



*Planning Division
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CONDOMINIUM USE PERMITS

A CAUTIONARY NOTE

Please be advised that as a condition of securing a condominium use permit, all existing construction on the property will be required to upgrade to meet the current applicable building code standards for new construction, pursuant to the condominium use permit regulations of the Tiburon Zoning Ordinance.

In cases where there is existing construction to be retained on a site proposed for condominiumization, the costs of performing this building code upgrade may be very high and may substantially affect the financial feasibility of the proposed condominiumization project.

Town Staff strongly advises that potential applicants make arrangements with the Tiburon Building Inspection Division to perform a thorough inspection of all existing structures to be retained prior to filing an application with the Town of Tiburon Planning Division. There is a charge for this service at a specified hourly rate set by the Town for the inspector performing the inspection. The inspection will result in a written report from the Town specifying all corrections that will be required to meet current building codes. A contractor or other qualified professional can prepare a cost estimate for the needed code upgrades based upon this report. Applicants can use this information when deciding whether or not to file a condominium use permit application.

The Tiburon Building Inspection Division may be reached at (415) 435-7380.

[EXCERPTED FROM TITLE IV, CHAPTER 16 (ZONING) OF THE TIBURON MUNICIPAL CODE]

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;
 2. 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;
2. 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.
2. 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;
2. 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.

SUBMITTAL MUST INCLUDE A COMPLETED LAND DEVELOPMENT APPLICATION FORM

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.

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

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