

**RESOLUTION 2005-xx**

**A RESOLUTION OF THE PLANNING COMMISSION  
OF THE TOWN OF TIBURON RECOMMENDING TO THE TOWN COUNCIL  
ADOPTION OF AMENDMENTS TO CHAPTER 16 (ZONING) OF THE TIBURON  
MUNICIPAL CODE**

WHEREAS, the Town of Tiburon has initiated text amendments to the Town's Zoning Ordinance, codified as Chapter 16 of the Tiburon Municipal Code; and

WHEREAS, the Planning Commission has determined that the project has no potential to result in adverse impacts on the environment and is exempt from the requirements of CEQA; and

WHEREAS, notice of the public hearing on the amendments was published in a newspaper of general circulation in Tiburon on May 29, 2005 and other noticing was provided as required by law; and

WHEREAS, the Planning Commission did hold a duly noticed and advertised public hearing on June 8, 2005, at which testimony was received from the public, and

WHEREAS, the Planning Commission finds that the proposed amendments are consistent with the goals and objectives of the Tiburon General Plan.

NOW, THEREFORE, BE IT RESOLVED that the Planning Commission hereby recommends that the Town Council adopt the amendments to Chapter 16 (Zoning) as set forth in the attached Exhibit "A".

PASSED AND ADOPTED at a regular meeting of the Planning Commission of the Town of Tiburon held on \_\_\_\_\_, 2005, by the following vote:

AYES:            COMMISSIONERS:  
NOES:            COMMISSIONERS:  
ABSENT:        COMMISSIONERS:

\_\_\_\_\_  
RICHARD COLLINS, CHAIRMAN  
Tiburon Planning Commission

ATTEST:

\_\_\_\_\_  
SCOTT ANDERSON, SECRETARY



## EXHIBIT “A”

A new Article VII to Chapter 16 (Zoning), Title IV, of the Tiburon Municipal Code, entitled “Economic Exceptions,” is hereby added to the Tiburon Municipal Code to read as follows:

### **Article VII. Economic Exceptions**

#### **16-7.1. Purpose.**

The purpose of this article 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. This article 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 under the United States or California Constitutions.

#### **16-7.2. Application for Economic Exception.**

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 parcels that are geographically contiguous in which the applicant holds an interest at the time of the application. Any applicant that does not submit a request for an Economic Exception as set forth in Section 16-7.3 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 said regulations.

#### **16-7.3. Time for Filing Application.**

(a) The applicant shall apply for the Economic Exception as early as possible in the process of obtaining land use approvals for the subject property, i.e., before or in conjunction with the first land development application submitted for the property.

(b) Notwithstanding subsection 16-7.3(a), if the Planning Commission is the decision-making body for the land development application and the applicant’s Economic Exception request is based on a condition of approval, mitigation measure or other measure imposed by the Planning Commission, the applicant shall submit the application for an Economic Exception within ten (10) days of the Planning Commission’s action on the land development application. The request for an Economic Exception shall be submitted using the Town’s regular appeal process for contesting zoning permit decisions by the Planning Commission.

(c) If the Planning Commission acts on the land development application as an advisory body and the applicant's Economic Exception request is based on a condition of approval, mitigation measure or other measure recommended by the Planning Commission, the applicant shall submit the request for an Economic Exception within ten (10) days of the Planning Commission's making its recommendation on the merits of the land development application. The Town Council shall consider the request for an Economic Exception prior to taking action on the merits of the land development application.

(d) If the request for Economic Exception is based on a condition of approval, mitigation measure or other measure first proposed at a meeting of the Town Council, the applicant may submit the application for an Economic Exception within ten (10) days of receiving constructive notice of said proposal.

**16-7.4. Required Information.**

(a) The applicant shall provide all of the following information:

1. The date the applicant purchased or otherwise acquired the property, and from whom.
2. The purchase price paid by the applicant for 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. Any development restrictions or other restrictions on use, other than government regulatory restrictions described in (4) above, that applied to the property at the time the applicant acquired it, or which have been imposed after acquisition.
6. 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 discussion of 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, and any litigation guarantees or similar documents that affect or limit the use of all or a portion of the property.
9. Any offers to buy all or a portion of the property which the applicant solicited or received, including the approximate date of the offer and offered price.
10. The applicant's costs associated with the ownership of the property, annualized for each of the last five (5) 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, any income generated by the use of all or a portion of the property over the last five (5) 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 foregoing information must be submitted within ten (10) days of submission of the application for an Economic Exception.

**16-7.5. Economic Viability Determination; Economic Exception.**

(a) The Town Council will 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, as well as 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 Town's General Plan and Zoning Ordinance; and, (b) minimizes environmental damage.

(b) The Council's findings shall identify the evidence supporting the findings.

scott/zo/Z2005-01pcreso.doc