as a conditional use. The procedures and requirements set forth herein, together with any other provisions in this Zoning Ordinance concerning the specific conditional use, shall govern the granting or denial of a Conditional Use Permit.

- B. Purposes.** The uses listed as conditional uses are declared to be uses possessing characteristics of such unique and special qualities as to require special review to determine whether or not any such use should be permitted in a specific location that may be proposed. The purposes of the review are to:
1. Determine whether the location proposed for the conditional use is properly related to the development of the neighborhood or vicinity as a whole;
 2. Determine whether the location proposed for the particular conditional use would be reasonably compatible with the types of uses normally permitted in the surrounding area;
 3. Evaluate whether or not adequate facilities and services required for such use exist or can be provided;
 4. Stipulate such conditions and requirements as would reasonably assure that the basic purposes of this Zoning Ordinance and the objectives of the General Plan would be served; and
 5. Determine whether the Town is adequately served by similar uses presently existing or recently approved by the Town.
- C. Applicability.** Uses listed as allowed by a Conditional Use Permit, and the similar or accessory uses which, in the opinion of the Director conform to the purposes of such zone, are not permitted in such zone unless a Conditional Use Permit has been granted.
- D. Special considerations.** Factors to be considered in determining whether or not any conditional use should be permitted in a specific location are:
1. The relationship of the location proposed to:
 - a. The service or market area of the use or facility proposed,
 - b. Transportation, utilities, and other facilities required to serve it, and
 - c. Other uses of land in the vicinity;

The compatibility of the design, location, size, and operating characteristics with the existing and future land uses in the vicinity.
 3. The probability of impairment to the architectural integrity and character of the zoning district in which it is to be located.
 4. The protection of the public interest, health, safety, convenience, or welfare of the Town, or any probability of injury to property or improvements in the vicinity and zoning district in which the real property is located.
 5. The need of the community for additional numbers of such uses, paying particular

heed to whether the neighborhood or vicinity is already adequately served by similar uses.

- E. Condominium Use Permits.** See Subsection 16-52.050.B (Condominium Use Permit required).
- F. Application and fee.** Application for a Conditional Use Permit shall be made in compliance with the provisions of Section 16-50 (Application Filing and Processing), and shall be accompanied by the appropriate fee.
- G. Information required.** Lists of information and materials that are normally necessary for a complete Conditional Use Permit application are available from the Planning Division. The Director may require additional information, plans, drawings, or other documents if needed to assist in making an informed decision on the application.
- H. Public hearing required--Notice.** A public hearing as prescribed in Section 16-64 (Public Hearings) shall be held to consider every application for a Conditional Use Permit. Notice shall be given in compliance with Government Code Section 65091, and as otherwise required by Section 16-64.030 (Notice of Hearing).
- I. Action by Planning Commission**

- 1. All actions of the Commission relating to the findings and decision shall be made by resolution, which shall contain the findings of the Commission relative to the considerations outlined in Subsections B. and D. above and any conditions to be imposed on the Conditional Use Permit. The resolution making such findings may do so in general terms by stating that the Commission finds the matters set forth in Subsection B. and D. to be true.

If the Commission is unable to make the findings required above, the Commission shall deny the Conditional Use Permit application.

- J. Recommended conditions.** In granting any Conditional Use Permit, the Commission may require that the use conform with the site plan, architectural drawings, or statements submitted in support of the application, or such modification thereof as it may deem necessary to protect the public health, safety and general welfare and to secure the objectives of the General Plan. The Commission may also impose such other conditions as it may deem necessary to achieve these purposes, including but not limited to, the following:

- 1. Special yards, open spaces and buffers;
- Fences and walls;
- 3. Surfacing of parking areas and specifications therefore;
- 4. Street dedications and improvements, including provisions of service roads or alleys when practical, and necessary dedications of utility easements, sites for public use, and to preserve open space;

5. Regulation of points of vehicular ingress and egress;
6. Regulation of special parking needs or controls;
7. Landscaping and maintenance thereof;
8. Maintenance of grounds;
9. Control of noise, lighting, vibration, odors, and other potentially dangerous or objectionable elements;
10. Limits on time for conduct of certain activities;
11. Time period in which the proposed use shall be developed or commenced;
12. Final review by the Design Review Board, if appropriate;
13. Time period in which the use will be reviewed;
14. Such other conditions as will make possible the development of the Town in an orderly and efficient manner and in conformity with the interest and purposes set forth in this Zoning Ordinance and the General Plan.

The Commission may require such guarantees as it deems necessary to ensure that such conditions will be met.

- K. Off-street parking and loading requirements.** The requirements for provision of off-street parking and loading applicable to the particular use shall prevail, unless in the findings and conditions recited in the resolution, specific additional requirements are made with respect thereto.
- L. Setbacks, height and area requirements.** The provisions for required front, rear, and side setbacks and requirements for height and area applicable to the particular zone in which any use is proposed to be located shall prevail, unless, in the findings and conditions recited in the resolution, specific additional requirements are made with respect thereto.
- M. Appeals.** The action of the Commission may be appealed in compliance with the provisions of Section 16-66 (Appeals).
- N. Reapplication.** A reapplication for a Conditional Use Permit shall not be filed within one year from the date that the Conditional Use Permit was revoked or denied. The only exceptions to this are when there has been a substantial change in circumstances or the denial was made without prejudice.
- O. Issuance of Conditional Use Permit.** An application for Conditional Use Permit approved by the Review Authority will become effective only after the expiration of the appeal period provided by this Zoning Ordinance.

P. Expiration of Conditional Use Permit.

1. Conditional Use Permits issued in compliance with this Section shall expire and become null and void one year after their effective date unless the authorized use has been commenced or an extension has been granted.

For good cause, an extension of the expiration date of the Conditional Use Permit not to exceed one additional year may be granted by the Review Authority. A request for extension must be filed prior to the expiration date and shall be accompanied by a filing fee. The permit holder shall submit sufficient information for the Review Authority to determine whether good cause for an extension exists. Consideration of the extension shall be made at a duly noticed public hearing.

Q. Cause and procedure for revocation. Upon written notice to the holder of such permit, and a public hearing, the Review Authority may revoke or modify any Conditional Use Permit, on any one or more of the following grounds:

1. That the approval was based on false information submitted by the applicant;
That the use for which such approval was granted has ceased to exist or has been suspended for one year or more;
3. That the permit granted is being or recently has been exercised contrary to the terms or conditions of such approval, or in violation of any statute, ordinance, law or regulation; or
4. That circumstances have changed in a manner that renders the use incompatible with surrounding development.

16-52.050 - Condominium Use Permit**A. Intent and purpose.** Condominiums, as defined in Article X (Definitions), create conditions that differ markedly from those associated with rental units. These conditions associated with condominium subdivision projects may result, unless regulated, in a negative impact upon the public health, safety, welfare, and economic prosperity of the Town. It is the intent of the Town to establish rules and standards that regulate the construction of, and/or the conversion of structures to condominiums, within the Town. The provisions of this Section shall be in addition to the provisions of the State Subdivision Map Act and the provisions of Municipal Code Chapter 14 (Subdivision of Land).

The provisions and standards in this Section are intended to provide that rental units being converted to condominiums, or structures initially erected as condominiums, meet reasonable construction criteria under state and local laws, ordinances, and regulations, in order that a reasonable balance between rental housing and owner-occupied housing continues to exist in the community, and to ensure that the density, bulk, height, massing, and character of the units constructed or converted hereunder are consistent with the existing character of structures in the area. These provisions and standards shall apply to industrial, commercial, mixed use, or marina subdivisions as well as purely residential subdivisions.

- B. Condominium Use Permit required.** No subdivision map for the construction of, or conversion of any structure to, a condominium, as that term is defined herein, shall be approved, and no Building Permit for any condominium shall be issued, until a Condominium Use Permit has been issued by the Review Authority.

In the case of new construction and/or exterior remodeling of units to be offered for sale as condominiums, the application for permit shall first be referred to the Design Review Board for its analysis and recommendations in compliance with the pertinent provisions of Section 16-52.020 (Site Plan and Architectural Review).

- C. Standards for permit issuance.** A Condominium Use Permit shall be issued by the Review Authority only if it determines that the property conforms to all applicable zoning regulations, or that the property was an established legal nonconforming use prior to June 21, 1980; and if the Review Authority is able to make the following findings:

1. The Review Authority finds that the application conforms to the General Plan;

The Review Authority finds that the condominium project meets all standards of Municipal Code Chapter 13 (Building Regulations), as they apply to new construction for group R1 or R3 occupancy for multiple-unit housing and single-family housing except for such requirements that the Review Authority deems unnecessary to fulfill the purposes of this Section;
3. The condominium project conforms to all applicable laws, ordinances, and regulations of the Town and the State in effect at the time of construction or conversion, including but not limited to those pertaining to housing, building, fire, subdivision, and zoning. In addition, the noise transfer standards for new buildings as contained in the latest Town-adopted version of the California Building Code shall apply to both new units and existing units sought to be converted;
4. The proposed use is properly located in relation to the community and to land uses, transportation, and service facilities in the vicinity, and the site for the proposed use is adequate in size and shape to accommodate it;
5. New construction proposed for use as a condominium is compatible with existing structures in the vicinity in terms of height, size, scale, bulk, and visual character;
6. The site for the proposed use will be served by streets and/or highways of adequate width and pavement type to carry the quantity and kind of traffic generated by the proposed use;
7. The proposed use will not unreasonably adversely affect the abutting property or the permitted use thereof;
8. The approval of the proposed condominium project will not adversely affect the provision of adequate housing for all segments of the community, and adequate replacement housing for displaced tenants is available;
9. Parking within the property lines of the project is provided to satisfy this Section,

and for residential projects, at a ratio of no less than two spaces per dwelling unit. Each required parking space shall have direct access to the street without passing over other required parking spaces, except that the Review Authority may waive this direct access requirement for one of the two spaces required for each dwelling unit where it finds that conditions of terrain or siting make strict adherence to this provision undesirable;

10. The proposed condominium conversion project provides a substantial common area consisting of real property that is not merely a token common area such as a fence or other minor portion of the property. The purpose of this requirement is to prohibit de facto lot splits presented in the guise of condominium conversions.

The resolution making the above findings may do so in general terms by stating that the Review Authority finds the matters set forth in this Section to be true. If the Review Authority is unable to make the findings required above, the Review Authority shall deny the granting of the Condominium Use Permit.

- D. Permit applications and procedure.** Applications for, and processing of, Condominium Use Permits shall be governed by the provisions of Section 16-52.040 (Conditional Use Permit). All associated variances sought for new or existing structures in relation to Condominium Use Permits shall be acted upon by the Review Authority.

In addition to the requirements of Subsection 16-52.040.G. (Information required) the applicant shall include with his permit application the following additional information:

1. A report describing the condition, code compliance, and estimate of remaining useful life of the following elements: structure, walls, roofs, paved surfaces, central or community heating and air conditioning systems, hot water heaters, and, where they are reasonably accessible for inspection, other electrical, plumbing, and mechanical equipment. Such report shall be prepared by a contractor, architect, or engineer who is licensed in the element he is reviewing. This information need not be included where newly constructed premises are sought to be erected as condominiums;

A comprehensive report advising of repairs and improvements the applicant intends to make to the premises sought to be converted, prior to sale of the unit(s). This information need not be included where newly constructed premises are sought to be erected as condominiums;

3. A report by a qualified acoustical consultant that the sound transmission requirements of the current Town of Tiburon-adopted California Building Code for walls, floors, and ceilings which separate the proposed dwelling units will be met;
4. Plans showing percentages of open space, parking, and circulation areas, building coverage, and the number of parking spaces (covered and open) in the project;

5. A written description of the proposed project organization, including the use and control of the common elements and recreation facilities within the project; and any proposed control of common facilities to be retained by the developer or by the owner or maintained by any other organization other than the homeowners association or unit owners;
6. A structural pest control report prepared by a licensed pest control operator in compliance with Section 8516 of the California State Business and Professions Code or successor sections thereto;
7. The subdivider's proposed program to accommodate existing tenants of units to be converted with specific reference to relocation assistance, availability of substitute accommodations, and a statement of any sale preference to present tenants;
8. If requested, a report on the proposed conversion indicating length of occupancy of present tenants, household composition of tenants, rent structure at time of application, nature of lease agreements, proposed sale prices of units and financing arrangements;
9. A list of the names of all tenants and lessees of the existing structure(s), together with a verified statement that notice of the filing of the application has been given to each such tenant and lessee by prepaid U.S. mail. Each application shall be deemed to provide authorization for inspections of the building and site by the Review Authority and by Town Staff as a condition of completeness of the application;
10. A statement indicating the exact number of units existing in the structure(s) proposed to be converted.

E. Condominium organization documents. There shall be required a declaration of covenants, conditions, and restrictions (CC&Rs), and the formation of an association or corporation for the purpose of managing and maintaining the project. The CC&Rs shall state that the Town has the right to abate public nuisance conditions in the common area if the association or corporation fails to do so, and to assess the cost to the association, corporation, or individual unit owners. In order to accomplish this, the CC&Rs shall contain the following typical statements:

1. In the event the Association fails to maintain the exterior portions of the common area so that owners, lessees, and their guests suffer, or will suffer, substantial diminution in the enjoyment, use or property value of the project, thereby impairing the health, safety, and welfare of the residents in the project, the Town of Tiburon, by and through its duly authorized officers and employees, shall have the right to enter upon the real property described in Exhibit "A" and to commence and complete such work as is necessary to maintain said exterior portions of the common area.

The Town shall enter and repair only if, after giving the Association written notice of the Association's failure to maintain the premises, the Association does not commence correction of such conditions within thirty days of delivery of the notice and proceed diligently to completion.

3. The Association agrees to pay all expenses incurred by the Town of Tiburon within thirty days of written demand. Upon failure by the Association to pay within said thirty days, the Town of Tiburon shall have the right to impose a lien for the proportionate share of such costs against such condominium or community apartment in the project.
4. It is understood that by the provisions hereof, the Town of Tiburon is not required to take any affirmative action, and any action undertaken by the Town of Tiburon shall be that which, in its sole discretion, it deems reasonable to protect the public health, safety, and general welfare, and to enforce the regulations, ordinances, and other laws.
5. It is understood that action or inaction by the Town of Tiburon, under the provisions hereof, shall not constitute a waiver or relinquishment of any of its rights to seek redress for the violation of any of the provisions of these restrictions or any of the rules, regulations, and ordinances of the Town of Tiburon, or of other laws by way of a suit in law or equity in a court of competent jurisdiction or by other action.
6. It is further understood that the remedies available to the Town of Tiburon by the provisions of this Zoning Ordinance or by reason of any other provisions of law shall be cumulative and not exclusive, and the maintenance of any particular remedy shall not be a bar to the maintenance of any other remedy. In this connection it is understood and agreed that the failure by the Association to maintain the exterior portion of the common area shall be deemed to be a public nuisance, and the Town of Tiburon shall have the right to abate said condition, assess the costs thereof, and cause the collection of said assessments to be made on the tax roll in the manner provided by pertinent provisions of the Tiburon Municipal Code or any other applicable law.
7. The Town Council of the Town of Tiburon may, at any time, relinquish its rights and interest in the project as herein set forth by appropriate resolution. Any such relinquishment by the Town Council shall be effective on the date that the resolution is adopted and a copy thereof is placed in the United States mail, postage prepaid, addressed to the Association.
8. The Association shall execute and record a declaration reflecting such relinquishment within ten (10) days of receipt of a copy of the resolution.

The above eight paragraphs cannot be amended or terminated without the written consent of the Town of Tiburon.

F. Information to precede final or parcel map submission. The following information shall be submitted for review prior to submittal of the final or parcel map where applicable:

1. Copy of applicant’s proposed application for Subdivision Permit, in the event a permit is required, from the California State Department of Real Estate;

Proposed sale price of each unit;
3. A copy of notices to tenants required by Section 66427.1 of the California Government Code or successor sections thereto together with evidence of each tenant’s receipt of same.

G. Special considerations relating to Condominium Use Permits.

1. The Review Authority may consider the following matters in its review of an application for a Condominium Use Permit. The desire of current tenants to either purchase prospective condominium units or maintain rental status, as well as the desire of neighborhood residents to either rent or buy, may be a consideration in a review of the effects on the general welfare of persons residing in the neighborhood of the proposed condominium use.

In granting any Condominium Use Permit, the Review Authority may impose such conditions as it may deem necessary to accomplish the purposes herein.

16-52.060 - Precise Development Plan

A. Applicability.

1. A Precise Development Plan is required in all RPD and RMP zones prior to subdivision, grading, or the making of improvements of any kind.
2. For all development projects that require the division of a lot or parcel, the filing and processing of the subdivision application shall not occur until after the Precise Development Plan, if one is required, has been approved by the Review Authority as provided in this Section.

B. Purpose. The purposes of the Precise Development Plan are:

1. To provide for review by the Town a detailed development proposal for a designated area with unique site characteristics or environmental conditions, in both written and graphic form, to ensure that new development in such areas is compatible with the existing land uses, development standards (including but not limited to, setbacks or building envelopes, coverage limits, and height limits) and identified constraints;

To demonstrate consistency of a development proposal with the goals and policies of the General Plan;

3. To preserve and conserve critically limited open space for the protection of the

ecology and the environment, and to safeguard against the adverse impacts of fire, noise, water pollution, the destruction of scenic beauty and hazards related to geology, fire and flood, while at the same time providing a reasonable use of the land.

C. Contents. The Precise Development Plan shall be prepared and endorsed by qualified professionals, such as a planning consultant, licensed architect or registered building designer, a land surveyor or registered civil engineer, and registered landscape architect. It shall encompass all contiguous lots under the same, or essentially the same, ownership and shall include the following:

1. Maps.

- a. A topographic map of the property prepared by a registered civil engineer or licensed land surveyor, with metes and bounds descriptions, which depicts in accurate detail the topography, existing buildings, land features (including areas subject to flooding or ponding), and pertinent features of adjacent properties that may affect or be affected by the project. Scale shall be one inch equals fifty feet for properties of four acres or more, with a contour interval of no more than five feet; and one inch equals twenty feet for properties less than four acres, with a contour interval of no more than two feet. This map shall delineate all portions of the property that are within fifty vertical feet and/or one hundred fifty horizontal feet of the Tiburon Ridgeline, as depicted in the General Plan Open Space and Conservation Element;
- b. A site plan map, at the same scale as the topographic map, showing in detail the design and location of proposed lots, building envelopes, proposed and existing structures, and all functional use areas such as roads, trails, paths, walkways, parks, common areas, rights-of-way, public and private open spaces, parking, planting, recreation, and so forth. The plan shall also depict the relationship of proposed buildings and structures to these functional areas and with existing and/or projected uses of adjacent property to a distance of two hundred feet from the subject property lines. The site plan map shall include a matrix, in tabular form, providing for each lot the proposed lot area; front, side, and rear setbacks (or their ranges for non-rectilinear building envelopes); area of the building envelope, proposed maximum height of structures, average percent of slope, and principal view direction;
- c. A preliminary grading plan map, at the same scale as the topographic map, depicting at a minimum:
 - (1) Existing contours;
 - (2) Proposed finished contours;
 - (3) All cut areas, depicted by shading or other clear means, with a cubic yard estimate for each cut area;

- (4) All fill areas, depicted by shading or other clear means, with a cubic yard estimate for each fill area;
 - (5) All areas where both cut and fill are proposed;
 - (6) An estimate of the total amount of cut and fill for the project, a statement as to whether cut and fill will be balanced, and an implementation program describing how surplus earth will be removed from the site or how added fill will be imported to the site. The number of truckloads necessary to accomplish this program should be estimated;
 - (7) At least three section drawings representative of the proposal, at the same scale as the grading plan;
 - (8) The location and height of all retaining walls or similar features necessary to accommodate the proposed grading scheme.
- d. A slope map reflecting existing conditions and a slope map reflecting proposed finished conditions. Slope maps shall be at the same scale as the topographic map, depicting by shading or other clear means, areas of slope less than twenty percent, areas of slope between twenty percent and thirty percent, areas of slope between thirty percent and forty percent, and areas of slope greater than forty percent. The acreage of each slope category shall be estimated.
- e. A resource conservation map showing the location of any of the following features on-site and describing how they will be preserved:
- (1) Springs, streams, watercourses, drainageways, ponds, or other water areas,
 - (2) Rare or endangered plant or animal species (survey may be required),
 - (3) Rare or endangered animal habitat areas (survey may be required),
 - (4) Areas of riparian vegetation,
 - (5) Archeological or paleontological resources (survey may be required),
 - (6) Rock outcroppings,
 - (7) Existing trails,
 - (8) Existing trees with trunks greater than twenty inches in circumference at a point two feet above ground level,

- (9) Knolls, ridges, or other places on-site from which view corridors or vistas are available,
- (10) Other noteworthy or unusual site characteristics;
- f. A preliminary erosion and siltation control plan map;
- g. A preliminary landscape plan map showing proposed treatment of common areas, roadway berms, entrances to the project, types of ground cover, types and heights of trees (at maturity), walls, irrigation, and details for walkways, paving, and fencing;
- h. Preliminary project elevations or perspective drawings.

2. Text.

- a. A general written description of the project and its site;
- b. A transportation analysis addressing circulation patterns (pedestrian, vehicular, and emergency), public and private; and estimating traffic generation as it may affect public streets within and adjacent to the proposed development. Consistency with General Plan Circulation Element policies shall be demonstrated;
- c. The number and type of dwelling units and a tabulation of the total land area and percent thereof designated for various uses. This shall include a matrix, in tabular form, providing for all lots the proposed lot area; front, side, and rear setbacks (or their ranges for non-rectilinear building envelopes); area of the building envelope and its percent of the lot area; proposed maximum height limit of structures; percent of slope of the lot, and principal view direction from each lot;
- d. An analysis of all public, quasi-public, recreational and educational facilities both on- and off-site, existing and proposed, in terms of the adequacy thereof to meet the project needs;
- e. A statement of the provisions for ultimate ownership and maintenance of all areas included within the project, including streets, structures, landscaping, drainage-ways and open space areas;
- f. A proposal describing how the Town's inclusionary housing policies will be addressed;
- g. Floor areas and proposed uses of non-residential buildings, if any;
- h. A description (with graphics) of provisions for storm drainage, sewage, paving, fencing and public utilities;

- i. An acoustical analysis, prepared by a properly registered firm or consultant, with analysis based upon the Town's standards as set forth in the General Plan Noise Element;
 - j. A preliminary title report for all involved parcels, including copies of documents referenced in the title report that could have a material effect on the development of the property. The beneficiary property, identified by assessors parcel number, shall be given for each easement burdening and benefiting the subject property. A separate sheet plan shall be provided indicating all proposed and existing easements, their dimensions and purposes clearly labeled;
 - k. Engineering studies in sufficient detail to indicate adequacy of soils, flood control, storm drainage, sewage disposal, and public utilities. Such studies shall include in-depth geologic and soils investigations and shall fully and clearly present all pertinent data. Such studies shall also clearly demonstrate the feasibility of the project as proposed;
 - l. A statement indicating the stages of construction, or phasing, for the entire development and a statement from applicable public utilities that service is available;
 - m. A draft of proposed deed restrictions, CC&Rs if any, and provision for circulation ways, view easements, maintenance of common or private areas and improvements, and preservation of open spaces. Any areas or improvements proposed for dedication to the Town shall be identified;
 - n. A statement describing the proposed materials and colors for the development, its theme (if any), and an explanation of how the proposal will be compatible with surrounding land uses;
 - o. A list of all other agencies from which a permit must be obtained, specifying the type of permit where known;
 - p. A statement describing whether the development involves diking, filling, dredging or placing structures in open waters, wetlands, or riparian corridors. If yes, then describe the specific nature of the proposal in this regard and note whether an Army Corps of Engineers permit and/or a Bay Conservation and Development Commission permit has been or will be applied for.
 - q. A preliminary Vegetation Management Plan conforming to Fire District regulations.
- 3. Photos and story poles.** Photo montages of the site as seen from critical vantage points, with accurate depictions of the proposed project superimposed, as well as one or more story poles or equivalent references as necessary to verify heights of buildings. Stakes shall be installed at the corners of building envelopes and along the centerline of proposed roadways.

4. Other. Such other information as the Director may reasonably require.

The relevancy of some of the above requirements will necessarily depend upon the nature and extent of the particular property and project being proposed. Upon written request, the Director shall advise the applicant of those requirements that may not be required to constitute a complete application.

D. Precise Development Plan procedure. Applications for Precise Development Plan shall be reviewed by the Commission, which after holding at least one public hearing, shall forward its recommendation by resolution to the Council. The Council shall consider the recommendation of the Commission, and after holding at least one public hearing, shall take final action on the application. Final action shall be by resolution of the Council. Approval of a Precise Development Plan is a legislative action by the Town, and as such shall not be effective until thirty days after adoption of the resolution by the Council.

E. Principles. Principles to be applied in making a determination to approve, deny or modify an application for Precise Development Plan approval are as follows:

1. Significant open space shall be permanently preserved, through dedication or other means acceptable to the Town, consistent with policies of the General Plan Open Space and Conservation Element.

Preservation of the natural features of the land shall be achieved to the maximum extent feasible through minimization of grading and sensitive site design. Features worthy of preservation include ridgelines, prominent knolls, desirable native vegetation, trees, significant rock outcroppings, watercourses, and riparian corridors.

3. Slopes created by grading should not exceed thirty percent. Final contours and slopes should reflect natural land features.
4. Every reasonable effort shall be made to preserve principal vistas, view points, view corridors, mature trees, rare plants, significant native flora and fauna, areas of historical significance, access corridors, and habitats of endangered species.
5. Location of development well below ridgelines shall be achieved, in compliance with the General Plan and other Town policies.
6. Prominence of development and construction should be minimized by appropriate location of grading and placing of buildings in order to screen by wooded areas, rock outcroppings and depressions in topography or other features.
7. Due consideration shall be given to avoid, eliminate or reduce areas posing geologic and non-geologic hazards.
8. Minimization of significant adverse impacts, as detailed in the environmental impact report, if one is required.

9. Roads shall be designed for minimum slopes, grading, cutbacks and fill. Narrowing of roadways may be allowed to reduce grading, retaining walls, and other scarring of the land.
10. Proposed arrangement of residential units and design of circulation system shall provide harmonious transition from and be compatible with neighboring development and open space. Monotony in design, and massive or inordinately large or bulky structures and site coverage that overwhelm or that are inconsistent with the surrounding area, shall be avoided.
11. Adequate consideration shall be given to the need for appropriate privacy between residential units and other uses. Design shall ensure minimum visual and aural intrusion into indoor and outdoor living areas from adjacent living areas.
12. Improvements shall be placed so as to minimize intrusion of noise on nearby areas.
13. Landscaping shall be designed so as to result in the least possible disturbance of natural and/or open areas and shall be compatible with the natural setting. Consideration shall be given to fire protection, water conservation, protection of views and trail areas, and buffering of noise.
14. Utilities shall be underground and streetlights, if needed, shall be of low intensity and low in profile.
15. Materials and colors used in improvements shall blend into the natural environment to the extent reasonably possible.
16. Consistency with other goals and policies of the General Plan elements shall be demonstrated.

F. Expiration of Precise Development Plan. Any Precise Development Plan approval shall expire and become null and void unless one of the following happens within thirty-six months after its effective date:

1. A tentative subdivision map is approved consistent with the approved Precise Development Plan;

If no subdivision map is necessary, subsequent Zoning or Building Permits have been issued in compliance with the approved Precise Development Plan;
3. An extension has been granted. A request for extension must be filed prior to the expiration date and shall be accompanied by a filing fee to be established by resolution of the Council. The permit holder shall submit sufficient information to the Town to determine whether good cause for an extension exists. Consideration of the extension shall be in compliance with Subsection H. (Amendments).

Upon expiration of a Precise Development Plan, the zoning for the site shall revert to that which existed prior to the Precise Development Plan approval, or if such zone no longer exists, to its nearest equivalent as determined by the Director.

- G. Denial, conditional approval of plan.** If from the facts presented, the Council is unable to make the findings to approve a Precise Development Plan, the application shall be denied. In taking action, the Council may deny the Precise Development Plan as submitted, or may approve such plan subject to specified amendments or conditions.
- H. Amendment.** Amendments to an adopted Precise Development Plan shall be processed using the same procedure as described in Subsection D. (Precise Development Plan procedure) pertaining to original adoption, except that in cases where the Commission votes to deny an application for precise development plan amendment, then the action of the Commission shall be final, and no action of the Council shall be required. Decisions of the Commission may be appealed as provided in Section 16-66 (Appeals).
- I. Moratorium.**
1. The period of time specified for the expiration of the Precise Development Plan shall not include any period of time during which a development moratorium, imposed after the approval of the Precise Development Plan, is in existence, provided, however, the length of the moratorium does not exceed five years.
 2. Once a moratorium is terminated, the Precise Development Plan shall be valid for the same period of time as was left to run on the approval at the time that the moratorium was imposed. However, if the remaining time is less than one hundred twenty days, the approval shall be valid for one hundred twenty days following the termination of the moratorium.
- J. Exemption from requirements of Precise Development Plan.**
1. The Director may waive the requirements of a Precise Development Plan, or various parts thereof, where the requirements are, in whole or in part, deemed inappropriate or inapplicable. Any such waiver shall be confirmed by the Commission.

Refusal of the Director to waive the requirements of the Precise Development Plan or various provisions thereof, upon written request by an applicant, may be appealed to the Commission by the applicant. The Commission's decision shall be final.

16-52.070 - Conceptual Master Plan

At the option of the property owner or duly authorized agent of the property owner, a Conceptual Master Plan review package may be filed with the Director. The Conceptual Master Plan is not a permit or an entitlement, and shall not be binding on the Town in any way, but is intended as a pre-application review for a subsequent Precise Development Plan submittal (see Section 16-52.060 [Precise Development Plan]). The Conceptual Master Plan requires considerably less detailed submittal information than a Precise Development Plan application. A Conceptual Master Plan review is strongly recommended when significant deviations from Town policies or regulations are anticipated in a development project.

A. Purpose. The purposes of the Conceptual Master Plan are as follows:

1. To encourage cooperative, good faith, participatory efforts by the public, the Town, the project proponent, and all other involved parties in addressing difficult land development issues;

To determine controversial aspects of a site or a potential development proposal and attempt to reach consensus on ways in which the controversial issues may be reasonably addressed. Public input shall be encouraged;
3. To obtain preliminary review and evaluation by Staff and related agencies regarding general consistency of the proposal with the General Plan and other applicable ordinances and regulations. The specificity of the review must necessarily reflect the specificity of the submittal;
4. To obtain preliminary public review and comment on a relatively schematic development proposal in order to assist project proponents in designing a Precise Development Plan that may be acceptable to the community and the Town;
5. To establish an informational foundation for any subsequent Precise Development Plan submittal.

B. Contents. The Conceptual Master Plan package shall consist of the following information and materials, details of which are further described in Section 16-52.060 (Precise Development Plan) but which excludes detailed engineering or other detailed information that is not necessary or is premature for evaluation of the Conceptual Master Plan, as determined by the Director:

1. A topographic map;

A conceptual site plan showing the type, location, and density of the proposed development; all roadways, proposed open spaces (whether public or private), and other functional use areas such as parking, planting, and recreation areas;
3. A preliminary grading plan;
4. A preliminary geological investigation report prepared by a qualified soils expert;
5. A resource conservation map;
6. A general written description of the project and its site;
7. A narrative describing how the project will be compatible with the setting and the neighborhood;
8. Photo montages of the site as seen from critical vantage points, with reasonably accurate depictions of the proposed project superimposed, as well as one or more story poles or equivalent references as necessary to verify heights on the montages;

9. A statement describing the proposed typical materials and colors for the project;
10. A statement describing how the Town's inclusionary housing requirements will be addressed;
11. A list of other agencies from which a permit must be obtained in order to carry out the project, specifying the type of permit where known;
12. A preliminary title report;
13. Such other information as the Director may reasonably require;
14. The Conceptual Master Plan will identify open waters, wetland and riparian corridors, as well as any areas involving diking, filling, or dredging;
15. A preliminary schedule of staging, sequence and approximate times for all proposed development.

C. Procedure.

1. Once the Director has determined that the appropriate materials have been submitted, an advisory agency meeting will be scheduled to discuss the proposal. This meeting would typically involve the Fire District, Town Engineer, Public Works Department, Planning Division, and other affected agencies.
2. Following this meeting, one or more informational meetings at the neighborhood, Commission, and/or Council level will be held at which the project proponent is to present the conceptual plan and respond to questions, and at which public input may be gathered.
3. Courtesy notices to property owners within three hundred feet, homeowner groups, and other interested parties shall be sent at least ten days prior to such meetings.

- D. Fees.** Fees for the Conceptual Master Plan shall be one-half of those established by the Town for Precise Development Plan applications.

16-52.080 - Tidelands Permit

- A. Purpose.** To preserve, promote and enhance tidelands, waterways, shorelines, salt marshes, and beaches as vital natural resources that provide open space, wildlife habitat, scenic views, and recreational and water-oriented resources in the Town of Tiburon.
- B. Review.** Tidelands Permit review consists of examination of plans and proposals for land use, grading, or site construction/development.
- C. Requirements.** A Tidelands Permit is required for all grading and/or construction on land and/or water areas within the Town's jurisdiction that are located in the M zone, and includes all submerged land, and partially submerged land up to the mean high tide line on the property, utilizing North American Vertical Datum (1988) for elevation data, unless

designated in a different zone on the zoning map.

- E. Exemptions.** Emergency work to prevent impending damage to land or improvements from floodwaters; maintenance work to buildings or structures that were approved by Tidelands Permit; any structure, fill, or excavation which the Director finds to be minor or incidental; any structure, fill or excavation which has been approved as part of any application, action or permit except as approved by a Building Permit, shall not be subject to a Tidelands Permit.
- F. Permitting Procedures.** The Director shall act on Tidelands Permit applications if the application includes only repair to a structure, or work is found to be minor and incidental and without significant environmental impact. If the application involves new construction and cannot be considered to be minor and incidental and/or is expected to have significant environmental impact, the application shall be referred to the Commission for consideration with a Conditional Use Permit (Section 16-52.040).

16-52.090 – Temporary Use Permit

- A. Purpose.** The purpose of Section 16-52.090 is to establish procedures for allowing short-term uses that may not meet the normal development or use standards applicable to the subject zoning district, but that may be acceptable because of their temporary nature.

This section provides a review process for a proposed use to ensure that basic health, safety, and general community welfare standards are met. This section also provides a process for Town approval of a suitable temporary use with the minimum necessary conditions or limitations consistent with the temporary nature of the use. This section is not intended to regulate uses permitted under the Town’s Special Events Permit Policy.

- B. Approval required.** A Temporary Use Permit may be approved for any of the following temporary uses:
1. **Holiday product sales lots.** Lots used for the sale of seasonal holiday products, and the establishment of an accessory temporary security trailer on the sales lots may be approved when needed for the provision of security. A permit shall not be required when the temporary sales lot is used in conjunction with an established commercial business that has been issued a valid Town Business License, provided that the activity does not impair vehicle access. Examples of temporary holiday sales lots are Christmas tree lots, pumpkin patches, and other seasonal holiday products. The uses may be located on vacant lots or within existing parking lots, but may not occupy parking spaces needed to meet the minimum parking requirements for the property required under Section 16-32 (Parking and Loading Standards).
 2. **Temporary real estate office.** A temporary real estate office may be approved within the area of an approved residential development project only for the sale of homes and/or lots.

3. **Temporary work trailers.** A trailer, coach, or mobile home may be approved as a temporary work site for employees of a business when at least one of the following conditions exist:
 - a. When a valid Building Permit is in effect, and the construction or remodeling of a permanent building is taking place; or
 - b. When an applicant can demonstrate that a temporary trailer is needed on a short-term basis.
4. **Similar temporary uses.** Other temporary uses which, in the opinion of the Director, are similar to and compatible with the zoning district and surrounding land uses may be approved. The maximum time period for which these types of uses shall be allowed will depend upon the particular circumstances involved.

C. Action by Director; Appeal. The Director may approve or conditionally approve a Temporary Use Permit only if the proposed temporary use is in compliance with Section 16-52.090 (B) above, and if all of the following findings are made:

1. The establishment, maintenance or operation of the requested use will not be detrimental to the health, safety, or general welfare of persons residing or working in the vicinity of the proposed use.
2. The use, as described and conditionally approved, will not be detrimental or injurious to property and improvements in the vicinity or to the general welfare of the Town.
3. Approved measures for removing the use and restoring the site will ensure that the temporary use causes no changes to the site that will limit the range of possible future land uses otherwise allowed by this Zoning Ordinance.

In order to make the determinations and findings listed above, the Director shall take into consideration the temporary nature of the requested land use activity. The decision of the Director may be appealed to the Planning Commission pursuant to Section 16-52.020, using procedures set forth in Section 16-66 (Appeals). The decision of the Planning Commission shall be final.

D. Recommended conditions. In approving any Temporary Use Permit, the Director may require that the use conform with the site plan, architectural drawings, or statements submitted in support of the application, or such modification thereof as the Director may deem necessary to protect the public health, safety and general welfare and to secure the objectives of the General Plan. The Director may also impose such other conditions as deemed necessary to achieve these purposes, including but not limited to, the following:

1. **Condition of site following temporary use.** Each site occupied by a temporary use shall be cleaned of debris, litter, or any other evidence of the temporary use upon completion or removal of the use, and shall thereafter be used in compliance with the provisions of this Zoning Ordinance. A bond may be required prior to initiation of the use to ensure cleanup after the use is finished.
2. **Time limits.** The Notice of Action for any approved Temporary Use Permit shall specify the permit duration.

3. **Other permits.** Any use approved under a Temporary Use Permit shall comply with all other licensing and/or permitting requirements of other departments or agencies necessary for operation of the use, including, but not limited to, Town business license, fire district, Marin County Environmental Health and State Alcoholic Beverage Commission.

16-52.100 - Secondary Dwelling Unit

This Section provides for the establishment and reasonable regulation of secondary dwelling units in order to encourage housing opportunities for all segments of the population while ensuring the public health, safety, and welfare.

- A. **Application and fee.** Application for a Secondary Dwelling Unit Permit shall be made in compliance with the provisions of Section 16-50 (Application Filing and Processing) and shall be accompanied by the appropriate fee.
- B. **Director of Community Development as Review Authority.** Applications for secondary dwelling units shall be acted upon by the Director without discretionary review or a public hearing.
- C. **Grant of Secondary Dwelling Unit Permit.** In order to grant a Secondary Dwelling Unit Permit, the Director shall find that the secondary dwelling unit would comply with all of the standards set forth in the Town's Standards for Secondary Dwelling Units as adopted by Council resolution.
- D. **Building Permits.** A Building Permit shall be required in conjunction with the issuance of a Secondary Dwelling Unit Permit if repair, rehabilitation, or other work otherwise requiring a Building Permit is necessary.
- E. **Approved Conditional Use Permits still valid.** Any secondary dwelling unit legally established with an approved Conditional Use Permit prior to July 1, 2003 shall continue to be considered a legal, conforming dwelling unit. Secondary dwelling units established by any such Conditional Use Permit shall continue to comply with all conditions of the permit approval.
- F. **Premises identification.** Approved numbers or addresses shall be provided for each dwelling unit and said numbers or addresses shall be plainly visible and legible from the street fronting the property.
- G. **Expiration.** Secondary Dwelling Unit Permits issued in compliance with this Section shall expire and become null and void three years after issuance unless a Certificate of Occupancy has been issued by the Building Division.
- H. **Revocation.** Upon written notice to the holder of a Secondary Dwelling Unit Permit, and a hearing before the Director, the Director may revoke or modify any Secondary Dwelling Unit Permit, on any one or more of the following grounds:
 1. That the approval was based on false information submitted by the applicant.

That the use for which such approval was granted has ceased to exist or has been suspended for one year or more.

3. That the permit granted is being or recently has been exercised contrary to the terms or conditions of such approval, or in violation of any statute, ordinance, law or regulation.
- I. Periodic update.** The Department shall maintain a record of all legal secondary dwelling units and shall review and update the record every two years. At the review, the owner of record shall verify in writing under penalty of perjury that the secondary dwelling unit is in compliance with all conditions of the Secondary Dwelling Unit Permit, or with all conditions of the Conditional Use Permit if the secondary dwelling unit was established under a Conditional Use Permit issued prior to July 1, 2003.
 - J. Reporting of violations.** All reporting of secondary dwelling unit violations shall be in writing and directed to the Department. The Director shall notify the owner of record of the property that a complaint has been registered, within ten calendar days from receipt of any such complaint. The Director shall investigate and issue a written report to the complainant within thirty days from the date of the issuance of the notice outlining the current status of any alleged violation and the steps that have been requested of the owner of record to remedy the situation.
 - K. Violations considered an infraction.** Violations of this Section shall be punished as infractions or by administrative citation, in the discretion of the Director and shall be subject to the provisions of Section 16-56.030 (Violations and Penalties) and/or Municipal Code Chapter 31 (Enforcement of Code). This Subsection also applies to violations of conditions of approval issued in association with any secondary dwelling unit approval.
 - L. Violations--Additional remedies--Injunctions.** As an additional remedy, the existence and/or maintenance of any secondary dwelling unit in violation of any provisions herein, or of any conditions of approval placed thereon, shall be cause for revocation and shall be deemed and is declared to be a public nuisance and may be subject to summary abatement (i.e., including, without limitation, administrative abatement in compliance with Municipal Code Chapter 31 [Enforcement of Code]), and/or restrained and enjoined by a court of competent jurisdiction. In the event legal action is instituted to abate said violation, the Town shall be entitled to recover its costs and reasonable attorney's fees incurred in prosecuting said action.
 - M. Appeals.** Any person aggrieved by any decision involving the approval, denial, or revocation of a Secondary Dwelling Unit Permit (or a Conditional Use Permit if the secondary dwelling unit was established under a Conditional Use Permit issued prior to July 1, 2003), may appeal such decision to the Town Council in compliance with Section 16-66 (Appeals).

16-52.110 - Home Occupations

- A. Application and fee.** Application for a Home Occupation Permit shall be made in

compliance with the provisions of Section 16-50 (Application Filing and Processing), and shall be accompanied by the appropriate fee.

B. General criteria. Home occupations shall be limited to the following uses:

1. Art and craft work (ceramics, painting, photography, sculpture, etc.);
Tailors, sewing, etc.; and
3. Office-only uses, including an office for an architect, attorney, consultant, counselor, insurance agent, planner, tutor, writer, etc., and electronic commerce.

Home Occupations also includes any other uses which may be determined by the Review Authority to be of the same general character as the above occupations, and not objectionable or detrimental to the zone in which they are located.

C. Operating Standards. Home occupations shall meet the following requirements:

1. No significant additional traffic shall be created in the neighborhood;
Adequate parking shall be maintained;
3. No more than one nonresident person shall be employed, at which time an additional off-street parking space shall be required beyond that required by Subsection C.2 above;
4. No material may be stored, and no equipment used which is hazardous or visible or audible from outside the building or otherwise creates a nuisance;
5. There shall be no display of goods visible from the exterior of the building, and no signs may be placed on the building or property.

The Review Authority may impose any reasonable conditions on the home occupation that are warranted by the type of activity. All persons conducting businesses from their homes are required to have a valid business license from the Town.

D. Referral. In his sole discretion, the Director may refer any application for a Home Occupation Permit to the Planning Commission for review and action.

E. Appeals. Any person aggrieved by any decision of the Director involving the approval, denial, or revocation of a Home Occupation Permit, may appeal such decision to the Planning Commission in compliance with Section 16-52.020 (Authority for Land Use and Zoning Decisions) and Section 16-66 (Appeals). The decision of the Planning Commission on the appeal shall be final. Any person aggrieved by any decision of the Planning Commission involving the approval, denial, or revocation of a Home Occupation Permit (except on appeal), may appeal such decision to the Town Council using procedures set forth in Section 16-66 (Appeals).

F. Business license. A home occupation shall have a valid business license from the Town.

16-54 Permit Implementation, Time Limits, Extensions

Section:

- 16-54.010 - Purpose
- 16-54.020 - Effective Date of Permits
- 16-54.030 - Applications Deemed Approved
- 16-54.040 - Filing of New Application After Denial
- 16-54.050 - Performance Guarantees
- 16-54.060 - Permit Time Limits, Extensions, and Expiration
- 16-54.070 - Changes to an Approved Project

16-54.010 - Purpose

The provisions of Section 16-54 provide requirements for the implementation or vesting of the permits required by this Zoning Ordinance, including time limits and procedures for granting extensions of time.

16-54.020 - Effective Date of Permits

A Site Plan and Architectural Review approval, Variance, Conditional Use Permit, Condominium Use Permit, Secondary Dwelling Unit, or Tidelands Permit, shall become effective on the 11th day following the date of application approval by the review authority, provided that the appeal period has ended and no timely appeal has been filed in compliance with Section 16-66 (Appeals). For Site Plan and Architectural Review applications for Minor Alteration projects, the approval shall become effective on the sixth business day following the date of application approval by the Director, provided that the appeal period has ended and no timely appeal has been filed in compliance with Section 16-66 (Appeals). A Precise Development Plan approval shall become effective on the 31st day following date of application approval by the Town Council.

16-54.030 - Applications Deemed Approved

A Zoning Permit application deemed approved by operation of law pursuant to Government Code Section 65956 shall be subject to all applicable provisions of this Zoning Ordinance, which shall be satisfied by the applicant before a Building Permit is issued or a land use not requiring a Building Permit is established.

16-54.040 - Filing of New Application After Denial

After the denial of an application for, or the revocation of, a Site Plan and Architectural Review approval, Variance, Conditional Use Permit, Condominium Use Permit, Secondary Dwelling Unit, or Tidelands Permit, no application for the approval of the same or a substantially similar project on the same site shall be considered by the Review Authority within one year after the date of its action on the original application, unless it is established that there has been a substantial change in the circumstances under consideration in the original proceedings, or that the denial was made without prejudice.

16-54.050 - Performance Guarantees

A permit applicant may be required by conditions of approval, or by action of the Review Authority, to provide adequate financial security, in a form acceptable to the Director, to guarantee and/or monitor the faithful performance of and compliance with any/all conditions of approval imposed by the Review Authority on the permit.

16-54.060 - Permit Time Limits and Extensions

A. Time limits. Unless a condition of approval or other provision of this Zoning Ordinance establishes a different time limit, any permit or approval not exercised within 12 months of approval shall expire and become void, except where an extension of time is approved in compliance with Subsection B., below, or by the period of time in which:

1. An appeal to the Review Authority is pending; or
2. Construction is restrained by the process of any Court of competent jurisdiction.

B. Extensions of time. Unless otherwise specified in this Zoning Ordinance, upon written request by the applicant, the Review Authority may grant no more than two separate extensions of up to one year per extension from the date of expiration of the original approval to the time for an approved Zoning Permit to be exercised.

1. Filing and review of request.

- a. Time for filing.** The applicant shall file a written request for an extension of time with the Director before the expiration of the permit, together with the filing fee required by the Town.
- b. Evidence to be provided.** The Director shall determine whether the applicant has made a good faith effort to exercise the permit or whether efforts to exercise the permit have been abandoned.

2. Action on extension request. A permit may be extended as follows for no more than two additional one-year periods beyond the expiration of the original approval, provided that the Review Authority first finds that there have been no substantial changes in the conditions or circumstances of the site or project such that there would have been grounds for denial of the original project.

- a. Director's action.** Upon good cause shown, the first extension may be approved, approved with modifications or denied by the Director, whose decision may be appealed in compliance with Section 16-66 (Appeals).
- b. Review Authority action.** One subsequent extension may be approved, approved with modifications, or denied by the Review Authority, whose decision may be appealed in compliance with Section 16-66 (Appeals).

C. Exception. Permit time limits and extensions in this Section are not applicable to Site Plan

and Architectural Review permits, which are governed by Section 16-52.020 (O).

16-54.070 - Changes to an Approved Project

Development, construction or a new land use authorized through a Zoning Permit granted in compliance with this Zoning Ordinance shall be established only as approved by the Review Authority, and in substantial conformance with any conditions of approval, except where a change to the project is approved as follows.

- A. Application.** An applicant shall request a desired change in writing, and shall also furnish appropriate supporting materials and an explanation of the reasons for the request. A change may be requested either before or after construction, or establishment and operation of the approved land use.
- B. Changes approved by Director.** The Director may authorize one or more changes to an approved site plan, architecture, conditions of approval, or the nature of the approved land use where the Director first determines the change is minor, and finds that each change:
1. Is consistent with all applicable provisions of this Zoning Ordinance;

Does not involve a feature of the project that was a basis for findings in a negative declaration or environmental impact report for the project;
 3. Does not involve a feature of the project that was specifically addressed or was a basis for conditions of approval for the project or that was a specific consideration by the Review Authority in the project approval;
 4. Does not result in a significant expansion of the use;
 5. Does not result in additional floor area or skylights; and
 6. Results in a revised project that is in substantial conformance with the form and intent of the original approval.

The Director may choose to refer any requested change to the original Review Authority for review and final action.

- C. Appeal.** The decision of the Director to approve changes to an approved project may be appealed to the Review Authority that originally approved the project, pursuant to Section 16-50.020.
- D. Changes approved by original Review Authority.** A proposed change that does not comply with the criteria in Subsection B. above, shall only be approved by the original Review Authority for the project through a new permit or formal amendment application processed in compliance with this Zoning Ordinance.

16-56 Enforcement and Penalties

Section:

- 16-56.010 - Purpose
- 16-56.020 - Enforcement
- 16-56.030 - Violations and Penalties
- 16-56.040 - Legal Remedies

16-56.010 - Purpose

The purpose of Section 16-56 is to establish procedures for Town responses to violations of this Zoning Ordinance and any conditions of Zoning Permits, in order to promote the Town's planning efforts and to protect the public health, safety, and welfare.

16-56.020 - Enforcement

The Director may withhold issuance of any permit or entitlement of use authorized under the provisions of this Zoning Ordinance if he or she determines that there has not been full compliance with all applicable ordinances, regulations, and statutes pertaining to land divisions, including but not limited to the State Subdivision Map Act (California Government Code Title 7, Division 2), and Municipal Code Chapter 14 (Subdivision of Land); or if it appears that the land to which the permit applies is not a legally created lot. Any permit, license, or other certificate of entitlement issued contrary to the provisions of this Zoning Ordinance is void.

16-56.030 - Violations and Penalties

- A. Infraction.** Any person violating any provision or failing to comply with any requirement of this Zoning Ordinance, including without limitation any violation of any Zoning Permit condition, shall be guilty of an infraction. Penalties for infractions shall be those set forth in Government Code Section 36900, as amended. Violations may also be prosecuted administratively, in compliance with Municipal Code Chapter 31 (Enforcement of Code).
- B. Power of arrest.** The Town Manager, Director, and Building Official, building inspector, or their designee, are authorized with the power of arrest for any person who violates any provision of this Zoning Ordinance, in compliance with Section 836.5 of the California Penal Code.
- C. Public nuisance.** Any violation of this Zoning Ordinance shall constitute a public nuisance. In addition to any other remedies provided in this Section, the Town may summarily abate any such violation and/or bring civil suit to abate the same.

- D. Separate offenses--Cumulative remedies.** Each and every day any violation of this Zoning Ordinance continues, is committed, or is permitted to continue, shall be regarded as a new and separate offense. The remedies provided in this Section shall be cumulative and not exclusive.

16-56.040 - Legal Remedies

- A. No person, business or legal entity shall maintain a court action or proceeding to attack, review, set aside, void or annul any decision on matters listed in this Zoning Ordinance, including, but not limited to, rezoning or reclassification of property or zoning text amendment, or concerning any of the proceedings, acts or determinations taken, done or made prior to such decision, or to determine the reasonableness, legality or validity of any condition attached thereto, shall not be maintained by any person unless they commence such action or proceeding is commenced within ninety days after the effective date of the challenged decision. Thereafter, all persons are barred from any such action or proceeding, or any defense of invalidity or unreasonableness of such decision or of such proceedings, acts or determinations.
- B. The provision of this Section shall apply to matters listed in this Zoning Ordinance. Provided, however, that should any court of competent jurisdiction hold that this Section is invalid in its application to matters referred to in California Government Code Section 65009, then such invalidity shall not affect the application of the provisions of this Section to all other matters listed in this Zoning Ordinance, and, to this end, the application of this Section to matters other than those listed in California Government Code Section 65009 is declared to be severable.
- C. The Council declares that it would have adopted this Section and made the same applicable to matters other than those listed in California Government Code Section 65009 irrespective of any holding that this Section cannot legally be applied to matters referred to in California Government Code Section 65009.

ARTICLE VI

Zoning Ordinance Administration

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16-60 Administrative Responsibility

Section:

- 16-60.010 - Purpose
- 16-60.020 - Design Review Board
- 16-60.030 - Planning Commission
- 16-60.040 - Town Council

16-60.010 - Purpose

The purpose of Section 16-60 is to describe the Zoning Permit review authority and other duties of the Design Review Board, Planning Commission, and Town Council in the administration of this Zoning Ordinance.

16-60.020 - Design Review Board

- A. Duties of Design Review Board.** The Design Review Board shall have the following Zoning Permit review authority and other duties:
1. Review, and thereafter to approve, deny, or approve with conditions or modifications, applications for Site Plan and Architectural Review, in compliance with Section 16-52.020 (Site Plan and Architectural Review);
 2. Review, and thereafter to approve, deny, or approve with conditions or modifications, applications for a Variance from the provisions of the Zoning Ordinance, in compliance with Section 16-52.030 (Variance), when such Variance is associated with an application for which the Board has review authority;
 3. Review the “Design Guidelines for Hillside Dwellings and General Design Guidelines for New Construction and Remodeling” booklet and make amendment recommendations to Council;
 4. To adopt all rules and procedures necessary or convenient for the conduct of its business;
 5. Other duties as may be specified elsewhere in the Municipal Code.
- B. Membership and terms.** The Board shall consist of five members, at least one of whom should be a professional architect. Members shall be appointed by the affirmative vote of a majority of the Council, and may be removed by the affirmative vote of a majority of the Council. The term of office of Board members shall be four years. Terms shall be staggered as to year of expiration. Appointment to fill a vacancy occurring prior to the expiration of the term shall be for the balance of the term only.

- C. Chairman and vice-chairman.** The Board shall elect a chairman and vice-chairman annually. The election shall be held at the first meeting of July each year, or as soon thereafter as possible. The Board may re-elect the chairman and/or vice-chairman to successive terms.
- D. Meetings.** The Board shall adopt a regular schedule of meetings and should meet at least one time per month. Meetings shall generally be conducted in accordance with Robert's Rules of Order, but otherwise in accordance with reasonable rules and procedures established by the chairman.
- E. Applications.** Any property owner, or his duly authorized agent, desiring a Zoning Permit over which the Board has review authority, shall file an application as provided in Section 16-50 (Application Filing and Processing).

16-60.030 - Planning Commission

- A. Duties and authority.** The Planning Commission shall have the following Zoning Permit review authority and other duties as may be specified elsewhere in the Municipal Code or in State law:

1. Review and approve, deny, or conditionally approve all applications for:
 - a. Conditional Use Permits,
 - b. Condominium Use Permits,
 - c. Home Occupation Permits when referred by the Director, as set forth in Section 16-40.040 (Home Occupations),
 - d. Minor Subdivisions, as provided in Municipal Code Chapter 14 (Subdivision of Land),
 - e. Variances when in conjunction with an application subject to review by the Commission or when not associated with any other Zoning Permit application;

Review, and thereafter to recommend approval, denial, or conditional approval of, applications for the following:

- a. Zoning Text Amendments or the initiation thereof,
- b. Rezonings or Prezonings or the initiation thereof,
- c. Precise Development Plans,
- d. Amendment to Master Plans and/or Precise Plans adopted under prior Town or County ordinances,
- e. Major Subdivisions,

- f. General Plan Amendments or the initiation thereof, as set forth in State law,
 - g. Specific Plans as set forth in State law;
3. Review and recommend approval of or deny Precise Development Plan Amendments;
 4. Serve as the planning agency for the Town, in compliance with the California Government Code;
 5. Maintain a viable General Plan for the Town;
 6. Interpret the meaning of the Zoning Ordinance, as described in Section 16-12.020, and the General Plan, when the meaning thereof is not clear, and to request opinions of the Town Attorney when deemed necessary;
 7. Supervise the administration of the Zoning Ordinance;
 8. Make recommendations to the Council as requested and as may be provided by law;
 9. Review the capital improvement program of the Town for consistency with the General Plan and make recommendations therein to the Council;
 10. Adopt rules and procedures necessary or convenient for the conduct of its business.

Additionally, the Commission may, on its own initiative or through Town staff:

11. Provide general information to interested persons upon request in order to assist in the implementation of the General Plan and Zoning Ordinance;
12. Disseminate to the Town information on current regional and state planning information;
13. Provide research into planning and environmental issues;
14. Adopt criteria for traffic projections and transportation management needs;
15. Examine and project growth assimilation needs as a function of the General Plan Housing Element, and coordinate with regional and county entities on population growth issues. [16-3.4.1]

B. Membership and terms. The Commission shall consist of five members, all of whom shall be residents of the Town. Members shall be appointed by the affirmative vote of a majority of the Council, and may be removed by the affirmative vote of a majority of the Council. The term of office of Planning Commissioners shall be four years. Terms shall be staggered as to year of expiration. Appointment to fill a vacancy occurring prior to the

expiration of a term shall be for the balance of the term only.

- C. Chairman and vice-chairman.** The Commission shall elect a chairman from its membership. The term of the chairman shall be one year, and the chairman may be re-elected. The Commission shall also elect a vice-chairman, who shall preside in the absence of the chairman. The term of the vice-chairman shall be the same as that of the chairman, and he may also be re-elected. The elections shall be held at the first meeting in July of each year, or as soon thereafter as possible.
- D. Meetings.** The Commission shall adopt a regular schedule of meetings and should meet at least one time per month. Meetings shall generally be conducted in accordance with Robert's Rules of Order, but otherwise in accordance with reasonable rules and regulations established by the chairman.
- E. Applications.** Any property owner or his duly authorized agent, desiring a Zoning Permit over which the Commission has review authority, shall file an application as provided in Section 16-50 (Application Filing and Processing).

16-60.040 - Town Council

Duties and authority. The Council shall have the following Zoning Permit review authority and other duties as may be specified in the Municipal Code or in state law:

1. To consider the recommendations of the Commission in reviewing, and thereafter approving, approving with conditions, denying, or remanding for further consideration applications for:
 - a. Zoning text amendments,
 - b. Rezoning or prezonings,
 - c. Precise development plans, or amendment thereto,
 - d. Major subdivisions, as provided in Municipal Code Chapter 14 (Subdivision of Land),
 - e. Amendment to Master Plans and/or Precise Plans adopted under prior Town or County ordinances,
 - f. General Plan amendments,
 - g. Specific plans.

To hear and act on appeals, as further described in Section 16-66 (Appeals).

16-62 Nonconforming Uses, Structures, and Lots

Section:

- 16-62.010 - Purpose and Applicability
- 16-62.020 - Definitions
- 16-62.030 - Restrictions on Nonconforming Structures and Uses
- 16-62.040 - Legal Nonconforming Lots

16-62.010 - Purpose and Applicability

- A. The provisions of Section 16-62 provide regulations for nonconforming land uses, structures, and lots that were lawfully established, but which would be prohibited, regulated, or restricted differently under the terms of this Zoning Ordinance or an amendment that changed the originally applicable requirements.
- B. It is the intent of this Zoning Ordinance to gradually eliminate, through attrition, the number and extent of nonconforming uses by (1) prohibiting their enlargement; (2) prohibiting their reestablishment after abandonment; and (3) regulating the alteration of the structures they occupy, while allowing them to exist under the limited conditions outlined in this Section.
- C. The requirements set forth herein do not regulate nonconforming signs, which are subject to the provisions of Municipal Code Chapter 16A (Signs).

16-62.020 - Definitions

- A. **Legal nonconforming use defined.** A “legal nonconforming use” is a use of a structure or land that was lawfully established and maintained prior to the adoption of this Zoning Ordinance, but which no longer conforms to the use regulations set forth herein. An example of a legal nonconforming use would be a multi-unit apartment building located in a single-family or two-family residential zone, or a commercial use located in any residential zone.
- B. **Legal nonconforming structure defined.** A legal nonconforming structure is a structure that was lawfully erected prior to the adoption of this Zoning Ordinance, but that no longer conforms to the standards of coverage, setbacks, height, distance between structures, or other prescribed regulation applicable under this Zoning Ordinance.
 - 1. Examples of a nonconforming structure could be:
 - a. A residence taller than thirty feet that did not receive a Variance to be built higher than thirty feet;

- b. A lot in an RO-1 zone that exceeds fifteen percent lot coverage and that did not receive a Variance to exceed the fifteen percent lot coverage limit;
- c. A building with a setback less than that required in its zone and that did not receive a Variance for the reduced yard area.

A structure shall not be considered nonconforming where its apparent nonconformity results solely from a Variance, Adjustment, or Conditional Use Permit granted by the Town or by the County of Marin and subsequently vested. Records of these permits may be on file in the Department.

- 3. Lawfully existing structures shall not be considered nonconforming solely on the basis of floor area guidelines described in Subsection 16-52.020.I (Floor area ratio guidelines).

16-62.030 - Restrictions on Nonconforming Structures and Uses

A nonconforming land use and the use of a nonconforming structure may be continued, including transfers of ownership, provided that their continuation shall comply with the requirements of this Section.

A. Nonconforming use of land. A nonconforming use of land may continue to be used as follows:

- 1. **Maintenance and repairs.** Legal nonconforming uses, as defined above, and the structures they occupy, may continue to be operated and occupied except as provided in Subsection A.2 below. Routine maintenance and repairs may be performed on land or structures containing a nonconforming use.

Expansion and alteration.

- a. No nonconforming use shall be moved, altered, enlarged, or extended in any way that would increase the nonconformity, unless the purpose of such change is to eliminate the nonconformity, and as otherwise set forth in Subsection B. (Nonconforming structure). This provision shall include structures containing nonconforming uses.
- b. A nonconforming use of a structure or site shall not be changed to another nonconforming use.
- 3. **Termination of nonconforming status by discontinuance.** Whenever a nonconforming use has been discontinued for a continuous period of one year, the nonconforming use shall not be reestablished, and the use of the structure or site thereafter shall conform to the regulations for the zone in which it is located.

4. Termination of nonconforming status by destruction.

- a. Whenever fifty percent or less of the structural square footage used for the nonconforming use is involuntarily damaged or destroyed, the structure may be restored, subject to the provisions of Subsection B.2 below (Alteration, enlargement and replacement) and the nonconforming use may be resumed, provided that work of reconstruction is commenced within one year of the date of damage and is diligently pursued to completion.
- b. Whenever more than fifty percent of the structural square footage used for the nonconforming use is involuntarily damaged or destroyed, then the structure shall be considered destroyed, and the nonconforming use shall not be resumed unless General Plan consistency can be demonstrated and a Conditional Use Permit is first obtained as provided in Section 16-52.040 (Conditional Use Permit).

B. Nonconforming structure. A legal nonconforming structure may continue to be used as follows:

- 1. Maintenance and repairs.** Routine maintenance and repairs may be performed on a legal nonconforming structure.

Alteration and/or enlargement. A legal nonconforming structure may be altered, remodeled or enlarged subject to the following provisions:

- a. The discrepancy between existing conditions and the standards of coverage, setback, height or any other standard prescribed in the regulations for the zone in which the structure is located shall not be increased.
- b. The alteration, remodeling, or enlargement receives Site Plan and Architectural Review approval as set forth herein.
- c. A legal nonconforming structure destroyed in whole or in part by fire, explosion, earthquake, flood, landslide, or similar disaster may be reconstructed in conformance with currently applicable building and fire codes, provided that:
 - (1) If the structure is proposed to be rebuilt substantially to the same floor area, form, appearance, elevations, footprint, volume, and lot coverage as the previously existing structure, Site Plan and Architectural Review approval shall be required only for exterior materials and colors, provided that reasonable efforts are made to correct or mitigate conditions that do not conform to this Zoning Ordinance.
 - (2) If the structure is not proposed to be rebuilt substantially the same as the previously existing structure, full Site Plan and

Architectural Review approval of all new and altered construction shall be required, but existing nonconforming conditions that are not directly affected by the new, enlarged or altered construction need not be brought into full conformity.

- (3) An existing commercial building may be rebuilt or reconstructed to the same floor area as the former structure. If the building is located in Downtown Tiburon, the resulting building shall substantially conform to the guidelines of the "Downtown Tiburon Design Handbook".
- (4) Whenever any other legal nonconforming structure is voluntarily razed or shall be required by law to be razed, the structure shall be replaced or reconstructed only when in full conformity with the regulations for the zone in which it is located.

16-62.040 - Legal Nonconforming Lots

- A. Within a number of zones, legally created or legally recognized lots exist that do not meet the area, width, access, or frontage requirements set forth in this Zoning Ordinance and Municipal Code, Chapter 14 (Subdivision of Land). These are classified as legal nonconforming lots.
- B. Development and improvement of legal nonconforming lots shall be permitted in accordance with provisions of this Zoning Ordinance. The Town recognizes that certain lot nonconformities may impose unusual hardships for the property owner, and that these hardships should be considered in the review of Zoning Permit applications. Development and improvement of these lots, as approved by the Town, shall be considered legal and conforming.
- C. Prior to issuance of Zoning Permits for a vacant nonconforming lot, evidence shall be provided that the lot was legally created or has been recognized by a recorded certificate of compliance, in compliance with the State Subdivision Map Act.

16-64 Public Hearings

Section:

- 16-64.010 - Purpose
- 16-64.020 - Setting of Hearing
- 16-64.030 - Notice of Hearing
- 16-64.040 - Hearing Procedure
- 16-64.050 - Findings, Conditions, and Decisions
- 16-64.060 - Notice of Decision
- 16-64.070 - Permanent Records of Hearings
- 16-64.080 - Indemnification

16-64.010 - Purpose

The provisions of Section 16-64 establish the procedures and requirements for hearings and decisions of the Design Review Board, Planning Commission, and Town Council.

16-64.020 - Setting of Hearing

- A. Upon receipt of a completed application for which a hearing is required, the Director shall set a reasonable time and place for a hearing before the appropriate Review Authority and the hearing shall be held in accordance with the procedures and requirements set forth in this Zoning Ordinance.
- B. Hearings on applications before the Review Authority shall be held at regularly scheduled meetings, or at adjourned or special meetings held by the Review Authority.

16-64.030 - Notice of Hearing

Notice of such hearings shall be as provided herein, and in the case of formal public hearings, notice shall be provided as required by California Government Code Section 65090 et seq, as amended.

16-64.040 - Hearing Procedure

- A. **Review at hearings.** The Review Authority shall review the application or action and other evidence relevant to the action requested. The Review Authority shall hear all persons wishing to be heard on the matter. The applicant or appellant may appear on his own behalf or may be represented by his duly authorized agent or counsel.

B. Transcript of hearing.

1. Any person interested in an application, appeal, or proposed action of the Review Authority, may in advance of the hearing, request the Director, Secretary of the Review Authority, or Town Clerk (as applicable) to provide for recording all testimony in a stenographic report. Such request shall be in writing at least five business days prior to the hearing and the person making the request shall prior to the hearing deposit with the Town a sum of cash sufficient to pay all costs involved in the taking and preparation of the stenographic report, as reasonably determined by the Town.
2. If two or more persons request a stenographic report of the testimony, they shall share the cost equally. Such costs shall be in addition to any other fees. Nothing in this Section shall prevent any interested person from employing a stenographic reporter of his own, if he so chooses. The interested person shall provide a complete copy of such transcript, if requested, at no cost to the Town, as soon as the transcript becomes available.
3. The Review Authority on its own motion may provide for the recording of testimony in a stenographic report within limits of funds available for such purposes.

16-64.050 - Findings, Conditions, and Decisions

- A. Design Review Board findings, conditions, and decisions.** The Board's action may be by resolution or other means that shall clearly set forth the findings required by any applicable sections of this Zoning Ordinance, and which shall set forth any conditions imposed by the Board. Any action taken by the Board shall be by a majority of those voting. Tie votes shall constitute a failure of the motion to pass. The lack of an affirmative majority for approval by those voting shall constitute a denial of an application or request. The Board's decision shall be final unless an appeal is filed with the Council, as provided in Section 16-66 (Appeals).
- B. Commission findings, conditions, decisions, and recommendations.** A decision by the Commission on an application may be issued by resolution or other means that shall clearly set forth the findings required by any applicable section of this Zoning Ordinance, and that shall set forth any conditions imposed by the Commission. Any action taken shall be by a majority of those voting, unless otherwise required by state law. A tie vote shall constitute a failure of a motion to pass. The lack of an affirmative majority for approval by those voting shall constitute a denial of an application or request. The Commission's decision shall be final unless an appeal is filed with the Council, as provided in Section 16-66 (Appeals), unless the action of the Commission is in the form of a recommendation to the Council.
- C. Council findings, conditions, and decisions.** The Council shall approve, approve with conditions, deny or remand for additional review any application or any other action recommended to it by the Commission, Board, or Town Official. Any action taken shall be by a majority of those voting, unless otherwise required by state law. A tie vote shall constitute a failure of a motion to pass. The lack of an affirmative majority for approval by those voting shall constitute a denial of an application, appeal, or request. Council decisions are final.

16-64.060 - Notice of Decisions

- A. Notice of Design Review Board decision.** Within a reasonable period of time following a decision of the Board, notice of the decision shall be sent by first-class mail to the applicant at the address as shown on the application or the last known address of the applicant. Notice may also be sent by e-mail to the e-mail address of the applicant. The form, content and method of delivery of the notice shall be within the discretion of the Director.
- B. Notice of Commission decision or recommendations.** Within a reasonable period of time following a decision or recommendation by the Commission, notice of the decision shall be sent by first-class mail to the applicant at the address shown on the application or the last known address of the application. The form and content of the notice shall be within the discretion of the Director.
- C. Notice of Council decision.** Within a reasonable period of time, not to exceed ten days following a final decision of the Council, notice of the decision shall be sent by first-class mail to the applicant and/or appellant at the address as shown on the application or the last known address of the applicant and/or appellant. The form and content of the notice shall be within the discretion of the Director.

16-64.070 - Permanent Records of Hearings

- A. Permanent Records.** The Director, Secretary of the Review Authority, or Town Clerk (as applicable) shall make a record of the evidence presented at hearings. The record, together with any resolution or other document announcing the decision of the Review Authority, shall be maintained as a part of the permanent records of the Town.
- B. Transmittal of records to the Council.** If the Review Authority recommends approval or denial of the application or the proposed action, the Secretary of the Review Authority shall transmit the administrative record of the case to the Council at the time of filing the resolution with the Council. In the case of an appeal, the Secretary of the Review Authority shall expeditiously transmit the administrative record of the case to the Council.

16-64.080 - Indemnification

The Review Authority may require by condition of approval that the applicant and successors in interest to the project and site indemnify, protect, and hold harmless the Town, its Council members, employees, officials, and agents, from and against any and all liability, losses, claims, damages, expenses, and costs (including attorney, expert witness and consultant fees, and litigation expenses) that may at any time arise or be set up because of damages to property or personal injury arising out of or in connection with negligent acts by the applicant, successors in interest, and/or the agents or employees of same, except loss or damage that was caused by the negligence or willful misconduct of the Town.

16-66 Appeals

Section:

- 16-66.010 - Purpose
- 16-66.020 - Appeal Subjects and Jurisdiction
- 16-66.030 - Filing and Processing of Appeals
- 16-66.040 - Site Plan and Architectural Review Exception

16-66.010 - Purpose

The provisions of Section 16-66 establish procedures for the appeal and review of determinations and decisions of the Director, Board, Commission, or other Town Official.

16-66.020 - Appeal Subjects and Jurisdiction

- A. **General Procedures.** A decision of the Review Authority authorized to issue Zoning Permits or other entitlements hereunder may be appealed to the Council, unless another appeal body (See Table 5-1 in Section 16-50.020 [Authority for Land Use and Zoning Decisions]) or procedure is specified in this Zoning Ordinance (See Section 16-66.040 [Site Plan and Architectural Review Exception]).
- B. **Days.** Days shall mean calendar days, unless otherwise specified in this Zoning Ordinance.
- C. **Determinations and actions that may be appealed.** The following types of actions may be appealed:
 1. **Appeal on action.** Action to approve, approve with conditions, or deny any discretionary Zoning Permit and/or determinations regarding compliance with the environmental review requirements, pursuant to the California Environmental Quality Act and the Town's Local CEQA Guidelines, for such permits.

Appeal on error. Determinations as to the meaning or applicability of the provisions of this Zoning Ordinance that are believed to be in error.
 3. **Appeal on completeness.** Any determination that a permit application or information submitted with the application is incomplete, in compliance with State law (Government Code Section 65943). Refer to Subsection 16-50.050.A. (Determination of completeness) for further information.
 4. **Appeal on Standards for Compliance.** Determination regarding an exemption from the green building Standards for Compliance. Refer to Section 16-90.080 (B) (Hardship or Infeasibility Exemption) for further information.

16-66.030 - Filing and Processing of Appeals

A. Filing.

1. Appeals shall be filed in writing with the Town Clerk on a prescribed form, accompanied by the appropriate fee, within ten days following the date of the decision being appealed, unless another time period (e.g. five business days) is specified in this Zoning Ordinance. For purposes of filing an appeal, if the final day to appeal falls on a Town Hall observed holiday or a day when Town Hall is closed, the final day to appeal shall be extended to the next day at which Town Hall is open for public business.
2. In the appeal form, the appellant shall state specifically the reasons why the decision is inconsistent with applicable provisions of this chapter or of other applicable provisions of the Tiburon Municipal Code or other laws or regulations, or the appellant's other basis for claiming that the decision was an error or abuse of discretion, including, without limitation, any claims that the decision is not supported by evidence in the record or is otherwise improper.

B. Record to Town Clerk. For Appeals to Town Council, within a reasonable period of time established by the Town following the close of the appeal period, the Director shall transmit or make available the entire record on appeal to the Town Clerk. The record shall consist of the application excluding any amendments or supplements thereto made after the decision being appealed was announced; all evidence presented at the hearing; all staff reports; all minutes; and all other written records of the proceeding.

C. Town Council hearings. The Council, at a meeting following appropriate notice, shall hear the appeal and, upon consideration thereof and of the record, shall make its findings and render a decision thereon.

D. Authority of Council; Remand.

1. The Council may grant, partially grant or deny the appeal, based upon findings of fact about the particular case. The findings shall identify the reasons for the action on the appeal, and verify the compliance or noncompliance of the subject of the appeal with the provisions of this Zoning Ordinance. The appeal may be upheld by a majority of those voting, when a quorum of at least three members is present. The lack of an affirmative majority of those voting for granting or partially granting an appeal, including a tie vote, shall constitute a denial of the appeal. When reviewing a decision on a Zoning Permit, the Council may adopt additional conditions of approval that may address other issues or concerns than the subject of the appeal. The findings, decision, and action of the Council shall be final.

Alternatively, the Council shall have the power to remand the matter to the Review Authority from which it was appealed for further hearing, review, and action. In doing so, the Council shall provide a specific description of the outstanding and unresolved issues. If the Review Authority from which the decision was appealed changes or modifies its decision, and the decision as modified is appealed to the Council, the appeal shall be deemed to be from the decision of the Review

Authority as changed or modified.

- E. Appeal by persons other than the applicant.** In the event the Review Authority approves an application, any two members of the Council or the Director, without paying a fee, or any interested person, upon payment of fees, may appeal the decision by filing a written notice of appeal with the Town Clerk in accordance with the procedure set forth above.
- F. Referral of appeals.** The Council may refer an appeal to any Review Authority, or other appropriate entity for a report and recommendation, to be returned within forty-five days for further proceedings by the Council.
- G. Rights pending appeal.** Pending decision on an appeal, all rights emanating from the permit, license or other entitlement that is the subject matter of the appeal, and all time periods relevant thereto, shall be suspended.
- H. Finality of decisions.** In the event an appeal is not filed within the applicable time frame specified in this Zoning Ordinance, the action of the Review Authority shall be final.
- I. Transmittal of minutes.** A copy of the hearing minutes shall be sent, upon written request, to the appellant by first class mail.
- J. Notice of decision.** A notice of decision of the Council shall be sent as set forth in Subsection 16-64.060.C (Notice of Council decision).
- K. Withdrawal of appeal.** After an appeal of a decision has been filed, the appeal shall not be withdrawn except with the consent of the Director.
- L. Judicial challenge.** If the decision is challenged in court, the appellant may be limited to raising only those issues which were raised at the public hearing, or in written correspondence delivered to the Department, at or prior to the public hearing, in compliance with State law (Government Code Section 65009.b.2).

16-66.040 - Site Plan and Architectural Review Exception

Decisions of the Director or his designee on applications for Site Plan and Architectural Review may be appealed within five business days to the Board, which shall follow the same procedures for hearing the appeal as set forth for the Council in Section 16-66.030 (Filing and Processing of Appeals). Notwithstanding provisions of Section 16-66.030 to the contrary, the decision of the Board on appeal shall be final.

16-68 Amendments to Zoning Ordinance

Section:

- 16-68.010 - Purpose and Authority
- 16-68.020 - Initiation of Amendment
- 16.68.030 - Rezoning and Annexation
- 16-68.040 - Hearings and Notice
- 16-68.050 - Commission Findings
- 16-68.060 - Council Action on Amendment
- 16-68.070 - Changes to Zoning Map
- 16-68.080 - Refiling of a Rezoning Application

16-68.010 - Purpose and Authority

- A. Purpose.** The provisions of Section 16-68 provide procedures for the amendment of the Zoning Ordinance, including without limitation text and maps, whenever the Town determines public necessity and general welfare require an amendment.
- B. Authority.** Amendments to the Zoning Ordinance, including text amendments and rezonings, may be authorized by the Council upon recommendation of the Commission, and in compliance with the provisions of Section 16-68.

16-68.020 - Initiation of Amendment

- A. Initiation.** The Zoning Ordinance may be amended by changing the boundaries of any zone, or by changing any zoning regulation, off-street parking or loading requirement, general provision, exception, procedure, or any other provision thereof whenever the public necessity, convenience, or general welfare requires such amendment. Amendments may be initiated by:
 1. Council request to the Commission;
 - Resolution of intention of the Commission;
 3. Director-initiated request to the Commission;
 4. Application of all land owners or their duly authorized representatives for amendments to the Zoning Ordinance involving the zoning of their land;
 5. Application of a plaintiff in an action in eminent domain for amendments to the Zoning Ordinance involving the zoning of the land to be acquired by plaintiff in an action in eminent domain;
 6. Application of any interested person for a text amendment.

- B. Application.** Application for an amendment to the Zoning Ordinance shall be made in compliance with the provisions of Section 16-50 (Application Filing and Processing). Town-initiated amendments do not require an application submittal.
- C. Information required.** Lists of information and materials normally required for a complete application to amend the Zoning Ordinance may be obtained from the Planning Division. Additional specific information may also be required according to the specific circumstances of the amendment request.

16-68.030 - Prezoning and Annexation

- A. Prezoning.** The prezoning of unincorporated territory adjoining the Town, or within its sphere of influence, may be initiated by request of the Director to the Commission, by resolution of intention of the Commission on its own motion, by request of the Council to the Commission, or by petition of the owner or owners of land in the unincorporated territory. The procedures set forth in this Section for amending the Zoning Ordinance shall govern the prezoning of any territory, and such prezoning shall become effective at the time of annexation of the territory to the Town.
- B. Annexations.** Where unincorporated territory has been prezoned in compliance with the procedures prescribed in Subsection A. above, the existing County zoning shall remain in effect until the territory has been annexed to the Town at which time the zone applied by the prezoning action shall become effective.

Where a prezoning action has not taken place, all territory hereafter annexed to the Town shall simultaneously with such action be classified in the residential planned development (RPD) zone, and shall be so shown on the Zoning Map until such time as the property is rezoned consistent with the General Plan.

16-68.040 - Hearings and Notice

- A. Public hearing required.** A public hearing in compliance with Section 16-64 (Public Hearings) shall be held by the Commission to consider rezonings or zoning text amendments. Notice of the hearing shall be given as prescribed by the California Government Code Section 65090 or 65091, as applicable.
- B. Public hearing by Council.** A public hearing in compliance with Section 16-64 (Public Hearings) shall be required to consider the Commission's recommendation of approval of any amendment to the Zoning Ordinance in compliance with Section 16-68.060 (Council Action on Amendment). Notice of the hearing shall be given as prescribed by California Government Code Section 65856.

16-68.050 - Commission Findings

- A.** The Commission shall, by resolution, recommend that the Council approve the proposed amendment if it makes the following findings:
1. The change of zone, change of zone boundaries, or other proposed amendment, is consistent with the requirements herein.

The change of zone, change of zone boundaries, or other proposed amendment, is consistent with the General Plan and any other applicable plans of the Town.

3. The change of zone, change of zone boundaries, or other proposed amendment, will not be detrimental to the public health, safety, or welfare of the Town.
- B. If the Commission does not make the above findings, it shall deny the application and transmit a written report of its findings to the Council within a reasonable period of time after making such decision. The decision of the Commission to deny the application is final unless appealed pursuant to Section 16-66.

16-68.060 - Council Action on Amendment

- A. The Council may affirm, reverse, or modify any recommendation for approval by the Commission. If the Council materially modifies the Commission's recommendation for approval, and the modifications were not previously considered by the Commission during its hearing, then the matter shall first be referred to the Commission for report and recommendation pursuant to Government Code Section 65857, but the Commission shall not be required to hold a public hearing thereon. Failure of the Commission to comment on the proposed amendment, as modified, within forty (40) days, shall be deemed Commission acceptance of the modification.
- B. An application for amendment approved by the Council shall be adopted by ordinance in compliance with provisions of the California Government Code.

16-68.070 - Changes to Zoning Map

Appropriate zone changes shall be recorded upon the Zoning Map and/or Planned Development Map within thirty days following enactment of an ordinance rezoning property, or changing the boundaries of a zone or a planned development.

16-68.080 - Refiling of a Rezoning Application

No application shall be reconsidered, and no new application for the same or a substantially similar change shall be considered by the Commission for a period of one year if the original application was denied, except where the denial was made without prejudice or there is a substantial change of circumstances.

Article VII

Inclusionary Housing and Density Bonuses

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16-70 Inclusionary Housing and Density Bonuses

Section:

- 16-70.010 - Purpose
- 16-70.020 - Exemptions
- 16-70.030 - General Inclusionary Requirements
- 16-70.040 - Designation of Housing Authority as Administrator
- 16-70.050 - Rental Inclusionary Unit Requirements
- 16-70.060 - Ownership Inclusionary Unit Requirements
- 16-70.070 - Control of Resale
- 16-70.080 - Amount of In-lieu Housing Fee
- 16-70.090 - Use and Reporting of Fee Revenues
- 16-70.100 - Town of Tiburon Density Bonus
- 16-70.110 - State-mandated Density Bonus
- 16-70.120 - Appeals

16-70.010 - Purpose

- A. The purpose of Section 16-70 is to enhance the public welfare by ensuring that residential development contributes to the attainment of the General Plan Housing Element goals, policies and programs by:
 - 1. Increasing the stock of dwelling units for special needs households;

Increasing the stock of dwelling units affordable by households of very low, low, or moderate-income;
 - 3. Encouraging and directing, through the provision of a density bonus and other incentives, the location of projects containing substantial numbers of affordable housing units to those sites identified in the Housing Element as affordable housing opportunity sites.
- B. A limited amount of land remains for development of housing in the Town. The Housing Element has identified sites where the Town most desires the construction of inclusionary housing units. To ensure that remaining residentially designated land is utilized in a manner consistent with the Town's housing policies and in a manner that furthers the Town's strategy as set forth in the Housing Element, the Town declares that each residential development creating two or more new lots or dwelling units shall participate in the provision of inclusionary units as set forth in this Article.

16-70.020 - Exemptions

- A. The construction of a two-family dwelling on any lawfully existing lot in the R-2 (two-family residential) zone shall not be subject to the provisions of this Article.

- B. The subdivision of a lot into two lots, wherein no more than a combined total of two dwelling units total could be constructed under applicable zoning regulations on the resulting lots, shall not be subject to the provisions of this Article.

16-70.030 - General Inclusionary Requirements

- A. Any residential development creating three through six new lots or dwelling units (whichever is greater), shall make a pro rata monetary contribution to the Town’s in-lieu housing fund in accordance with the provisions of Section 16-70.080 (Amount of In-lieu Housing Fee). The monetary contribution shall be based on a requirement of fifteen percent of the units being affordable.

- B. Any residential development creating seven through twelve new lots or dwelling units (whichever is greater) shall:

- 1. Provide ten percent of the total number of units as designed for special needs households; five percent of the total number of units must be handicapped accessible units as defined in this Article.

Provide fifteen percent of the total number of units as affordable by very low, low, or moderate-income households in perpetuity or for the longest term possible; a minimum of five percent shall be affordable to very low- or low-income households. When only one affordable unit is required it may be for a moderate-income household. No more than fifty percent of affordable units shall be allowed to double as special needs household units required in Subsection B.1 above.

In applying the fifteen percent figure for the construction of dwelling units, any decimal fraction less than one-half may be disregarded and any decimal fraction equal to or greater than one-half shall be construed as requiring one affordable unit. For payment of in-lieu fees, the fee shall be calculated using exact decimal fractions.

- C. Any residential development creating more than twelve new lots or dwelling units (whichever is greater) shall:

- 1. Provide ten percent of the total number of units as designed for special needs households; five percent of the total number of units must be handicapped accessible units as defined in this Zoning Ordinance.

Provide twenty percent of the total number as units affordable by very low, low, or moderate-income households in perpetuity or for the longest term possible; a minimum of five percent shall be affordable to very low- or low-income households. No more than fifty percent of affordable units shall be allowed to double as special needs household units required in Subsection C.1 above.

In applying the twenty percent figure for construction of dwelling units, any decimal fraction less than one-half may be disregarded and any decimal fraction equal to or greater than one-half shall be construed as requiring one affordable unit. For payment of in-lieu fees, the fee shall be calculated using exact decimal fractions.

- D. If the Town finds and determines that there exists physical and/or nongovernmental constraints to the provision of on-site inclusionary units that make the payment of in-lieu fees more effective in support of affordable housing projects being constructed in less constrained locations, the Town may allow payment of in-lieu fees in accordance with Section 16-70.080 (Amount of In-lieu Housing Fee).
- E. Any residential development creating two or more new lots or dwelling units (whichever is greater) shall be subject to conditions ensuring compliance with the provisions of this Article. Such conditions may specify the timing of construction or purchase of inclusionary units (or payment of in-lieu fees), the number of inclusionary units and the specified affordability levels, provisions for income certification and screening of potential purchasers and/or renters of inclusionary units, and resale control mechanisms. Said conditions may require a written agreement between the applicant and the Town and/or its designee, indicating the number, type, location, sales price, approximate size and construction scheduling of inclusionary units and such reasonable information as is required to determine compliance.
- F. All inclusionary units in a project shall be constructed concurrently with or prior to the construction of noninclusionary units.
- G. Inclusionary units shall be indistinguishable in exterior appearance from the noninclusionary units. An exception may, in the Town's reasonable discretion, be permitted in residential developments only as an incentive or concession made under the State density bonus law, unless the project qualifies for a density bonus under Section 16-70.100 (Town of Tiburon Density Bonus).
- H. A reduced setback, reduced parking standard, or other reduction in site development standards may, in the Town's reasonable discretion, be permitted in residential developments only as an incentive or concession made under the State density bonus law, unless the project qualifies for a density bonus under Section 16-70.100 (Town of Tiburon Density Bonus).
- I. The interior amenity level of the inclusionary units shall be generally the same as that of the noninclusionary units. Any reduction of interior amenity level for inclusionary units may, in the Town's reasonable discretion, be permitted only as an incentive or concession made under the State density bonus law, unless the project qualifies for a density bonus under Section 16-70.100 (Town of Tiburon Density Bonus).
- J. The square footage of the inclusionary units shall be generally the same as that of the noninclusionary units. Any reduction of square footage for inclusionary units may, in the Town's reasonable discretion, be permitted only as an incentive or concession made under the State density bonus law, unless the project qualifies for a density bonus under Section 16-70.100 (Town of Tiburon Density Bonus).

- K. A residential development qualifying for a density bonus under provisions of Section 16-70.100 (Town of Tiburon Density Bonus) shall receive the highest priority and efforts will be made by staff and decision-makers to:
1. Provide technical assistance to potential affordable housing developers in processing requirements, including community involvement;

Consider project funding and timing needs in the processing and review of the application; and
 3. Provide the fastest turnaround time possible in determining application completeness.

These measures shall each constitute an incentive or concession under any other circumstances.

- L. The Town shall waive or reduce certain application and development fees for the inclusionary units in a proposed development if the project qualifies for a density bonus under provisions of Section 16-70.100 (Town of Tiburon Density Bonus). Waiver or reduction of fees shall constitute an incentive or concession under any other circumstances.

16-70.040 - Designation of Housing Authority as Administrator

- A. The Housing Authority shall be the agency designated to administer inclusionary housing programs on behalf of the Town, except as provided in Subsection B. below.
- B. If so designated by resolution of the Council, another agency or entity may assume all roles and responsibilities of the Housing Authority as set forth in this Article.

16-70.050 - Rental Inclusionary Unit Requirements

- A. Affordable rental units shall be offered at rent levels not exceeding the maximum rent affordable by the very low, low, or moderate-income household restriction placed on that unit, as determined by the Housing Authority.
- B. The Town may contract with the Housing Authority or other entity to monitor the developer and/or management agent's compliance with the requirements established for special needs eligibility and/or rent levels and income eligibility for the inclusionary rental units. The developer or owner shall retain final discretion in the selection of tenants, provided that unless specific preferences have been established for a residential development by resolution of the Council, the same rental terms and conditions are applied to tenants of inclusionary units as are applied to tenants of noninclusionary units in the development, except as to special needs eligibility and rent levels and income, or as required to comply with government subsidy programs.
- C. The Town may contract with the Housing Authority or other entity to require guarantees, to enter into recorded agreements with developers, and to take other appropriate steps necessary to ensure that the required inclusionary rental units are provided and that they are rented to the appropriate special needs and/or eligible income households.

16-70.060 - Ownership Inclusionary Unit Requirements

- A. Inclusionary ownership units designated for very low, low, or moderate-income households shall be sold at prices affordable to the requisite income and/or special needs households as determined by the Housing Authority. The inclusionary unit sales prices and the parameters used to calculate the sales prices shall be determined by the Housing Authority.
- B. The applicant shall be required, for a period of not less than one hundred twenty days from the date of the Town's issuance of an Occupancy Permit for the inclusionary units, to offer to the Housing Authority (or individuals selected and qualified by the Housing Authority), the Town, or a party designated by the Town, all inclusionary units required by this Article, for sale to eligible purchasers. Sale and resale restrictions will be removed from the units in the event the Housing Authority, the Town, or a Town designee does not, within such one hundred twenty days, complete the sale to an eligible purchaser, or elect to purchase the units for subsequent sale to an eligible purchaser. The Housing Authority shall advise all prospective purchasers of the resale restrictions applicable to inclusionary units.
- C. Upon written notification of the availability of inclusionary units by the developer to the Housing Authority one hundred twenty days prior to the anticipated completion of the inclusionary units, the Housing Authority shall advertise the inclusionary units to the general public and shall seek and screen qualified purchasers through a process involving applications and interviews. Where necessary, the Housing Authority shall hold a lottery to select purchasers. Unless specific preferences have been established for a residential development by resolution of the Council, the same terms and conditions (except special needs and/or income eligibility) shall apply to purchasers of inclusionary units as are applied to purchasers of noninclusionary units in the development.
- D. Every purchaser of an inclusionary unit shall acknowledge in a form acceptable to the Town that the unit is being purchased for the purchaser's primary residence and that continuous owner-occupancy is a condition of eligibility under the program. The Housing Authority shall verify this acknowledgement.

16-70.070 - Control of Resale

The Town shall require the following resale controls in order to maintain the availability of inclusionary units in perpetuity or for the longest term possible:

- A. The resale price of an inclusionary unit shall be limited to the lowest of:
 - 1. The purchase price plus an increase based on the percentage increase in the Consumer Price Index for the San Francisco Bay Area for all urban consumers since the date of purchase;
 - The purchase price plus an increase, based on the percentage increase in the median income since the date of purchase; or
 - 3. The fair market value.

- B. Ownership inclusionary units being sold shall be offered to the Housing Authority or its assignee, at the price determined according to Subsection A. above, for a period of one hundred twenty days from the date a notification of intent to sell is given by the first purchaser or subsequent purchaser(s). Ownership inclusionary units shall be resold only to very low, low, or moderate-income households as determined to be eligible for inclusionary units by the Housing Authority. The seller shall not levy or charge any additional fees in connection with the sale, nor shall any “finder’s fee” or other consideration be allowed on resale other than customary real estate commissions and closing costs.
- C. At the time of purchase, the owners of any inclusionary unit shall execute a resale and refinancing restriction agreement and option to purchase and a deed of trust provided by the Housing Authority, stating the restrictions imposed in compliance with this Article, including but not limited to all applicable resale controls and occupancy restrictions. The resale and refinancing restriction agreement and option to purchase and the deed of trust shall be recorded in the office of the Marin County Recorder and shall explicitly provide the Housing Authority and the Town the right to enforce the declaration of restrictions.
- D. The Housing Authority shall be responsible for monitoring and facilitating the resale of inclusionary units. Any abuse in the resale provisions shall be referred to the Town for action.

16-70.080 - Amount of In-lieu Housing Fee

- A. In-lieu housing fees shall be calculated on the basis of the difference between the affordable purchase price of a dwelling unit for which a moderate-income four-person family earning eighty percent of median income can qualify, and the estimated cost of constructing a market rate unit of appropriate size, to be determined by the Town. The Town’s in-lieu housing fee shall be revised periodically by the Director and shall be based on current fixed-rate mortgage rates, median incomes, construction costs and site/land development costs as determined by the Town. The total in-lieu fee shall be calculated by multiplying the required number of inclusionary units (including exact fractions of a unit) by the per-unit in-lieu housing fee (see Table 7-1).
- B. The in-lieu housing fee shall constitute a lien on the property. The recorded lien notice shall include a provision for foreclosure under power of sale in case of default.
- C. Unless otherwise specified in conditions of project approval, the payment of in-lieu housing fees shall be at the time of issuance of the first Building Permit associated with the project, or as otherwise required by State law.

**Table 7-1.
Example Housing In-Lieu Fee Calculation¹**

Cost to construct a modest single-family dwelling unit of 1500² square feet.	
Assumptions:	
A. Land and site development costs	\$350,000 ²
B. Construction costs @ \$225 ² per sq. ft.	\$375,000
C. Total of A and B above	\$725,000
Moderate-income purchase price affordability calculation.	
Assumptions:	
A. Current median income for 4-person household (Effective 2/13/08)	\$94,300 ²
B. 4-person household at 80% of median income	\$75,440 ²
C. 6.25% ² fixed rate mortgage, 95% ² loan to value ratio, 5% ² down-payment, 0.75% ² private mortgage insurance, for a total effective mortgage rate of 7.0% ²	
D. 25% ² for mortgage payment	
E. Mortgage payment equates to:	\$1,572 per month
F. Loan amount equates to:	\$238,000
G. Affordable purchase price:	\$250,500
In-lieu housing fee calculation (using these variables):	
A. Total construction cost:	\$725,000
B. Affordable purchase price:	\$250,500
C. In-lieu housing fee (per unit):	\$474,500
Note	
1. This is an example of housing in lieu fees, based on 2008 income levels. The Housing Authority updates income levels annually; therefore in-lieu fees will vary by year.	
2. Denotes a variable subject to determination by the Director.	

16-70.090 - Use and Reporting of Fee Revenues

- A. Revenues raised by payment of housing in-lieu fees shall be placed in a segregated Town-wide housing in-lieu fund.
- B. Revenues collected, including interest earned, under the provisions of this Article shall be used for the following purposes:
 - 1. Design and construction of permanently affordable units;
 - 2. Other actions that would directly preserve, conserve, rehabilitate, or increase the supply of affordable units in the Town.
- C. The Town shall comply with reporting requirements that may be set forth in Government Code Section 66000, or successor sections, to the extent that such provisions apply.

16-70.100 - Town of Tiburon Density Bonus

- A. Residential developments located within an affordable housing overlay (AHO) zone, as set forth in Sections 16-23.020.B. (RMP/AHO [Residential Multiple Planned/Affordable Housing Overlay] Zone) and 16-23.020.C. (NC/AHO [Neighborhood Commercial/Affordable Housing Overlay] Zone), and qualifying for a Town density bonus therein, shall be offered the substantial incentives in Section 16-23.050 (Affordable Housing Overlay Zones Development Incentives) as set forth therein. Such density bonus is exclusive of, and shall not be combined with, a density bonus in compliance with Section 16-70.110 (State-mandated Density Bonus).
- B. In compliance with the General Plan policies, the Town may grant a density bonus sufficient to allow the reestablishment of developments containing affordable housing units when such developments are destroyed by fire, earthquake, or similar disaster, even when such reestablishment exceeds current maximum General Plan densities.

16-70.110 - State-mandated Density Bonus

- A. In compliance with Government Code Section 65915 et seq., or successor sections thereto, the Town shall provide a density bonus for a qualifying housing development, as defined therein.
- B. Applicants who voluntarily agree to develop a housing development that complies with the affordability requirements referenced in Subsection A. above, may submit to the Town a proposal for the specific incentive(s) or concession(s) described in Subsections 16-70.030.G. through L. or otherwise provided by applicable State law. A proposal shall be submitted concurrently with the application for a density bonus. The Town shall award the incentive(s) or concession(s) requested by the applicant in compliance with State law requirements unless any of the following written findings is made based upon substantial evidence:
1. The incentive is not required in order to provide for affordable housing costs, or is not required for rents for targeted units to be set as specified in applicable State law;

The incentive would have a specific adverse impact, as defined by applicable State law, upon public health and safety or the physical environment or on any real property that is listed in the California Register of Historical Resources and for which there is no feasible method to satisfactorily mitigate or avoid the specific adverse impact without rendering the development unaffordable to low- and moderate-income households; and
 3. The concession or incentive would be contrary to State or federal law.

16-70.120 - Appeals

Any person aggrieved by the denial, conditioning, suspension or revocation of a Building or Occupancy Permit or other development permit in compliance with provisions of this Article, may appeal such action or determination to the Council in compliance with Section 16-66 (Appeals).

ARTICLE VIII

Economic Exceptions

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16-80 Economic Exceptions

Section:

- 16-80.010 - Purpose
- 16-80.020 - Application
- 16-80.030 - Time for Filing Application
- 16-80.040 - Required Information

16-80.010 - Purpose

The purpose of Section 16-80 is to ensure that the Town applies its General Plan, ordinances, resolutions, and other measures that regulate land use for the protection and promotion of the public health, safety, general welfare, and the environment (collectively, “land use regulations”) in a manner that treats property owners fairly and in a manner consistent with State and federal law. Section 16-80 authorizes the Town to grant an economic exception relaxing the application of the Town’s land use regulations to the extent necessary to avoid an unconstitutional taking in compliance with the United States or California Constitutions.

16-80.020 - Application

- A. If any applicant believes that strict application of the Town’s land use regulations would not permit an economically viable use of his or her property, or would otherwise effect an unconstitutional taking of property, the applicant may apply for an economic exception. The application for an economic exception shall include the entirety of all lots that are geographically contiguous in which the applicant holds an interest at the time of the application.
- B. The applicant shall be required to fund all costs associated with independent peer review studies and reports commissioned by the Town of any information submitted by the applicant, or the independent preparation of such information by the Town or its consultants, and may be required to submit an advance deposit upon application to cover such costs.
- C. Any applicant that does not submit a request for an economic exception as set forth in Section 16-80.030 (Time for Filing Application) shall be deemed to have waived any objections based on the takings clauses of the United States and California Constitutions to the strict application of the Town’s land use regulations, including, without limitation, any condition of approval, mitigation measure, or other measure imposed to implement such regulations.

16-80.030 - Time for Filing Application

- A. Economic exception requests should be filed as early as possible in the planning and/or permit process.
1. If the economic exception request is based on the facial application of the Town's land use regulations, the applicant shall apply for the economic exception before or in conjunction with the first land development application submitted for the property.
 2. The applicant shall apply for an economic exception in conjunction with the first land development application submitted for the property if it is reasonably foreseeable that the Town's land use regulations will require a denial or a condition of approval, mitigation measure, or other measure to be imposed which the applicant believes will effect an unconstitutional taking of property.
- B. Notwithstanding Subsection A.1 above, if the Council is the Review Authority for the land development application and the applicant's economic exception request is based on a denial or on a condition of approval, mitigation measure, or other measure imposed by the Council, the applicant shall submit the application for an economic exception within thirty days of the Council's action on the land development application. The Council shall retain jurisdiction over the project after its initial decision on the application for the sole purpose of considering a request for an economic exception, which jurisdiction shall expire at the end of the thirty-day period if no such request is filed. This Subsection shall not apply if the denial, condition of approval, mitigation measure, or other measure was reasonably foreseeable when the applicant filed his first land development application for the property.
- C. Notwithstanding Subsection A.1 above, if the Commission, Board, or Town official is the Review Authority for the land development application and the applicant's economic exception request is based on a denial or on a condition of approval, mitigation measure, or other measure imposed by the Commission, Board, or Town official, the applicant shall submit the application for an economic exception within ten days of the Review Authority's action on the land development application. The request for an economic exception shall be submitted in conjunction with an appeal filed in compliance with the Town's regular appeal process for contesting Zoning Permit decisions as set forth in Section 16-66 (Appeals). Council will be the Review Authority for the appeal as referenced in Section 16-80.050 (Economically Viable Use Determination-Economic Exception). The applicant may submit supporting information for the economic exception request for a period of thirty days following the decision being appealed. Scheduling of the Council hearing on the appeal and the request for economic exception shall be at a date that the Director determines will allow sufficient time for the Town to analyze the issues raised by the appeal and the economic exception application. This Subsection shall not apply if the denial, condition of approval, mitigation measure, or other measure was reasonably foreseeable when the applicant filed his first land development application for the property.
- D. For purposes of this Section, "first land development application" means the first land development application filed in connection with a particular project.

16-80.040 - Required Information

- A. The applicant shall provide all of the following information within thirty days of the decision on which the economic exception request is being filed:
1. The date the applicant purchased or otherwise acquired the property, and from whom;

The purchase price paid by the applicant for the property and a description of any consideration that the applicant received for that purchase price in addition to the property;
 3. The fair market value of the property at the time the applicant acquired it, describing the basis upon which the fair market value is derived, including any appraisals done at the time;
 4. The General Plan, zoning, or similar land use designations applicable to the property at the time the applicant acquired it, as well as any changes to these designations that occurred after acquisition;
 5. A description of any development restrictions or other restrictions on use, other than government regulatory restrictions described in Subsection A.4 above, that applied to the property at the time the applicant acquired it, or which have been imposed after acquisition;
 6. A description of any change in the size of the property since the time the applicant acquired it, including a discussion of the nature of the change, the circumstances, and the relevant dates;
 7. A statement as to whether the applicant has sold or leased a portion of, or interest in, the property since the time of purchase, indicating the relevant dates, sales prices, rents, and nature of the portion or interests in the property that were sold or leased;
 8. A title report for the property, as well as copies of any underlying documents referenced therein, and copies of any litigation guarantees or similar documents that affect or limit the use of all or a portion of the property;
 9. A statement describing any offers to buy all or a portion of the property which the applicant solicited or received within the last five years, including the approximate date of the offer and offered price;
 10. An accounting of the applicant's costs associated with the ownership of the property, annualized for each of the last five calendar years, including property taxes, property assessments, debt service costs (such as mortgage and interest costs), and maintenance, operation and management costs;
 11. Apart from any rent received from the leasing of all or a portion of the property, an accounting of any income generated by the use of all or a portion of the property

over the last five calendar years. If there is any such income to report, it should be listed on an annualized basis along with a description of the uses that generate or have generated such income;

12. A brief written explanation why the application is necessary to avoid an unconstitutional taking.
- B. The Director may, in his reasonable discretion, not require information from the list above or require the submittal of additional information that he determines is necessary to analyze the application.
- C. The Director may, in his reasonable discretion, grant additional time for the applicant to submit the required information.

16-80.050 - Economically Viable Use Determination-Economic Exception

- A. The Council shall hold a public hearing on any application for an economic exception. The Council shall grant an economic exception from strict application of the Town's land use regulations if the Council makes the following findings:
1. Based on the economic information provided by the applicant or consultants, and considering any other relevant evidence, strict application of the Town's land use regulations would not provide an economically viable use of the applicant's property or would otherwise constitute an unconstitutional taking of the applicant's property.
 2. The economic exception granted will result in a project which, to the maximum extent possible while avoiding an unconstitutional taking:
 - a. Complies with the General Plan and Zoning Ordinance; and
 - b. Minimizes significant environmental impacts.
- B. The Council's findings shall identify the evidence supporting the findings.

ARTICLE IX

Green Building

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16-90 Green Building

Section:

- 16-90.010 - Purpose
- 16-90.020 - Covered Projects
- 16-90.030 - Standards for Compliance
- 16-90.040 - Documentation
- 16-90.050 - Review of Documentation
- 16-90.060 - Verification
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- 16-90.080 - Exemptions

16-90.010 - Purpose

The purpose of Section 16-90 is to enhance the public health and welfare and assure that residential development is consistent with the Town's desire to create a more sustainable community by incorporating green building measures into the design, construction and maintenance of buildings and appurtenant development. The green building practices referenced in this Section 16-90 are designed to achieve the following objectives:

- A. Encourage resource conservation;
- B. Reduce waste generated by construction projects;
- C. Increase energy and water efficiency; and
- D. Promote the health of residents.

16-90.020 - Covered Projects

Provisions of Section 16-90 shall apply to:

- A. The construction of new dwelling units, including dwelling units deemed "new construction" in compliance with Subsection 16-52.020.K. (New construction projects versus remodel projects).
- B. Additions to existing dwelling units that constitute at least five hundred square feet of conditioned floor area.
- C. The construction of new non-residential buildings or additions to existing buildings that equal or exceed 3,000 square feet of conditioned space.
- D. Town-sponsored projects.

16-90.030 - Standards for Compliance

All covered projects shall demonstrate compliance with the applicable green building rating checklist or system and minimum point requirements set forth in the green building Standards for Compliance, as established by separate resolution of the Council, as amended from time to time.

16-90.040 - Documentation

A. Residential Projects. Application for building permits for residential covered projects shall submit two completed sets of the applicable green building rating checklist and supporting documentation indicating the measures to be used to achieve the required number of points to achieve conformance with the Town's Standard for Compliance. The submitted green building rating checklist shall be prepared or certified as accurate by a certified green building rater. Building permit drawings shall indicate in the general notes or individual detail drawings, where appropriate, the green building measures to be used to attain the required number of points.

B. Non-residential Projects.

- 1. Projects from 3,000 to 19,999 square feet of conditioned space.** All applicants are required to retain the services of a LEED® Accredited Professional and submit a copy of the LEED® checklist and supporting documentation indicating compliance with the Town's Standards for Compliance, signed by the project LEED® Accredited Professional prior to issuance of a building permit. All building documents shall indicate in the general notes and/or individual detail drawings, where feasible, the green building measures employed to attain the applicable LEED® rating.

Projects exceeding 19,999 square feet of conditioned space. Non-residential covered projects shall follow the certifying and procedural requirements of the U.S. Green Building Council for the LEED® rating system. All applicants are required to retain the services of a LEED® Accredited Professional and complete LEED® project registration prior to issuance of a building permit. Applicants shall submit proof of registration of the project with the U.S. Green Building Council and submit a copy of the LEED® checklist and supporting documentation indicating compliance with the Town's Standards for Compliance, signed by the project LEED® Accredited Professional, prior to issuance of a building permit. All building documents shall indicate in the general notes and/or individual detail drawings, where feasible, the green building measures employed to attain the applicable LEED® rating. The applicant shall also provide the Building Official with online access to the U.S. Green Building Council website in order for the Building Official to monitor the submission of documents by the applicant to the U.S. Green Building Council. If the Building Official determines the project is no longer in compliance with the approved plans or that the applicant is not diligently pursuing LEED® certification by the U.S. Green Building Council, the Building Official may issue a stop work order.

3. **Alternative rating system.** The Council may, by resolution, adopt an alternative green building rating system other than LEED®.

16-90.050 - Review of Documentation

If the Building Official determines that the green building documentation fails to indicate that the project will conform to the Standards for Compliance, the documentation shall be returned to the applicant as incomplete, with an indication of additional information or project modifications that may be required for approval. A building permit, including a grading permit, shall not be issued until the submittal documentation has been approved.

16-90.060 - Verification

A. Residential projects. A Certified Green Building Rater or Town building inspector shall verify that the green building measures indicated in the approved green building documentation have been implemented through inspections during the construction of the project or through review of purchase receipts or photographic documentation. At the completion of project construction, the Certified Green Building Rater or Town building inspector shall verify compliance with the approved green building documentation and the Standards for Compliance. During the verification process for the project, flexibility may be exercised by substituting other allowable compliance measures. Substitution of measures must be approved by the Building Official by submittal and approval of a revised Green Building Rating Checklist by the Certified Green Building Rater. An occupancy permit or final inspection approval for the construction project shall not be granted until the Building Official has determined that all required green building measures have been implemented.

B. Non-residential projects.

1. **Projects from 3,000 to 19,999 square feet of conditioned space.** A LEED® Accredited Professional shall verify that the green building measures indicated in the approved green building documentation have been implemented through inspections during the construction of the project or through review of purchase receipts or photographic documentation. At the completion of project construction, the LEED® Accredited Professional shall verify compliance with the approved green building documentation and the Standards for Compliance. During the verification process for the project, flexibility may be exercised by substituting other allowable compliance measures. Substitution of measures must be approved by the Building Official by submittal and approval of a revised LEED® checklist by the LEED® Accredited Professional. An occupancy permit or final inspection approval for the construction project shall not be granted until the Building Official has determined that all required green building measures have implemented. Certification through the U.S. Green Building Council is not required.

Projects exceeding 19,999 square feet of conditioned space. Prior to approval of a final inspection for any covered non-residential project, the applicant shall demonstrate substantial completion of the LEED® documentation for the project as evidenced by accessing the online information of the project on the U.S. Green Building Council's website, following which the Building Official shall grant a

conditional occupancy permit if all other requirements have been satisfied. Within one year of granting such conditional occupancy permit, the applicant (or current owner) shall submit satisfactory evidence of LEED® certification to the Building Official. Failure of the applicant to submit such evidence shall be a violation of this Municipal Code, entitling the Building Official to revoke the conditional occupancy permit, require the vacancy of the building, and/or impose a civil penalty of \$250 per day against the applicant (or current owner) until such evidence of certification has been submitted.

16-90.070 - Cost of Verification

The costs for verification of compliance with green building requirements, including the hiring of a Certified Green Building Rater or a LEED® Accredited Professional, shall be borne by the applicant.

16-90.080 - Exemptions

A. Exemptions. This Section shall not apply to:

1. Secondary dwelling units,
2. Civic facilities that are located within leased buildings,
3. Historic buildings, or
4. Any project that received and maintains a valid Site Plan and Architectural Review approval or a building permit, or which has submitted a complete Site Plan and Architectural Review application or a completed Building Permit application prior to October 31, 2008.

B. Hardship or Infeasibility Exemption. An exemption from the Standards for Compliance based on hardship or infeasibility may be granted by the Building Official under special circumstances. Such circumstances may include, but are not limited to: availability of green building materials and technology, conflict between green building requirements and other building or zoning standards, or provision of alternate methods that provide greater resource conservation, energy conservation or resident health than adopted green building measures. The determination by the Building Official shall be provided in writing to the applicant. The decision of the Building Official may be appealed to the Council in compliance with Section 16-66 (Appeals).

ARTICLE X

Definitions

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16-100 Definitions

Section:

16-100.010 - Purpose

16-100.020 - Definitions of Specialized Terms and Phrases

16-100.010 - Purpose

- A. The following definitions shall be used in the interpretation of this Zoning Ordinance. Terms and phrases used in this Zoning Ordinance that are technical or specialized, or that may not reflect common usage, are defined herein.
- B. If any of the definitions in Section 16-100 conflicts with definitions in other provisions of the Municipal Code, the former shall control for the purposes of this Zoning Ordinance. If a word is not defined in Section 16-100, or in other provisions of the Municipal Code, the Director shall determine the correct definition. Should there be any difference between the following definitions and those in other sections of this Zoning Ordinance, the more detailed and specific definition shall take precedence, unless otherwise determined by the Director.

16-100.020 - Definitions of Specialized Terms and Phrases

As used in the Zoning Ordinance, the following terms and phrases shall have the meaning ascribed to them in this Section unless the context in which they are used clearly requires otherwise.

A. Definitions, “A.”

Abuts or abutting. Having a common line, or separated only by a private or public street, alley, or easement.

Access corridor. The portion of a flag lot providing access from the street, except that no portion of a site having side lot lines radial to the center or curvature of a street from the street property line to the rear lot line shall be deemed an access corridor. The area of an access corridor shall not be included in determining the area of a site, and the depth of an access corridor shall not be included in determining the depth of a front yard.

Accessory building or structure. A building or structure that is subordinate to the main building on the same site, or the use of which is incidental to the use of the site or the use of the main building on the site. A building that shares a common wall with a main building shall be deemed a part of the main building. A building or structure that is used as a secondary dwelling unit is not an accessory building or structure. (See “Setback.”)

Accessory use. A use customarily incidental, related, and subordinate to the principal legal use of the parcel or lot and located on the same. A secondary dwelling unit is not an accessory use.

Affordable housing. See “Inclusionary housing.”

Affordable unit. A dwelling unit affordable to households of very low, low, or moderate-income as determined by the Housing Authority.

Agent of owner. A person authorized in writing by the property owner to represent and act for a property owner in contacts with Town employees and officials regarding matters regulated by this Zoning Ordinance.

Agriculture. The breeding, raising, pasturing, and grazing of livestock, for the production of food and fiber; the breeding and raising of bees, fish, poultry, and other fowl; and the planting, raising, harvesting and producing of agricultural, aquacultural, horticultural and forestry crops, not including a household garden.

Alcoholic beverage. Any beverage falling within the definition contained in Section 23004 of the California Business and Professions Code.

Alley. A public or private roadway, not intended for general vehicle traffic circulation, that provides secondary vehicle access to the rear or side of lots having other public street frontage.

Alteration, structural. “Structural alteration” means any change in the supporting members (e.g., bearing walls, columns, beams, or girders) of a structure, including enlargement of such structure, or addition to it.

Animal, Large. Any cloven-footed or hooved animal, including without limitation, any cow, goat, sheep, pig, llama or member of the horse family.

Animal, Small. Any animal, bird, or reptile of substantially less size than a cloven-footed or hooved animal, including a chicken, turkey, rabbit, cat, dog, duck, mink, hamster, chinchilla, frog, fish, worm, or bee.

Antenna. See “Wireless communications facility.”

Apartment. Three or more units under one ownership in a single multifamily dwelling. Units have a separate kitchen and are designed or intended for and/or occupied by one family.

Applicant. The owner of a property on which a proposed project is located, or his agent, as designated by him in writing.

Area. See “Floor area” or “Lot area.”

Attached two-family dwelling. A building containing two dwelling units designed for and/or occupied by two families living independently. An attached two-family dwelling is

such that the two dwelling units share a common wall, roof, and foundation, or are one above the other sharing a common floor/ceiling. A breezeway, carport, or similar accessory structure connecting two buildings does not transform the buildings into an attached two-family dwelling.

Attic. The room or space directly below the roof of a building. In modern buildings, the attic is the space between the roof and the ceiling of the upper story. In classical structures, the attic is the space, or low room, above the entablature or main cornice of the building.

Authorized Agent. See “Agent of owner.”

Automatic Teller Machine (ATM). Machines used by bank and financial service patrons for conducting transactions, including deposits, withdrawals and fund transfers, without contact with financial institution personnel.

B. Definitions, “B.”

Basement or below-grade story. Any floor area, all on one level with at least one foot elevation difference from other floor area, where the top surface of the floor or roof above, as measured at the outer edge, does not exceed three feet above grade for more than fifty percent of the perimeter of the basement or below-grade story, nor exceed four feet above grade for more than twenty-five percent of the perimeter, nor exceed seven feet above grade at any point.

Bed and breakfast inn. A residential dwelling unit offering lodging and partial or full board to overnight guests on a temporary basis.

Block. That property on one side of a street and lying between the two nearest intersecting or intercepting streets, or between the nearest intersecting or intercepting streets.

Board. The Design Review Board of the Town of Tiburon.

Boarding house. A dwelling, other than a hotel or bed and breakfast inn, wherein lodging and meals for two or more persons are provided for compensation.

Breezeway. A structure designed to connect the main building on a site with another main building or an accessory structure on the same site. A breezeway shall not exceed fifteen feet in height and no more than fifty percent of the total side area of the structure may be enclosed with any material other than that necessary for roof supports.

Building. Any structure used or intended for supporting or sheltering any use or occupancy. When any portion thereof is completely separated from every other portion thereof by an approved fire wall assembly or separation as defined by the California Building Code, without any window, door, or other opening therein, which fire wall extends from the ground to the upper surfaces of the roof at every point, then such portion shall be deemed to be a separate building.

Building, main. A structure within which is conducted the principal use of the lot upon which it is located.

Building code. The California Building Code ("CBC"), editions and amendments as adopted by the Town.

Building coverage. See "Lot Coverage."

Building envelope. A defined maximum volumetric limit above grade on a property, as established by setbacks, heights or other limits. A building envelope is not intended to be filled with buildings or structures, but is intended to provide flexibility in the location of buildings or structures within the envelope. In planned development zones, limits on the placement of buildings or structures relative to building envelope boundaries may be specified in a Precise Development Plan or other Zoning Permit.

Building permit. A permit issued by the Building Division of the Town of Tiburon in conformance with the requirements of the California Building Code ("CBC"), editions and amendments as adopted by the Town.

Business. The purchase, sale, or other transaction involving the handling or disposition (other than that included in the term "industry" as defined herein) of any article, substance, service, or commodity for profit or livelihood. (See also "Home occupation.")

Business day. A day on which Tiburon Town Hall is open for the transaction of public business.

C. Definitions, "C."

California building code. The California Building Code ("CBC"), editions and amendments as adopted by the Town.

Cantilevered. An overhang where a floor, deck, balcony or other horizontal projection extends beyond a foundation wall or other floor level and is unsupported at the extended end.

Carport. An accessory structure or portion of a main building open on two or more sides and designed for the shelter or storage of vehicles, as defined in this Section.

Certificate of Compliance. A certificate of compliance is a document that acknowledges, either conditionally or unconditionally, that a subject parcel, which was typically created prior to current subdivision map requirements, is considered by the Town to be a legal lot of record.

Certified green building rater. A person or organization certified or designated by a green building rating organization associated with a specific green building rating system adopted by Town Council resolution for performing inspections and providing documentation to assure compliance with green building requirements.

Charitable facility. A public service, nonprofit enterprise.

Child day-care center. Any establishment, activity, or use of a site providing group day-

care or instruction services for 15 or more children, other than those resident on the site; including a day nursery, nursery school, play group, or afternoon group.

Child day-care facilities. There are two categories of child day-care facilities:

1. **Small family day-care homes (up to eight children).** As provided by State law (Health and Safety Code Sections 1596.78, et. seq.), small family day-care homes are allowed within any single-family residence located in a residential zoning district. A day-care facility may accommodate up to eight children and still be considered a small family day-care home. No assistant is required. Parents must be informed in writing when a caregiver increases the number of children cared for to eight. A small family day-care home licensed for eight children may care for:
 - a. Six children with no more than three infants;
 - b. Four infants only; or
 - c. Eight children when two are at least six years of age and a maximum of two infants and four other children over age two.
2. **Large family day-care homes (up to 14 children).** As provided by State law (Health and Safety Code Sections 1596.78, et. seq.), this use is allowed within any single-family residence located in a residential zoning district. Family day-care homes that do not qualify as small family day-care homes are deemed to be large family day-care homes.

Commercial Place of Amusement. Any establishment maintained and operated for the purpose of providing amusement and entertainment to guests thereof, including places designed to house video games.

Commercial Recreation Use. Any establishment, activity, or use of a site except for a nonprofit establishment, in which a fee is charged to provide space, services, or facilities for individual or group use in the pursuit of any recreational purpose.

Commercial use. A general term referring to business use, especially retail or office use, unless otherwise stipulated.

Commission. The Planning Commission of the Town of Tiburon.

Community apartment. A development as defined in Section 1351(d) of the California Civil Code, or any successor Section thereto.

Community care facility. Any facility, place, or building that is maintained and operated to provide non-medical residential care, day treatment, adult day care, or foster family agency services for children, adults, or children and adults, including, but not limited to, the physically handicapped, mentally impaired, incompetent persons, and abused or neglected children, and includes residential facilities, adult day care facilities, day treatment facilities, foster family homes, small family homes, social rehabilitation facilities, community treatment facilities, and social day care facilities (Health and Safety

Code Sections 1500 et. seq.).

Community Development Department. The Planning Division and the Building Division of the Town of Tiburon, which together are charged with implementing the land use regulations of the Town and providing Staff support to the various boards, commissions, and the Town Council.

Conceptual Master Plan. A conceptual development plan for a developed or undeveloped property (see Section 16-52.070).

Conditional use. A use not authorized by right in a zone, which requires a conditional use permit prior to the start of operation, pursuant to provisions of this code.

Conditional use permit. A discretionary zoning permit that may be granted in compliance with the provisions of Section 16-52.040 (Conditional Use Permit), which authorizes a specific use of land on a specific site, subject to compliance with any conditions of approval imposed on the permit.

Conditioned floor area. Floor area within a building that is provided with a heat supply or a method of cooling, as defined by the building code.

Conditioned space. An enclosed space in a non-residential building that is provided with a mechanical heating system that has a capacity exceeding ten (10) Btu/(hr. x ft.²), or is provided with a mechanical cooling system that has a capacity exceeding five (5) Btu/(hr. x ft.²).

Conditions, Covenants, and Restrictions (CC&Rs). A declaration recorded with the title to a parcel that may establish private provisions governing how a property shall be held, conveyed, encumbered, leased, rented, used, occupied, and/or improved. Unless specified therein and expressly authorized by the Town, CC&Rs are not administered or enforced by the Town.

Condominium. The term “condominium” shall include the following:

1. Community apartment as that term is defined in Civil Code Section 1351(d) or any successor Section thereto;
2. Condominium as that term is defined in Civil Code Section 1351(f) or any successor Section thereto;
3. Stock cooperative as that term is defined in Civil Code Section 1351(m) or any successor Section thereto; or
4. Undivided interest project that is defined as any parcel of land containing five or more residential dwelling units in which five or more individuals own an undivided interest coupled with the right of exclusive occupancy of any unit located thereon.

Condominium conversion. A change in the type of ownership of a parcel or parcels of

land, together with the existing structures, to that defined as a condominium, regardless of the present or prior use of such land or structures and whether improvements have been made or are to be made to such structures.

Condominium project. Any development consisting of condominiums, or converting existing structures to condominiums.

Council. The Town Council of the Town of Tiburon.

Coverage. See “Lot coverage.”

Crawl space. An open area between the floor of a building and the ground.

D. Definitions, “D.”

Days. Calendar days, unless otherwise specified (i.e. business days).

Debris Box. A large receptacle, often 8-15 cubic yards in volume, commonly but not exclusively used for the disposal of construction debris from a construction site.

Deck. A flat, floored, roofless structure usually adjoining a main building or accessory building.

Density. The number of dwellings per acre of lot area, unless otherwise stated, for residential uses.

Density bonus. An increase in the number of units otherwise allowed by the general plan and/or zoning ordinance for any particular lot or parcel.

Depth. The horizontal distance between the front and rear property lines of a site measured in the mean direction of the side property lines, but not including the length of an access corridor on a flag lot. (See Figures 10-1 and 10-2 under “Lot”)

Design review guidelines. See Section 16-52.020 (Site Plan and Architectural Review [Design Review]).

Detached two-family dwelling. Two dwelling units, each located in a separate building on the same lot, for which a detached two-family dwelling exception has been issued in compliance with this Zoning Ordinance. Detached two-family dwellings that lawfully exist but that have not received a detached two-family dwelling exception shall be deemed legal nonconforming structures subject to provisions of Section 16-62 (Nonconforming Uses, Structures, and Lots).

Director of Community Development. The Director of the Town’s Community Development Department, or his designee.

Director. The Director of Community Development.

Division. See Planning Division.

Dock. Any public or private facility for the berthing, loading, or unloading of boats or other water-related craft.

Dolphin. A man-made marine structure that extends above the water level and is not connected to shore. Used for providing a point to moor, to display regulatory or navigation information, and/or providing lighting aids.

Driveway. A private roadway serving three or fewer lots, and not meeting Town standards for public streets.

Dwelling unit. A room or group of internally connected rooms that have sleeping, food preparation, eating and sanitary facilities, but not more than one kitchen, which constitute an independent housekeeping unit, occupied by or intended for one household on a long-term basis.

Dwelling, multi-family. A building containing three or more dwelling units.

Dwelling, single-family. A building containing one dwelling unit.

Dwelling, two-family. An attached two-family dwelling or a detached two-family dwelling, as defined herein.

Duplex. See “Attached two-family dwelling.”

E. Definitions, “E.”

Electronic commerce. The buying and selling of products or services over electronic systems such as the internet and other computer networks.

Emergency. A sudden, unexpected occurrence demanding immediate action to prevent or mitigate loss of or damage to life, health, property, or essential public services.

Emergency Shelter. Housing with minimal supportive services for homeless persons that is limited to occupancy of six months or less by a homeless person.

Equestrian facility. A land use that consists of the commercial keeping of horses, donkeys, and mules in facilities, including:

1. Horse ranches;
Stables (public and private);
3. Riding schools and academies;
4. Horse exhibition facilities; and
5. Pack stations.

This land use includes barns, stables, corrals, and paddocks accessory and incidental to the above uses.

F. Definitions, “F.”

Family. One or more persons occupying a dwelling and living as a single, domestic housekeeping unit, as distinguished from a group occupying a hotel or motel, club, fraternity or sorority house.

Feasible. Capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, legal, social, and technological factors.

Fence. A man-made barrier that provides privacy and/or limits passage. Fences may be continuous or open at intervals. Fences that exceed three and one-half feet in height shall be considered “structures” as defined in this Zoning Ordinance.

Floor area, gross. “Gross floor area” means the sum of all enclosed or covered areas of each floor of the building, measured to the exterior faces of the enclosing walls, columns, or posts.

NOTE: The term “capable of being used or finished for habitable space” is used below. A space shall be considered “capable of being used or finished for habitable space” if it meets California Building Code occupiable ceiling height requirements and is all of the following:

1. Covered by a solid, weatherproof roof or floor and

At least fifty percent of the vertical area around the space is closed.

Gross floor area shall not include the following six areas:

1. For residential uses, the first six hundred square feet of garage or carport space on properties less than or equal to sixty thousand square feet in area; or the first seven hundred fifty square feet of garage or carport space on properties greater than sixty thousand square feet in area; or the first two hundred fifty square feet of garage or carport space for each parking space required in compliance with parking requirements from Section 16-32.040 (Number of Paring Spaces Required);

Areas permanently open to the sky;

3. Exterior areas under roof eaves or other cantilevered overhangs;
4. Attic spaces and underfloor spaces that are not capable of being used or finished for habitable space;
5. Basements, as defined in this Zoning Ordinance; and
6. Floor areas of roofed or covered open spaces (such as breezeways, balconies,

porches and similar spaces), which are not capable of being used or finished for habitable space, if at least fifty percent of the vertical area around the space is fully open.

Gross floor area shall include the following:

1. Unfinished loft spaces and other areas capable of being used or finished for habitable space;

Other roofed or covered spaces (such as breezeways, balconies, porches, or similar spaces) that are capable of being used or finished for habitable space, if less than fifty percent of the vertical area around the space is fully open;
3. Roof penthouses; mezzanine floor areas; and accessory buildings;
4. All crawl space area with a minimum height of seven feet when measured from finished or natural grade (whichever is lower) to the bottom of the floor above. This definition shall only apply to crawl space created after March 31, 2006; and
5. All space with a minimum height of seven feet beneath a cantilevered portion of other floor area of a dwelling unit. This definition shall only apply to such space created after March 31, 2006.

Unless otherwise stipulated, the term “floor area” shall mean gross floor area.

Floor area ratio (FAR). For residential uses, the floor area ratio is specified in Table 5-2 as described in Section 16.52.010(I). For non-residential uses, the floor area ratio is the gross floor area of the building or buildings on a lot, divided by the area of the lot.

Frontage. The property line abutting on a street. On a corner lot or a flag lot, or on a double-frontage lot, the lot line closest to the point of access to the lot, and/or the lot line abutting the principal street, as determined or approved by the director. The term also includes front lot line (see Figure 10-1 and 10-2 below, under “Lot”).

G. Definitions, “G.”

Garage. An accessory building or portion of a main building, enclosed on three or more sides, designed or used primarily for the shelter or storage of automobiles and/or other vehicles.

General Plan. The comprehensive plan as adopted by the Town in compliance with the California Government Code Section 65302, or successor sections thereto.

Grade. The natural surface of the ground, or the finished ground surface, whichever is lower, but in no case lower than the minimum flood grade elevations adopted by the Town (See “Height.”) The director or board may determine the grade in the case of unusual project conditions.

Green building rating checklist. A rating system adopted by Town Council resolution

and used for determining compliance of new construction and substantial additions with green building requirements.

Ground surface. See “Grade.”

Guest house. Living quarters within a detached accessory building for use by guests of the occupants of the premises, such quarters having no kitchen or cooking facilities and not otherwise used or usable as a separate dwelling unit.

Guest room. A room without kitchen facilities that is intended, arranged, or designed to be occupied, or which is occupied, by one or more guests, and is not rented or otherwise used as a separate dwelling unit.

Guidelines. Design review guidelines, Town of Tiburon Design Guidelines For Hillside Dwellings and General Design Guidelines for New Construction and Remodeling (Hillside Design Guidelines), Downtown Tiburon Design Handbook, or any other guidelines adopted by resolution of the Town Council.

H. Definitions, “H.”

Handicapped accessible unit. A dwelling unit that meets all the special requirements as set forth in federal and State law for handicapped persons.

Hearing, public. “Public hearing” means a duly noticed hearing held subject to the provisions herein, for the purpose of obtaining public opinion and comment upon an application or other matter before the board, commission, or council.

Height. The plumb vertical distance, measured using a plane, established by the lower of the natural or finished grade at the perimeter of the exterior surface of the building, structure, fence, or wall. No point of the roof edge, fence, wall, parapet, mansard, structure, or other building feature shall extend above the plane established by the maximum height line from grade, except as specifically excluded in Subsection 16-30.050.D (Exceptions to height limits).

Hillside Design Guidelines. The Town of Tiburon Design Guidelines for Hillside Dwellings and General Design Guidelines for New Construction and Remodeling.

Historic building. Any building listed on a national, state, or local register or listing of historic resources.

Home occupation. Any use which is conducted entirely within a dwelling and carried on by the inhabitants thereof, is clearly incidental and secondary to the use of the dwelling for residential purposes, and does not change the character thereof or adversely affect the uses permitted in the residential zone in which it is located, and may be permitted in any residential zone. Subject to the regulations contained in Section 16-40.040 (Home Occupations).

Home, rest or convalescent. “Rest home” or “convalescent home” means a residential use in which nursing, dietary, and other personal services are furnished to convalescents,

invalids, or aged persons.

Hospital. See “Medical Services - Hospitals.”

Hotel. A building or part thereof containing completely furnished individual guest rooms or suites, occupied on a transient basis (less than 30 days), where lodging with or without meals is provided for compensation. This definition includes motels.

Household. See “Family.”

Household pet. A domesticated animal normally allowed free access to the dwelling, kept for company, security, or pleasure and bred for this purpose, in compliance with Title VI, Chapter 20 (Animals). Examples include a dog, cat, or canary; but do not include related species normally found in the wild state.

Housing Authority. The Housing Authority of the County of Marin, a public body, corporate and politic, created in compliance with the Housing Authority Law of the State of California, or its successor.

Housing Element. The Town of Tiburon General Plan Housing Element.

HUD. The United States Department of Housing and Urban Development or its successor.

I. Definitions, “I.”

Inclusionary housing. Housing for low and moderate-income families, as defined in Article VII (Inclusionary Housing and Density Bonuses). The following words and phrases shall be interpreted as set forth below for use of regulations in Article VII:

1. **Affordable unit.** A dwelling unit affordable to households of very low, low, or moderate-income as determined by the Housing Authority.

Applicant. The owner of a property on which a proposed project is located, or his agent, as designated by him in writing.
3. **At one location.** All adjacent land owned or controlled by the applicant, the property lines of which are contiguous at any point, or the property lines of which are separated only by a public or private street, road or other public or private right-of-way, or separated only by other land of the applicant.
4. **Density bonus.** An increase in the number of units otherwise allowed by the general plan and/or zoning ordinance for any particular lot or parcel.
5. **Dwelling unit.** A room or group of internally connected rooms that have sleeping, food preparation, eating and sanitary facilities, but not more than one kitchen, which constitute an independent housekeeping unit, occupied by or intended for one household on a long-term basis.
6. **Handicapped accessible unit.** A dwelling unit that meets all the special

requirements as set forth in federal and State law for handicapped persons.

7. **Housing Authority.** The Housing Authority of the County of Marin, a public body, corporate and politic, created in compliance with the Housing Authority Law of the State of California, or its successor.
8. **Housing Element.** The Town of Tiburon General Plan Housing Element.
9. **HUD.** The United States Department of Housing and Urban Development or its successor.
10. **Inclusionary unit.** An ownership or rental dwelling unit that is affordable by households with very low, low, or moderate-income, and/or a dwelling unit designed for a special needs household.
11. **In-lieu housing fee.** A fee paid to the Town by an applicant for residential development in the Town, in lieu of providing the required inclusionary units or lots.
12. **Income levels.** The following definitions are used to describe income levels:
 - a. **Low income.** That income level determined periodically by the Housing Authority using median income levels and family sizes. Generally, low income indicates a household income between fifty percent and eighty percent of median income.
 - b. **Moderate-income.** That income level determined periodically by the Housing Authority using median income levels and family sizes. Generally, moderate-income indicates a household income between eighty percent and one hundred twenty percent of median income.
 - c. **Very low income.** That income level determined periodically by the Housing Authority using median income levels and family sizes. Generally, very low income indicates a household income below fifty percent of median income.
13. **Median income.** The median income for the San Francisco Primary Metropolitan Statistical Area (PMSA), or its successor, as determined by HUD, adjusted for family size and updated annually.
14. **New.** Not previously existing in a numerical sense. For example, the subdivision of an existing lot or parcel into two lots will create only one new lot.
15. **Resale controls.** Legal restrictions by which the price of an affordable unit will be controlled, ensuring that the unit remains affordable by very low, low, or moderate-income households on resale.
16. **Residential development.** A housing development, as defined in California Government Code Section 65915 et seq., condominium conversion or land

subdivision, at one location, including all residential lots or dwelling units for which permits have been applied for or approved.

17. Special needs household. A household with identified special needs, including but not limited to:

- a. Single-person household (smaller units);
- b. Single-parent household (smaller units);
- c. Senior household (including assisted housing and board and care);
- d. Large family household (minimum of three bedrooms);
- e. A household with people with disabilities (handicapped persons).

Improved parking surface. An artificially enhanced ground surface, typically but not exclusively composed of concrete, asphalt, stone, pavers, brick, ceramic, macadam, turf-block, or gravel, that is used for, or capable of being used for, the parking of vehicles.

Industry. Any non-residential building or land area in which the industrial operations of manufacturing, fabricating, processing, reduction, or destruction of any article, substance, or commodity, or similar processes takes place.

Institution. A public or semi-public facility, especially schools, religious places of worship, public government buildings, and other structures used and occupied by a government, religious, educational, or other similar organization.

Interlocking module. Angle parking that places the bumpers of vehicles in adjacent stalls next to one another. An interlocking to curb module places the bumpers of vehicles to adjacent curbs.

Intermediate community care facility. See “Community care facility.”

J. Definitions, “J.”

Junkyard. Buildings, structures, or premises where junk, waste, and discarded, recyclable, or salvage materials are bought, sold, exchanged, stored, baled, packed, disassembled, or handled. Includes automobile wrecking yards, but does not include premises used for the purchase or storage of used furniture and household equipment, or used cars in operable condition.

K. Definitions, “K.”

Kennel. Any lot or premises on which four or more dogs, cats, or other small animals at least four months of age are kept; or an establishment in which veterinary services, clipping, bathing, boarding, and other services are rendered to dogs, cats, and other small animals and household pets.

Kitchen. Any portion of a structure, other than a wet bar, with a combination of two or more of the following:

1. Sink (other than that associated with a bathroom);
Food storage and preparation areas;
3. Refrigerator; or
4. Cooking appliances including a stove, microwave oven, convection oven, cooking burners, hot plate or similar appliances that reasonably may be used for the preparation of food.

L. Definitions, “L.”

Landscaped area. The portion of a site containing planted areas and plant materials including trees, shrubs, lawns, flower beds, and ground cover, together with decorative elements such as walks, benches, patios, terraces, water features, and the like, suitable for ornamenting or screening the site or a use on the site.

LEED®. Any one of the U.S. Green Building Council’s Leadership in Energy and Environmental Design green building rating systems or programs.

LEED® accredited professional. A person who is accredited by the U.S. Green Building Council as having a thorough understanding of green building practices and principles and familiarity with LEED® requirements, resources and processes.

Legal nonconforming secondary dwelling unit. A secondary dwelling unit that currently does not conform to the regulations for the district in which it is situated but which did conform at the time it was constructed or erected.

Legal nonconforming structure. A structure which was lawfully existing or maintained, or for which a building permit was issued but which no longer conforms to the standards of coverage, yard space, height, distance between structures, or other prescribed regulation for the Zone in which the structure is located. (Please refer to Section 16-62 [Nonconforming Uses, Structures, and Lots] for more detailed information.)

Legal nonconforming use. A use of a structure or land which was lawfully established and maintained but which no longer conforms to the use regulations of the Zone in which it is located. (Refer to Section 16-62 [Nonconforming Uses, Structures, and Lots] for more detailed information.)

Loading area. A space not on a public street, conforming to the requirements for loading spaces or berths specified in Section 16-32.090 (Loading Berths), with adequate provision

for ingress and egress. Developed for the loading or unloading of motor vehicles or trailers, including loading berths, aisles, access drives, and related landscaped areas, and normally located on the lot where the building or use which it serves is located.

Lot. Land occupied or to be occupied by a building and its accessory building, together with such open spaces as may be required in compliance with the provisions herein, having not less than the minimum area required by this Zoning Ordinance for a building site in the zone in which such lot is situated, and having frontage on a street; and which is shown on a duly approved and recorded subdivision map, or otherwise legally subdivided or recognized by certificate of compliance (see Figure 10-1 and 10-2). (See also “Parcel.”)

- 1. Corner lot.** A lot that occupies the interior angle at the intersection of two or more streets that have an angle of intersection of not more than one hundred thirty-five degrees.

Through lot. An interior lot having frontage on two parallel or approximately parallel streets.

- 3. Flag lot.** A lot having a narrower strip connection to a public street than would otherwise be permitted under the minimum lot width requirement, but in no case less than fifteen feet.

- 4. Interior lot.** A lot other than a corner lot.

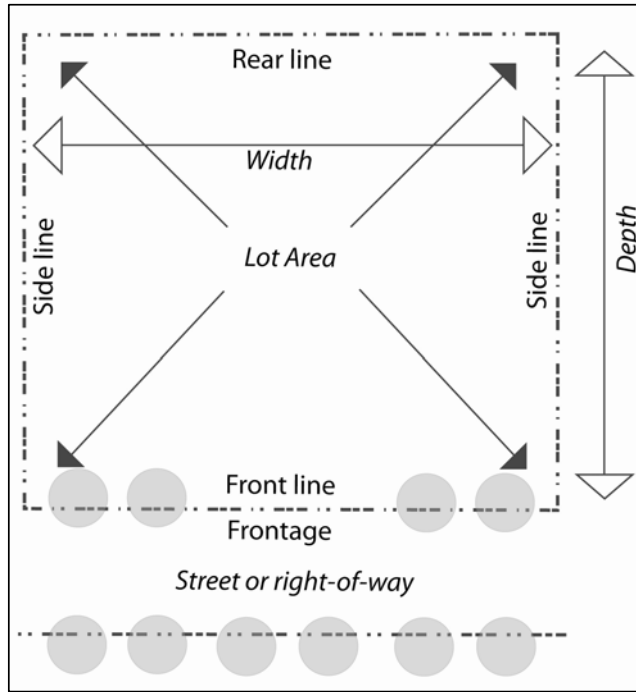


Figure 10-1 - Lot Lines

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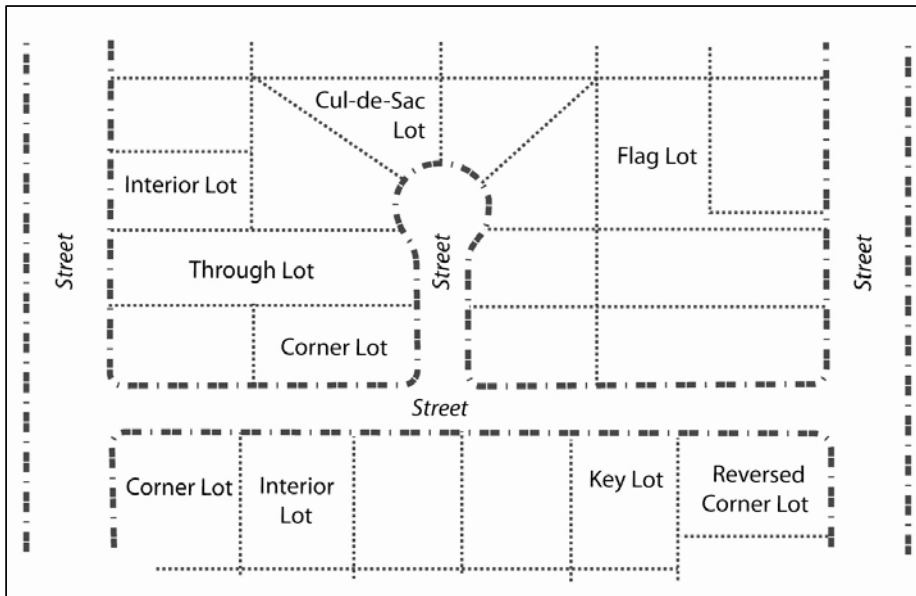


Figure 10-2 - Lot Types

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5. **Key lot.** The first interior lot to the rear of a reversed corner lot.
6. **Reversed corner lot.** A corner lot, the rear yard of which abuts the side yard of another lot.

Lot area. The total area included within the boundary lines of a lot, exclusive of the area of access corridors or portions of the lot within existing or planned street lines. See Figure 10-2 above.

Lot coverage. The percentage of a lot or parcel that is covered by structures. (Refer to Subsection 16-30.120.B (Lot coverage) for detailed information on the calculation of lot coverage.)

Lot line. The lines bounding a lot as defined herein.

Lot line, front. “Front lot line” means the line of an interior lot separating it from a street at or closest to the access to the lot, except (1) as otherwise defined under “Frontage”, or (2) when a front property line falls within a street right-of-way or roadway easement, the front lot line shall be the street right-of-way or roadway easement line within the property. (See also “Yards.”)

Lot line, rear. “Rear lot line” means a lot line that is opposite and most distant from the front lot line. On an irregular lot that is not of extreme configuration, the rear lot line shall coincide with the rear property line. In the case of an extremely irregular or triangular shaped lot, a line ten feet in length within the lot parallel to and at a maximum distance from the front lot line shall be the rear lot line (see Figures 10-3 and 10-4 on the following page). In the case of lots within the Marine Zone, the rear lot line is the mean high tide line.

Lot line, side. “Side lot line” means the line of an interior lot separating it from another lot and the line of a corner lot separating the line of that lot adjacent to the frontage from a street, except (1) as otherwise defined under “Frontage”, or (2) when a street side property line falls within a street right-of-way or easement, the side lot line on that side shall be the easement or right-of-way line within the property.

Lot of record. A lot created prior to current subdivision map requirements and in compliance with the applicable subdivision regulations in effect at that time.



Figure 10-3 - Irregular lot lines

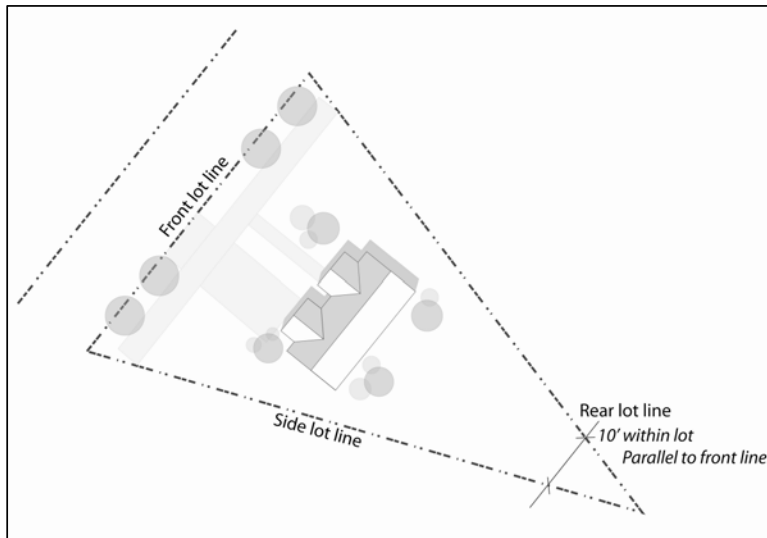


Figure 10-4 - Triangular lot lines

M. Definitions, “M.”

Maintenance. Repair work on a building or structure, including painting, carpentry, glazing, and the reinforcement or replacement of defective parts, including roofs, foundations, structural members, and the like, but not including an addition to or enlargement of the building, structure or living area.

Master plan, conceptual. See “Conceptual master plan.”

Mean high tide line. The line establishing the mean high tide elevation. Mean high tide line is used to define the jurisdiction of the Bay Conservation and Development Commission, which includes a band of land 100 feet shoreward from the mean high tide line. See, also, “Lot line, rear.”

Medical services. Businesses primarily engaged in furnishing outpatient medical, mental health, surgical and other personal health services, but which are separate from hospitals. Counseling services by other than medical doctors or psychiatrists are included under "Offices."

Medical services - hospitals. The provision of diagnostic services and extensive medical treatment, including surgical and other related services. These establishments have an organized medical staff, inpatient beds, and equipment and facilities to provide complete health care services. May include on-site accessory clinics and laboratories, accessory retail uses and emergency heliports.

Medical services - clinics, labs. Businesses primarily engaged in furnishing outpatient medical, mental health, surgical and other personal health services, but which are separate from hospitals, including:

1. Health management organizations (HMOs);
Medical and dental laboratories;
3. Medical, dental and psychiatric offices;
4. Out-patient care facilities;
5. Other allied health services.

Counseling services by other than medical doctors or psychiatrists are included under "Office."

Mezzanine. An intermediate floor placed within any story or room.

Mobile Home. A trailer, transportable in one or more sections, that is certified under the National Manufactured Housing Construction and Safety Standards Act of 1974, which is over eight feet in width and forty feet in length, with or without a permanent foundation and not including recreational vehicle, commercial coach or factory-built housing.

Motel. See “Hotel.”

Municipal Code. The Tiburon Municipal Code.

N. Definitions, “N.”

Natural resource. Resources, including but not limited to, streams, bays, watersheds, groundwater recharge, soils, wildlife habitat as defined herein, special land forms and natural vegetation.

New construction. For purposes of Section 16.52.020(K), a construction project for an existing dwelling or commercial structure wherein either of the following occurs:

1. The roof is removed and more than 50% of the existing exterior wall framing on the upper level is removed. A single-story dwelling is considered to be the upper story for purposes of this clause.
2. All or most of the roof remains, but more than 50% of the exterior wall framing is removed.

Nonconforming structure. See “Legal nonconforming structure.”

Nonconforming use. See “Legal nonconforming use.”

Nursery. Any land use to raise trees, shrubs, flowers and other plants for sale or for transplanting.

Nursery school. See Child day-care center.

O. Definitions, “O.”

Occupy. To take or enter upon possession of a place, building, or site.

Office. A place or use where administrative work is done, services offered, or business transacted, with only incidental handling of goods or products.

Open space. The portion, or portions, of a parcel unoccupied or unobstructed by structures or development of any kind except as permitted by this Zoning Ordinance or other ordinances of the Town, consistent with the General Plan.

Open space land. Any lot or parcel or other real property that is located in the open space zone on the zoning map or that is otherwise encumbered by an open space and/or conservation easement or that is designated as open space in a Zoning Permit or other Town-recognized document.

Open space use. The use of land for public recreation, enjoyment of scenic or natural beauty, conservation of natural resources, and containment of development.

Outdoor Display. An outdoor arrangement of objects, items, products, or other materials, typically not in a fixed position and capable of rearrangement, designed and/or used for the purpose of advertising or identifying a business, product, or service, or having the practical effect of doing so.

Owner of record. The owner of at least fifty percent interest in the subject real property.

P. Definitions, “P.”

Parcel. All contiguous land held by one owner. A parcel may or may not have frontage on a street, or may contain a street within it.

Parking area. A site or portion of a site devoted to the off-street parking of motor vehicles. Includes parking spaces, aisles, access drives, and related landscaped areas.

Parking space. A usable and accessible space, with adequate provision for automobile ingress and egress, which space is used solely and permanently for vehicle parking, and conforms to the provisions of Section 16-32 (Parking and Loading Standards) concerning parking regulations.

Path. A paved or unpaved walkway for pedestrian and/or bicycle use.

Paved areas. Hardscape that includes, but is not limited to, walks, driveways, and garage aprons.

Permit. All building, grading, and other certificates of entitlement issued by the Town including use permits and variances.

Permit, conditional use. See “Conditional use permit.”

Philanthropic facility. See “Charitable facility.”

Planned development. A development project, usually located in the RPD or RMP zone, in which typical zoning regulations such as density, coverage limits, setbacks, and so forth have been or will be established by adoption of a precise development plan or similar document.

Planned development map. A map depicting planned development zones within the Town. (See Section 16-14.020 [Zoning Map and Zones])

Planning Commission. The Town of Tiburon Planning Commission, referred to throughout this Zoning Ordinance as the "Commission."

Planning Director. See “Director of Community Development.”

Planning Division. The division of the Community Development Department charged with responsibility for the current and advance planning functions of the Town, including land use regulation, Zoning Permits, and enforcement thereof.

Play equipment. Equipment intended to be used for play purposes on residential property, including basketball standards, swing sets, and similar recreational equipment.

Play structure. A portable (not permanently installed into the ground) structure intended to be used by children for play purposes on residential property.

Precise Development Plan. A plan submitted by a property owner, or his legal representative, specifically showing the proposed improvement of a property including the site plan, preliminary engineering data, building concepts, landscaping plan, and other information as required in Section 16-52.060 (Precise Development Plan).

Preschool. See Child day-care center.

Prezoning. A zoning designation, formally adopted by the Town, that applies to unincorporated territory adjoining the Town or within its Planning Area, that would become effective upon annexation. Prezoning has no regulatory effect until the property is annexed. See Section 16-68.030 (Prezoning and Annexation).

Principal use. The primary purpose or function that a lot serves or is intended to serve.

Private residential recreation facilities. A noncommercial club or recreation facility, civic club, or veteran organization, when located in a single-family dwelling.

Property. A parcel or lot, unless otherwise specified herein.

Property area. See “Lot area.”

Property line. The boundary defining the ownership of any parcel of land, including a public right-of-way but not including a limit of ownership within a public right-of-way.

Public use. Any use that is available to the general public and/or owned by the general public.

Public/quasi-public use. A land use including educational facilities; governmental and quasi-public buildings or facilities; utility facilities; and similar facilities owned or operated by public or non-profit agencies.

Q. Definitions, “Q.”

No specialized terms beginning with the letter "Q" are defined at this time.

R. Definitions, “R.”

Real estate tract office. A dwelling temporarily occupied by an office use for the intent of conducting real estate sales for a development project under construction in which the dwelling is located.

Recreation, public. Any recreation use owned or operated by a public agency, with or without charging a fee.

Recreational vehicle. A motor home, travel trailer, truck camper or camping trailer, with or without motive power, originally designed for human habitation for recreational, emergency or other occupancy, which meets all of the following criteria:

1. It contains less than 320 square feet of internal living room area, excluding built-in equipment, including wardrobe, closets, cabinets, kitchen units or fixtures, and bath or toilet rooms;
2. It contains 400 square feet or less of gross area measured at maximum horizontal projections;
3. It is built on a single chassis; and
4. It is self-propelled, truck-mounted or permanently tow-able on the highways without a towing permit.

Religious places of worship. Religious facilities operated by organizations for worship, or the promotion of religious activities. Includes accessory uses on the same site, such as living quarters for ministers and staff, and child day-care facilities where authorized by the same type of land use permit required for the religious facility itself. Does not include other establishments maintained by religious organizations, such as full-time educational institutions, hospitals and other potentially related operations (such as a recreational camp), which are defined under their respective activities.

Remodel. For purposes of Section 16.52.020 (K), a construction project for an existing dwelling or commercial structure that does not qualify as “new construction” as that term is defined herein.

Resale controls. Legal restrictions by which the price of an affordable unit will be controlled, ensuring that the unit remains affordable by very low, low, or moderate-income households on resale.

Residence. A building or portion thereof containing one dwelling unit designed for occupancy of or occupied by one family.

Residential care facility. A dwelling unit licensed or supervised by any Federal, State, or local health/welfare agency which provides 24-hour nonmedical care of unrelated persons who are disabled and need of personal services, supervision, or assistance essential for sustaining the activities of daily living or for the protection of the individual in a family-like environment.

Residential planned development zone. Any area of land or water designated RPD and subject to all of the terms and regulations of Sections 16-21.030 (Residential Zones Allowable Land Uses and Permit Requirements) and 16-21.040 (Residential Zones Development Standards).

Retail store. A business selling goods, wares, or merchandise directly to the ultimate consumer.

Review Authority. The Design Review Board, Planning Commission, Town Council, Town official, or other designee acting on a Zoning Permit application.

Ridgeline. A ground line located at the highest elevation of a connected series of major and minor hills. The primary ridgeline in Tiburon is the Tiburon Ridge as identified in the General Plan Open Space and Conservation Element. Significant (secondary) ridgelines are also identified in the General Plan Open Space and Conservation Element.

Right-of-way. The legal boundary of a street. (See “Street line.”)

Rooming house. See “Boarding house.”

S. Definitions, “S.”

Seasonal rental unit. A dwelling unit that is rented on a repeated basis for less than 31 consecutive days, or is advertised or marketed on a repeated basis to be rented for any period less than 31 days.

Secondary dwelling unit. An attached or detached additional dwelling unit on a single-family lot, which provides independent living facilities for not more than three persons, and which has kitchen/cooking, sleeping and sanitation facilities on the same lot as the primary unit is situated. See Section 16-40.030 (Secondary Dwelling Unit). The following definitions are used for secondary dwelling units:

1. **Attached secondary dwelling unit.** A secondary dwelling unit that shares a common wall with the primary unit.

Legal nonconforming secondary dwelling unit. A secondary dwelling unit that currently does not conform to the regulations for the zone in which it is situated but which did conform at the time it was constructed or erected.
3. **Owner of record.** The owner of at least fifty percent interest in the subject real property.
4. **Primary unit.** The building (or portion of the building in cases of an attached secondary dwelling unit) in which the principal residential use of the lot takes place. A secondary dwelling unit cannot constitute the primary unit.
5. **Principal place of residence.** A dwelling unit that is occupied by the owner of record as a primary place of residence.

Secretary of the Board. The Director of Community Development or his designee.

Secretary of the Planning Commission. The Director of Community Development or his designee.

Service station. A place for the retail sale of gasoline or other motor vehicle fuels, which may also include services incidental to fuel sales. These incidental services may include vehicle engine maintenance and repair, towing and trailer rental services. Does not include the storage or repair of wrecked or abandoned vehicles, vehicle painting, body or fender work, or the rental of vehicle storage or parking spaces.

Setback. A line within a lot depicting the limits of the required yard areas.

Sidewalk. A paved walkway adjacent to a street or road.

Significant (secondary) ridgeline. A ridgeline other than the Tiburon Ridge, as identified and described in the General Plan Open Space and Conservation Element.

Site. A parcel of land or portion thereof with access to a street, devoted to or intended for use or occupied by a structure or a group of structures. (See also “Lot” and “Parcel.”)

Site area. See “Lot area.”

Site Plan and Architectural Review. A type of Zoning Permit procedure used by the Town. Refer to Section 16-52.020 (Site Plan and Architectural Review).

Slope. The natural ground slope of a lot or parcel. Percent of slope shall be measured along a line passing through the center of the lot or parcel, or through the building site, between lot lines and perpendicular to the natural contours; this choice shall be made by the Director.

Special needs household. A household with identified special needs, including but not limited to:

- a. Single-person household (smaller units);
- b. Single-parent household (smaller units);
- c. Senior household (including assisted housing and board and care);
- d. Large family household (minimum of three bedrooms);
- e. A household with people with disabilities (handicapped persons).

Sports Court. A court facility where outdoor recreational activities occur for non-commercial neighborhood, community, or private residential use. These include facilities such as basketball courts and tennis courts.

Stable, private. An accessory structure on a lot of not less than one acre in area in which not more than two horses are kept for private use, provided that an additional horse may be added for each additional acre of land in the site.

Stable, public. A building in which any horses are kept for remuneration, hire, or sale.

State. The State of California.

Stock Cooperative. A development as defined in Section 1351(m) of the California Civil Code.

Storage Box. A receptacle used to store household goods and furniture during the construction process on a property.

Story. That portion of a building including between the surface of any floor and the surface of the next floor above it, or if there is no floor above it, then the space between the floor and the ceiling next above it.

Street. A thoroughfare other than an alley, whether public or private, which provides the principal means of vehicular access to abutting property.

Street line. The dividing line between a lot or parcel of land and a contiguous street. The street line shall be the right-of-way line in cases where the property extends into the street.

Structure. Anything that is built or constructed and requires a location on the ground, including a building, accessory building, or edifice of any kind; or any piece of work artificially built up or composed of parts. Structure does not include a fence or a wall used as a fence three and one-half feet or less in height; nor landscaping features, decks, or pavement wherein no part of such landscaping features, decks, or pavement extends more than three feet above grade.

Structure, legal nonconforming. See “Legal nonconforming structure.”

Supportive housing. Housing with no limit on length of stay, that is occupied by people with disabilities 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.

Swimming pool. A pool, pond, lake, hot tub, or open tank capable of containing water to a depth greater than one and one-half feet located on the site of a private residence for the exclusive use of residents of the site and their guests. It shall not be considered a structure unless it extends more than three feet above grade as defined herein.

T. Definitions, “T.”

Theater, playhouse. A building, room, or outdoor structure for the presentation of plays, films, or other dramatic performances.

Town. The Town of Tiburon, County of Marin, State of California.

Town Clerk. The Town Clerk of the Town, or a designated deputy.

Town-sponsored project. A building exceeding three thousand (3,000) square feet in floor area primarily funded and sponsored by the Town and located on Town-owned land.

Trail. An unpaved walkway.

Trailer. Any vehicle or structure constructed in such a manner as to permit occupancy as sleeping quarters or the conduct of any trade or business, and so designed that it is or may be mounted on wheels and used as a conveyance, propelled or drawn by its own or other motive powers; this may include boats on trailers when used as described.

Transitional housing. Rental housing 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.

U. Definitions, “U.”

Undivided Interest Project. Any parcel of land containing five or more residential dwelling units in which five or more individuals own an undivided interest coupled with the right of exclusive occupancy of any unit located thereon.

Usable open space. The required, relatively level portion of a lot at ground level, including terraces or decking, unoccupied by principal or accessory buildings, and available to all occupants of a building or dwelling; this space of minimum prescribed dimension shall be unobstructed to the sky and shall not be devoted to driveways, parking, gradients of greater than ten percent, or other surfaces or uses obstructing leisurely outdoor use of the space.

Use. The purpose for which a site or structure is arranged, designed, intended, constructed, erected, moved, or enlarged, or for which either a site or structure is or may be occupied or maintained.

Use, legal nonconforming. See “Legal nonconforming use.”

V. Definitions, “V.”

Vehicle. Any automobile, truck, boat, or any device, operable or inoperable, with or without wheels, by which any person or property may be propelled, moved, or drawn upon any street or highway, excepting nonmotorized bicycles.

Vest. To obtain a right by completing an action required by the Tiburon Municipal Code, State or federal law.

View corridor. A view as seen through a corridor created by buildings, trees, or other opaque objects.

Vista. Similar to view corridor except that vistas need not be confined to a corridor, but may provide long-range views over opaque objects, rather than between them.

W. Definitions, “W.”

Water Efficient Landscape. Landscaping and irrigation that has been designed and installed to comply with water efficiency regulations set forth in current Marin Municipal

Water District (MMWD) ordinances. A water-efficient landscape is designed to conserve water usage by establishing and applying a ‘maximum applied water allowance,’ which is the upper limit of annual applied water for a landscape area based on the local evaporation factor, and site-specific factors such as soil, slope and planting conditions. Water-efficient landscape regulations for applicable projects are administered pursuant to Title IV, Chapter 13E (Water Efficient Landscape) of the Tiburon Municipal Code.

Wet bar. A portion of a structure, other than a kitchen, with a combination of two or more of the following:

1. Sink (other than that associated with a bathroom);
Food storage and preparation areas;
3. Refrigerator (of no more than six cubic feet capacity);
4. Wine cooler (of no more than six cubic feet capacity);
5. Under counter ice maker;
6. Microwave oven; or
7. Hot plate.

Other cooking appliances, including a stove, convection oven, cooking burners, or similar larger appliances that reasonably may be used for the preparation of food are not permitted as part of a wet bar. A wet bar may be classified as a kitchen if the Director determines that the wet bar is in a portion of the house with a separate access to exterior of the building that has the potential for conversion into a separate dwelling unit.

Width. The distance between the side property lines of a site measured in the mean direction of the front and rear property lines at the front setback line of the site.

Wildlife habitat. Any area of land or water valuable or necessary to the preservation or enhancement of the wildlife resources of the Tiburon Peninsula.

Wireless communication facility (WCF). A facility that transmits and/or receives electromagnetic signals, including without limitation, antennas, microwave dishes, satellite dishes, radio, TV transmitter and broadcasting station, and other types of equipment for the transmission or reception of such signals, monopoles or similar structures supporting the equipment, equipment building, shelters, cabinets, parking area, and other accessory construction. Including amateur and professional facilities.

1. **Antenna.** Any device or system of devices, such as poles, panels, rods, reflecting discs, or similar or other objects, used for the transmission or reception of electromagnetic signals, including but not limited to radio waves and microwaves.

Antenna, amateur radio. A ground-, building-, or tower-mounted antenna operated by a federally licensed amateur radio operator as part of the Amateur

Radio Service and as designated by the Federal Communications Commission (FCC).

3. **Antenna, building-mounted.** An antenna or antenna structure mounted on a building or rooftop, including a water tank.
4. **Antenna, direct broadcast satellite service (DBS).** An antenna, usually a small home receiving dish, designed to receive direct broadcast from a satellite.
5. **Antenna, ground-mounted.** Any antenna or antenna structure that is not mounted on a building or rooftop, and usually anchored directly to the ground.
6. **Antenna, multipoint distribution services (MDS).** An antenna designed to receive video programming services via multipoint distribution services, including multipoint multichannel distribution services, instructional television fixed services, and local multipoint distribution services.
7. **Antenna, reception window.** The area within the direct line between a satellite antenna and orbiting communications satellites transmitting signals.
8. **Antenna, satellite.** Any antenna used to receive and/or transmit radio or television signals from orbiting communications satellites.
9. **Antenna, satellite earth station (SES).** An antenna designed to receive and/or transmit radio frequency signals directly to and/or from a satellite.
10. **Antenna, television broadcast service (TVBS).** An antenna designed to receive only television broadcast signals.
11. **Antenna structure.** An antenna and its associated support structure, such as a mast or tower (but not to include a suspended simple wire antenna) that is used for the purpose of transmitting and/or receiving electromagnetic signals, including but not limited to radio waves and microwaves.
12. **Antenna structure, freestanding.** An antenna structure or mast that is not attached to a building, fence, or other such structure. Freestanding antenna structures include communications towers, wooden utility poles, standard or decorative concrete, and steel monopoles. If the total height of the structure, including the antenna, exceeds fifteen feet, it shall be treated as a monopole.
13. **Antenna structure, monopole.** A ground-mounted antenna structure, often tubular in shape, made of metal, reinforced concrete, or wood, which exceeds fifteen feet in height.
14. **Electromagnetic field (EMF).** A field of radiation produced by all electromagnetic waves, from gamma rays to radio waves. The EMF produced by wireless communication facilities is radio frequency (RF) radiation.

15. **Related equipment.** All equipment appurtenant to the transmission and/or reception of voice and data via radio frequencies. Such equipment may include, but is not limited to, cable conduit and connectors, equipment pads, equipment shelters, cabinets, buildings, and access ladders.
16. **Satellite dish.** See “Satellite antenna” under “Antenna, satellite.”
17. **Visually inevident.** That any component of a WCF, while possibly visible to a person with normal vision from street level, is such that it is not visually distinguishable as an antenna or other components of a WCF due to sufficient camouflage, design, screening, building or architectural integration, or other factors.
18. **Wireless communication facility--co-located.** A wireless communication facility comprised of a single telecommunication tower or building supporting one or more antennas or similar devices owned or used by more than one public or private entity.
19. **Wireless communication facility--shared location.** More than one telecommunications facility comprised of multiple antenna structures and other structures used for the support of antennas operated by one or more carriers where such antenna structures and other structures are located on the same lot or parcel.
20. **Wireless communication facility standards.** A set of standards, adopted by resolution of the Town Council, applying generally to review of applications for wireless communication facilities.

X. Definitions, “X.”

No specialized terms beginning with the letter "X" are defined at this time.

Y. Definitions, “Y.”

Yard. An open area on the same site as a main building, unoccupied and unobstructed from the natural ground upward except as otherwise provided in this Zoning Ordinance, including a front yard, side yard, rear yard, or unobstructed area between structures. See also “Setback,” and Section 16-30.030 (Setback Requirements and Exceptions). See Figure 10-5.

1. **Front Yard or Setback.** An area extending across the full width of a lot, the depth of which is the minimum distance separating the front line (as defined herein) and the main building on the lot.
2. **Rear Yard or Setback.** An area extending across the full width of a lot, the depth of which is the minimum distance separating the rear lot line (as defined herein) and the main building on the lot.

3. **Side Yard or Setback.** An area from the rear to the front yard of the lot, the width of which is the minimum distance separating the side lot line (as defined herein) and the main building on the lot.

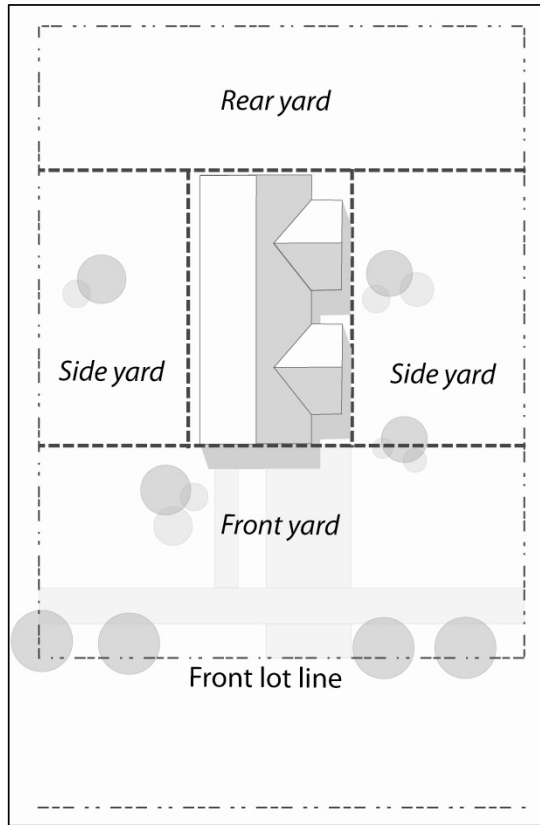


Figure 10-5 - Yards

Z. Definitions, “Z.”

Zone. An area within which certain uses of land and buildings are permitted and certain others are prohibited, yards and other open spaces are required, lot areas, building height limits, and other requirements are established.

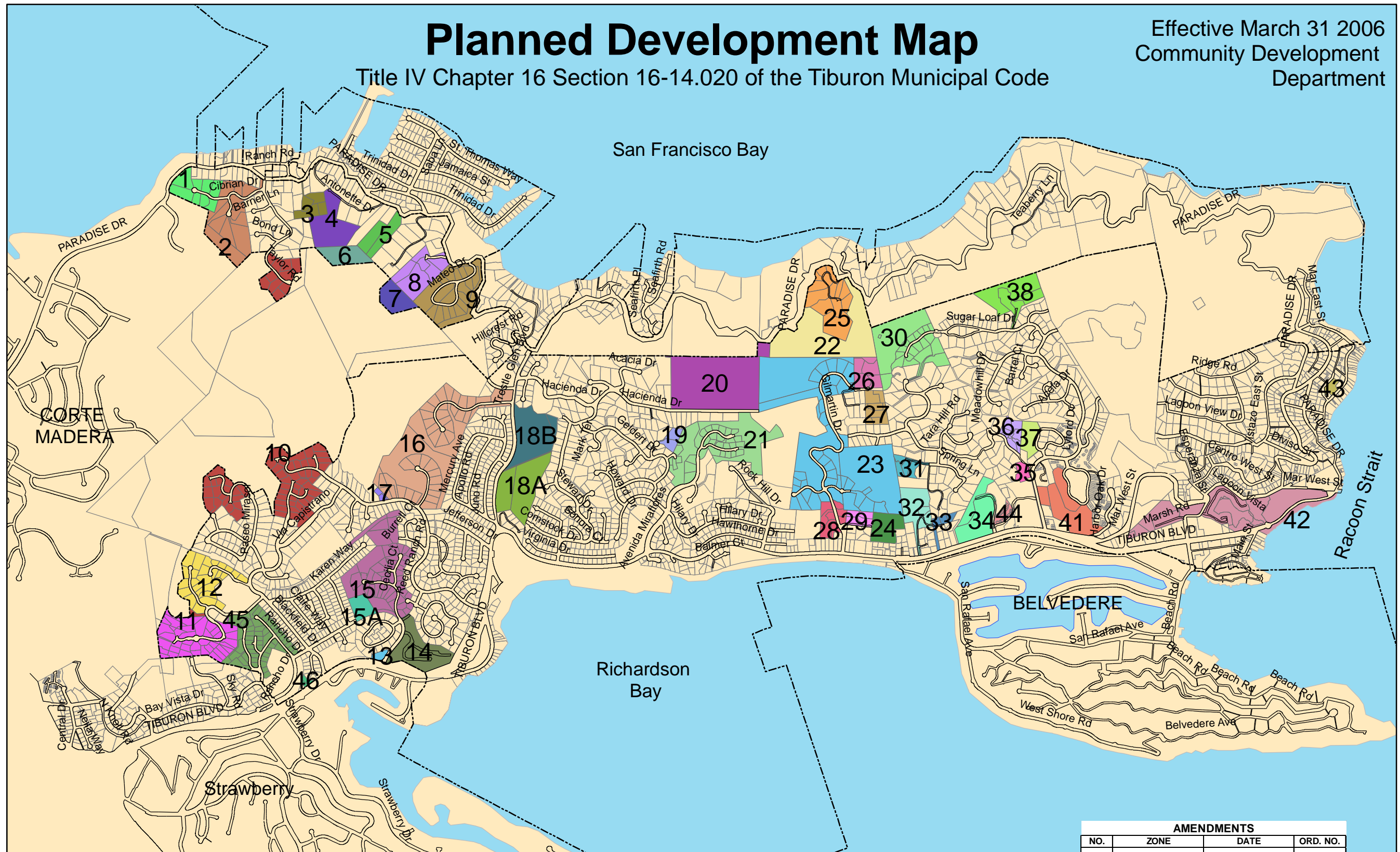
Zoning map. The map entitled, “Town of Tiburon Zoning Map” (see Section 16-14.020 [Zoning Map]).

Zoning Permit. Any permit required by the terms of this Zoning Ordinance.

Planned Development Map

Title IV Chapter 16 Section 16-14.020 of the Tiburon Municipal Code

Effective March 31 2006
Community Development
Department

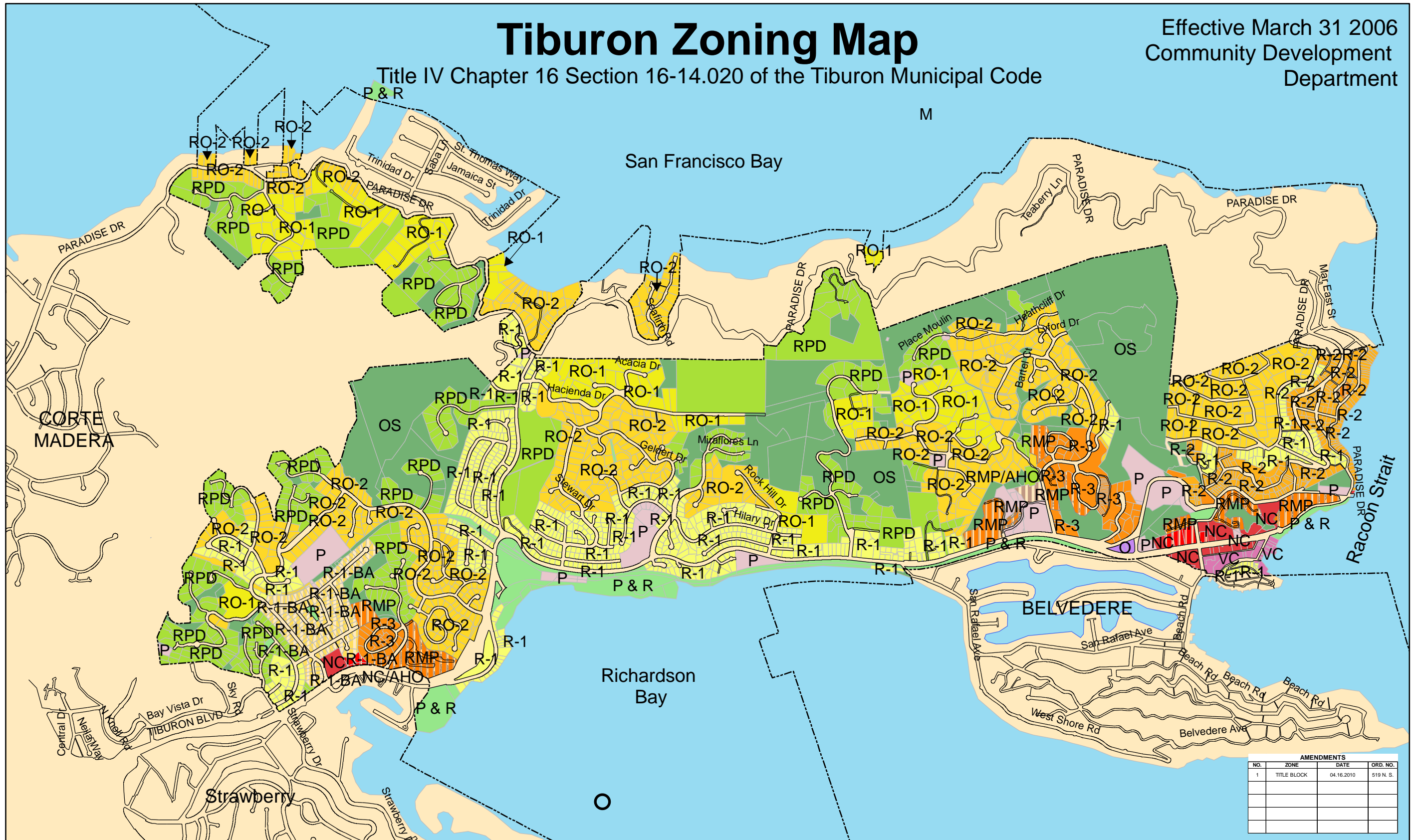


AMENDMENTS			
NO.	ZONE	DATE	ORD. NO.
1	TITLE BLOCK	04.16.2010	519 N.S.

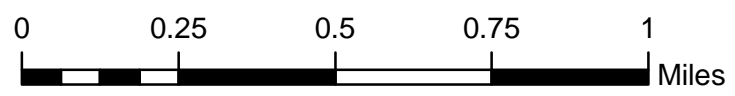
Tiburon Zoning Map

Title IV Chapter 16 Section 16-14.020 of the Tiburon Municipal Code

Effective March 31 2006
Community Development
Department



AMENDMENTS			
NO.	ZONE	DATE	ORD. NO.
1	TITLE BLOCK	04.16.2010	519 N. S.



- ZONING DISTRICT**
- R-1 Single Family Residential
 - R-2 Two-Family Residential
 - M Marine
 - P Public/Quasi-Public
 - R-1-B-A Bel Aire Single Family Residential
 - R-3 Multi-Family Residential
 - O Office
 - OS Open Space
 - R-1-B-2 Modified Single Family Residential
 - RPD Residential Planned Development
 - NC Neighborhood Commercial
 - P & R Parks & Recreation
 - RO-1 Residential Open (40,000 Sq. Ft.)
 - RMP Residential Multiple Planned
 - NC/AHO Neighborhood Commercial/Affordable Housing Overlay
 - RO-2 Residential Open (20,000 Sq. Ft.)
 - RMP/AHO Residential Multiple Planned/Affordable Housing Overlay
 - VC Village Commercial

NOTE: Angel Island (not shown) is within the Park & Recreation Zoning District.