



# Town of Tiburon STAFF REPORT

AGENDA ITEM \_\_\_\_\_

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TO: **PLANNING COMMISSION**

FROM: **PLANNING MANAGER WATROUS**

SUBJECT: **MUNICIPAL CODE CHAPTER 16 (ZONING): VARIOUS TEXT AMENDMENTS; FILE NO. MCA 2007-01**

MEETING DATE: **MARCH 14, 2007** \_\_\_\_\_

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## BACKGROUND

Implementing Program LU-a of the Land Use Element of the Town's recently-adopted General Plan, *Tiburon 2020*, states that "the Town shall periodically review and, if appropriate, revise its Municipal Code and other regulations to reflect the goals, policies, densities, intensities and the land use regulations of the General Plan." The General Plan includes a number of implementation programs which describe specific actions to be taken by the Town to implement the goals and policies contained within the General Plan. A number of these implementation programs involve amendments to Chapter 16 (Zoning) of the Tiburon Municipal Code. The most urgent of these amendments were adopted by the Town in March and April of 2006. Other high priority programs requiring amendments to the Municipal Code are now being presented for review.

The Town is also in the early stages of a comprehensive update to the zoning regulations contained within Chapter 16, expected to be completed sometime during 2007-2008. In conformance with Program LU-a, Staff is recommending approval of several relatively minor amendments to this chapter prior to the more comprehensive zoning review.

The specific issues to be addressed in the recommended amendments to the Municipal Code are as follows:

- Within the Downtown Element of the General Plan, Policies DT-12 and DT-15 increase the floor area ratios within the Neighborhood Commercial (NC) and Village Commercial (VC) areas from 0.17 to 0.37 and 0.28, respectively. These land use limits need to be reflected in the floor area ratio and lot coverage regulations established for the NC and VC zoning districts. Policy DT-28 encourages a mix of two- and three-story buildings for new construction along Tiburon Boulevard. The current thirty foot (30') height limit in the NC and VC zones is not always conducive to the design of three-story buildings; the Affordable Housing Overlay zones within both the NC and VC zones were established with a 35 foot height limit in recognition of this concern. The Zoning Ordinance should be amended to implement these General Plan policies.
- During the past year's Town Council-Design Review Board workshop, the desire to clarify the description of the method for measuring building height was discussed. Staff has prepared draft language for this change.



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- During the course of reviewing Site Plan and Architectural Review applications over the years, it has become apparent that there is a need for several additional amendments to the Zoning regulations. Standardized conditions of approval are routinely applied to requests to install new skylights; these conditions should appear in the zoning regulations. Interpretations have also been made to determine which interior spaces can be classified as basements. Staff has prepared draft language for these specific changes.

### ANALYSIS

#### NC and VC Zones

Downtown Element Policy D-12 states in part that “the maximum allowable intensity for lands designated Neighborhood Commercial is an FAR of 0.37, except where a Transfer of Intensity is approved consistent with Policy DT-9.” Sections 16-2.11.3 (b&d) [NC Zone Land and Structure Regulations] list the maximum lot coverage and floor area ratio for the NC zone as 17.0% and 0.17, respectively. To implement Policy DT-9, these requirements would be changed to 37.0% and 0.37.

Similarly, Downtown Element Policy DT-15 states in part that “the maximum allowable intensity for lands designated Village Commercial is an FAR of 0.28, except where a Transfer of Intensity is approved consistent with Policy DT-9.” Section 16-2.12 [VC Zone Regulations] currently states that “the Village Commercial (VC) zone has the same permitted uses, conditional uses, and land and structure regulations as the Neighborhood Commercial zone, except that souvenir shops are allowed in the Village Commercial zone.”

To implement Policy DT-9, this section would be amended to read as follows:

“The Village Commercial (VC) zone has the same permitted uses, conditional uses, and land and structure regulations as the Neighborhood Commercial zone, except that souvenir shops are allowed in the Village Commercial zone; **and except for the following regulations:**

**(a) Lot coverage limit: not to exceed twenty-eight percent of the land area located above the high water line, unless a transfer of intensity has been approved pursuant to General Plan Downtown Element policies;**

**(b) Floor area ratio limit: 0.28, unless a transfer of intensity has been approved pursuant to General Plan Downtown Element policies.**

Downtown Element Policy DT-28 encourages project designs for new buildings along Tiburon Boulevard to include “a mix of two- and three-story buildings.” Section 16-2.11.3 (a) [NC Zone Land and Structure Regulations] establishes a building height limit of thirty feet in the NC zone. Staff has found that three-story building designs are often architecturally constrained by this 30 foot height limit. As previously noted, the Affordable Housing Overlay zones within both the NC and VC zones were established with a 35 foot height limit in recognition of this concern.



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In order to encourage three-story buildings which would not be subject to such design constraints, it is recommended that this height limit be increased to 35 feet for Downtown properties with frontage onto Tiburon Boulevard. This height limit would be reflected in the VC zone through the language contained in Section 16-2.12 referring to the same land and structure regulations contained in the NC zone.

In order to implement Policy DT-28, Section 16-2.11.3 (a) would be amended to read as follows:

“(a) Building height limits: thirty feet; **for Downtown properties with frontage on Tiburon Boulevard, thirty-five feet;**”

### Building Height Measurement

Section 16-5.6.7 of the Municipal Code (Height Measurement Method) reads as follows:

“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 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.”

An illustration accompanies this section showing how height is to be measured, and is attached as Exhibit 1. This illustration shows a portion of a building that has been dug into the slope of a hillside, and clearly indicates that the height of the building should be measured from the bottom of the building, even when this portion of the building is situated below both the natural and finished grades of the site. In effect, the “finished grade at the perimeter of the exterior surface of the building” is determined to be the dirt outside the building, even though that building surface is enveloped by dirt and is not visible.

The Hillside Design Guidelines encourage residential building designs that cut into hillside slopes. Goal 1, Principle 1 of the Guidelines encourages projects to “cut building[s] into [the] hillside to reduce effective visual bulk,” and Goal 1, Principle 2 states that projects should “terrace building[s] using the slope.”

Property owners in Tiburon and their architects have raised concerns that home designs which follow these principles are being penalized by the current building height requirement which includes portions of buildings cut into the slope in determining the height of the structure. The 30 foot maximum height of such homes would include the area below grade, resulting in a lesser amount of building height available above grade. Other homes which do not cut into the slope, however, would be entitled to a full 30 feet of building height above the existing grade.

The difference between homes that bury portions of the structure below grade and others that simply sit upon a cut into the hillside is a matter of visual exposure. A home dug into the hillside in conformance with the Hillside Guidelines would have less visual mass than a home in which the grade has been lowered but all portions of the house are visible. A change in measuring the building height is recommended to exclude below grade building areas which are not visible.



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However, it is not recommended that homes with exposed surfaces below the natural grade of the lot be allowed additional building height.

Staff surveyed other cities within Marin County regarding their building height measurement methods. Each city has a different method of measuring building height, but none has a requirement that measures height from the outside surface of a building if that portion is below grade.

In order to address these issues, Section 16-5.6.7 would be amended to read as follows:

“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.”

In addition, the Height Measurement Diagram illustrations would be modified, as shown on Exhibit 2, to reflect this change.

The concept for this amendment was discussed at the 2006 Town Council-Design Review Board workshop, where Staff was given direction to proceed with the drafting of this amendment. The Design Review Board reviewed this proposed amendment on March 1, 2007 and has recommended approval of the amendment as drafted.

### Skylights

Over the past ten years or more, the Planning Division and Design Review Board have consistently imposed a condition of approval on Site Plan and Architectural Review applications that request to install new skylights stating that “all skylights shall be bronzed or tinted and no lights shall be placed in the wells.” The only reference to lighting issues for Design Review applications contained in the Municipal Code is Section 16-4.2.7 (h) (Guiding Principles in the Review of Applications), which currently reads as follows:

“In reviewing applications for Site Plan & Architectural Review, the acting body shall consider the following principles as they may apply:

- (h) “*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.”

In order to more properly emphasize the importance of evaluating and controlling potential light pollution from skylights, Staff recommends adding the phrase “all skylights shall be bronzed or tinted and no lights shall be placed in the wells” to the end of this section.



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It is therefore recommended that Section 16-4.2.7 (h) be amended to read as follows:

- (h) *“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. **All skylights shall be bronzed or tinted and no lights shall be placed in the wells.**”

### Basements

Section 16-1.5.2 [Definitions] of the Municipal Code defines “Basement, or Below-grade Story” as “any 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 said perimeter, nor exceed seven feet above grade at any point.” Interior space that meets this definition is excluded from the calculations of gross floor area for a house.

Staff has sometimes found it difficult to determine whether a portion of a house meets the definition of basement. In particular, many hillside homes in Tiburon are designed with rear portions of lower floor levels that are substantially buried into the hillside, but have portions toward the front of that same floor level that exceed 7 feet above grade at the perimeter (e.g., a garage with an addition to the rear buried into the hillside). In interpreting the current basement definition, Staff has determined that that if a portion of a floor level is vertically separated by at least one foot from the remainder of the floor level, it is eligible to be considered to be a basement.

In order to make the basement definition clearer and easier to interpret, it is recommended that Section 16-1.5.2 be amended to read as follows:

“Basement, or Below-grade Story: Any floor area, **all on one level vertically separated by at least one foot 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 said perimeter, nor exceed seven feet above grade at any point.”

### **ENVIRONMENTAL REVIEW**

All of the proposed amendments considered herein are either exempt from CEQA pursuant to Section 15061 [b(3)], or were adequately analyzed in the Environmental Impact Report certified for the General Plan update in 2005, and no further environmental review is required.

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### **FUTURE ACTIONS REQUIRED**

The Planning Commission will make a recommendation to the Town Council regarding the possible adoption of these amendments. A subsequent public hearing will be scheduled for the Town Council to consider the amendments as recommended by the Planning Commission.

### **RECOMMENDATION**

It is recommended that the Planning Commission:

1. Hold a public hearing and discuss the proposed text amendments to the Tiburon Municipal Code Chapter 16 (Zoning); and
2. Adopt the attached resolution recommending approval of these amendments to the Town Council.

### **EXHIBITS**

1. Draft resolution
2. Existing Height Measurement Diagram included in Tiburon Municipal Code
3. Proposed Height Measurement Diagram
4. Goal 1, Principles 1 & 2 of the Hillside Design Guidelines