

ORDINANCE NO. 563 N. S. (DRAFT)

**AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF TIBURON
AMENDING MUNICIPAL CODE TITLE VI, CHAPTER 32 (REGULATION OF
FIREARMS) TO REGULATE FIREARMS STORAGE, REQUIRE THE REPORTING
OF LOSS OR THEFT OF FIREARMS, AND BAN THE POSSESSION OF LARGE
CAPACITY MAGAZINES**

SECTION 1. FINDINGS.

(1) The Town Council finds as follows:

A. In 2011, 2,928 people died from firearm-related injuries in California and 2,884 other people were hospitalized for non-fatal gunshot wounds;

B. In 2011, 1,356 homicides were committed with a firearm in California – 337 of those victims were under the age of 21;

C. Federal and California law require licensed firearms dealers to report the loss or theft of firearms to law enforcement within 48 hours;

D. When a crime gun is traced by law enforcement to the last purchaser of record, the owner may falsely claim that the gun was lost or stolen to hide his or her involvement in the crime or in gun trafficking. Reporting laws provide a tool for law enforcement to detect this behavior and charge criminals who engage in it;

E. Existing reporting laws, like California’s requirements that firearms dealers report the loss or theft of firearms and that motorists report serious automobile accidents to the Department of Motor Vehicles, demonstrate that reporting laws are not unduly burdensome. Moreover, the highly lethal nature of firearms justifies an increased level of responsibility over that required for ownership of other, less dangerous products;

G. Reporting laws protect gun owners from unwarranted criminal accusations when their guns are recovered at a crime scene, and make it easier for law enforcement to locate a lost or stolen firearm and return it to its lawful owner;

H. The extreme danger firearms pose to public safety requires a heightened level of accountability on the part of individuals who choose to own firearms. Reporting laws make gun owners more accountable for their weapons;

I. Data from the U.S. Department of Justice Bureau of Alcohol, Tobacco, Firearms, and Explosives indicate that more than 173,000 guns were reported lost or stolen by persons other than federally licensed dealers in 2012. Survey research indicates that at least 500,000 firearms are stolen annually from residences, however. This discrepancy shows that most lost or stolen firearms are not reported;

J. Many stolen guns are used to commit other crimes. A U.S. Department of the Treasury study revealed that nearly a quarter of ATF gun trafficking investigations

involved stolen firearms and were associated with over 11,000 trafficked firearms – including 10 percent of the investigations which involved guns stolen from residences;

K. Neither federal nor California law contains any requirement that firearm owners report lost or stolen firearms;

L. Several local governments in California already require the reporting of lost or stolen firearms, including San Francisco, Sacramento, Oakland, Berkeley, Los Angeles, West Hollywood, Thousand Oaks, Simi Valley and Port Hueneme. Local ordinances often serve as catalysts for statewide policies;

M. Laws requiring the reporting of lost and stolen firearms are associated with a reduction in gun trafficking. One study found that states without mandatory lost or stolen reporting laws export two and a half times more crime guns across state lines than jurisdictions with such laws;

N. In International Association of Chiefs of Police (IACP), *Taking a Stand: Reducing Gun Violence in Our Communities* 16, p. 22 (Sept. 2007), The International Association of Chiefs of Police states, “law enforcement’s early awareness of every lost and stolen gun will enhance their ability to recover those guns and reduce gun violence.” The report recommends that state and local governments mandate reporting of lost or stolen firearms;

O. Having a loaded or unlocked gun in the home is associated with an increased risk of gun-related injury and death.

1. A firearm stored loaded or unlocked increases the risk of an accidental shooting.

2. All United States case control studies (12 to date) have found that people who die by suicide are more likely to have lived in a home with a gun than similar people who did not die by suicide. Studies have also shown that the risk of suicide increases in homes where guns are kept loaded or unlocked.

3. A 2007 study compared the 40 million people who live in the states with the lowest firearm prevalence (Hawaii, Massachusetts, Rhode Island, New Hampshire, Connecticut, and New York) to about the same number living in the states with the highest firearm prevalence (Wyoming, South Dakota, Alaska, West Virginia, Montana, Arkansas, Mississippi, Iowa, North Dakota, Alabama, Kentucky, Wisconsin, Louisiana, Tennessee, and Utah). Although non-firearm suicides were about equal in the two groups, total suicides were almost twice as high in the high-gun states.

P. Children are particularly at risk of injury and death, or causing injury and death, when they can access guns in their own homes or homes that they visit.

1. The authors of a 2005 study found that an estimated 1.69 million children age 18 and under are living in households with loaded and unlocked firearms. Many young children, including children as young as three years old, are strong enough to fire handguns.

2. A significant majority of the guns used in youth suicide attempts and unintentional injuries were stored in the residence of the victim, a relative, or a friend. Of youths who died by firearm suicide, the vast majority used a family member's gun, usually a parent's. And more than two thirds of school shooters obtained their gun(s) from their own home or that of a relative.

3. Quick access to loaded firearms heightens the risk that a young person's impulsive decision to commit suicide will be carried out without reflection or seeking help, and that the impulsive attempt will be fatal. One third of youths who died by suicide had faced a crisis within the previous 24 hours. Among people who nearly died in a suicide attempt, almost a quarter indicated that fewer than five minutes had passed between deciding on suicide and making the attempt. While fewer than 10 percent of suicide attempts by other means are fatal, at least 85 percent of firearm suicide attempts end in death.

Q. Guns kept in the home are most often used in suicides and against family and friends rather than in self-defense.

1. Guns kept in a home are more likely to be involved in an unintentional shooting, criminal assault, or suicide attempt than to kill or injure in self-defense.

2. Only one in ten firearm homicides in the shooter's home is considered justifiable, meaning the shooter was not the assailant. Of every ten firearm homicide victims killed at the shooter's residence, six were intimate partners or family members of the shooter, three were friends or acquaintances of the shooter, and only one was a stranger to the shooter.

R. Applying trigger locks or using lock boxes when storing firearms in the home reduces the risk of firearm injury and death.

1. Keeping a firearm locked when it is not being carried ensures that it cannot be accessed and used by others without the owner's knowledge or permission. This simple measure significantly decreases the risk that the gun will be used to commit suicide, homicide, or inflict injury, whether intentionally or unintentionally.

2. Safe storage measures have a demonstrated protective effect in homes with children and teenagers where guns are stored.

S. There is a wide consensus among medical professionals, police chiefs, gun control advocates and gun rights groups that applying trigger locks or using lock boxes to store unsupervised guns in the home promotes health and safety.

1. The International Association of Chiefs of Police recommends that state and local governments mandate safe storage of firearms.

2. The American Academy of Pediatrics recommends that if families must have firearms in their homes, the firearms should be stored locked, unloaded, and separate from locked ammunition.

3. Both gun control and gun rights advocates endorse the use of locking devices when storing guns to ensure that unauthorized or untrained persons cannot use the gun to

inflict injury or death. For example, the National Rifle Association's Home Firearm Safety Handbook, developed and used as part of the National Rifle Association (NRA) Basic Firearm Training Program, emphasizes that there is one general rule that must be applied under all conditions: "Store guns so they are not accessible to untrained or unauthorized persons." The NRA Guide To The Basics Of Personal Protection In The Home further explains that "all storage methods designed to prevent unauthorized access utilize some sort of locking method."

T. Requiring stored unsupervised firearms to be secured with trigger locks or in a locked container does not substantially burden the right or ability to use firearms for self-defense in the home.

1. The locking requirements apply only to handguns that are not being carried. Gun owners and adults over 18 may carry loaded and unlocked handguns in the home at any time. The safe storage requirements also permit owners who wish to do so to store their handguns fully loaded.

2. Gun security does not preclude quick access. For example, affordable lockboxes using Simplex-type locks, which pop open immediately when several keys or push buttons are touched in a preset sequence, are widely available. Users report that they can retrieve a loaded weapon in just two to three seconds, and that the locks are also easy to open in the dark. The NRA describes this type of lockbox as providing "a good combination of security and quick access." Some lockboxes also feature biometric locks, which provide immediate access when they scan the owner's fingerprint.

3. Portable lockboxes can store loaded weapons such that they are always within easy reach on counters, tables or nightstands. Such safely stored weapons are more quickly and easily retrieved for use in self-defense than unlocked guns that have been hidden away in seldom-used locations.

U. Large capacity magazines, some of which can hold up to 100 rounds of ammunition, significantly increase a shooter's ability to injure and kill large numbers of people quickly because they enable the shooter to fire repeatedly without needing to reload. The time required to reload can be critical in enabling victims to escape and law enforcement or others to intervene;

V. Magazines with a capacity of more than 10 rounds of ammunition are generally considered to be "large capacity" magazines, although the statutory definitions vary. While large capacity magazines are typically associated with semi-automatic assault weapons or machine guns, such devices are generally available for any semi-automatic firearm that accepts a detachable magazine;

W. Large capacity ammunition magazines are the common thread uniting all of the high-profile mass shootings in America. In Newtown, Connecticut, the shooter equipped his assault weapon with 30-round magazines, which enabled him to fire 154 rounds in less than five minutes. The gunman in Tucson in 2011 used a handgun equipped with a 33-round magazine, and was only tackled when he stopped to reload his weapon;

X. Large capacity magazines were also used in the assault weapons massacres in Aurora, Columbine, Fort Hood, and at 101 California Street in San Francisco. Moreover, the shooter who killed 67 people at a summer camp in Norway in 2011 stated in his written manifesto that he purchased 30-round ammunition magazines via mail order from a dealer in the United States;

Y. A review of 62 mass shootings between 1982 and 2012 by Mother Jones magazine found that large capacity ammunition magazines were recovered in fifty percent of them. A review of mass shootings between January 2009 and January 2013 by Mayors Against Illegal Guns found that incidents where assault weapons or large capacity ammunition magazines were used resulted in 135% more people shot and 57% more killed, compared to other mass shootings;

Z. Large capacity magazines are a relatively new phenomenon. Prior to the 1980s, the most popular handgun design was the revolver, but, during the 1980s, the firearms industry shifted design and marketing toward high-capacity semiautomatic pistols. In 1980, semiautomatic pistols accounted for only 32% of the 2.3 million handguns produced in America. By 2008, however, such pistols accounted for 76% of the 1.8 million handguns produced that year;

AA. Bans on large capacity ammunition magazines are often adopted in concert with bans on assault weapons. However, large capacity ammunition magazine bans reduce the capacity, and thus the potential lethality, of any firearm that can accept a large capacity ammunition magazine, including a firearm that is not an assault weapon. Crime data also suggests that a ban on large capacity magazines would have a greater impact on gun crime than a ban on assault weapons alone;

BB. Polling consistently shows that a strong majority of Americans support laws banning large capacity ammunition magazines. In a 2012 survey for CNN, 62% of those polled supported such laws;

CC. In 1994, in recognition of the dangers posed by these devices, Congress adopted a law prohibiting the transfer and possession of large capacity magazines as part of the federal assault weapon ban. (Violent Crime Control and Law Enforcement Act of 1994, P.L. 103-322, codified at: 18 U.S.C. §§ 921(a)(31), 922(w)(1), (2).) That law was enacted with a sunset clause, however, providing for its expiration after ten years. Despite overwhelming public support for the law, Congress allowed the federal ban to expire on September 13, 2004;

DD. A researcher hired by the U.S. Department of Justice to analyze the effect of the 1994 federal ban on assault weapons (AWs) and large capacity magazines (LCMs) found that, “attacks with semiautomatics including AWs and other semiautomatics equipped with LCMs result in more shots fired, more persons hit, and more wounds inflicted per victim than do attacks with other firearms.”

EE. A study that analyzed data kept by the Virginia State Police found a clear decline in the percentage of crime guns that were equipped with large capacity ammunition magazines after the federal ban was enacted. (*About the Project: The Hidden Life of*

Guns, Wash. Post, Jan. 22, 2011; David S. Fallis & James V. Grimaldi, *Virginia Data Show Drop in Criminal Firepower during Assault Gun Ban*, Wash. Post, Jan. 23, 2011.) The percentage reached a low of 10% in 2004 and then steadily climbed after Congress allowed the ban to expire; by 2010, the percentage was close to 22%;

FF. Since the end of the federal ban, the Los Angeles Police Department has recovered significantly greater numbers of large capacity ammunition magazines, from 38 in 2003 to anywhere from 151 to 940 each year between 2004 and 2010. (Citizens Crime Commission of New York City, Press Release, *NYC & LA City Councils Introduce Rezo for Federal Ban On Large Capacity Ammunition Magazines* (Mar. 2, 2011), at <http://www.nycrimecommission.org/pdfs/CrimeCmsnNYCLACouncils.pdf>);

GG. Since January 1, 2000, California law has, with limited exceptions, prohibited the manufacture, importation into the state, keeping for sale, offering or exposing for sale, giving, or lending of large capacity magazines (Cal. Penal Code §§ 32130, 16590, 17700-17745, 32315, 32400-32450; Cal. Code Regs. tit. 11, §§ 5480 – 5484), and declares any large capacity magazine a “nuisance” subject to confiscation and summary destruction. The attorney general, district attorneys and city attorneys may seek an injunction against the possession of these magazines, with criminal penalties available for violation of the injunction under certain circumstances. (Cal. Penal Code §§ 166, 18010.) California law does not, however, generally prohibit the possession of large capacity magazines, and this gap in the law threatens public safety;

HH. Laws banning large capacity magazines are consistent with the Supreme Court’s interpretation of the Second Amendment. In the 2008 ruling in *District of Columbia v. Heller*, the United States Supreme Court stated for the first time that the Second Amendment protects a law-abiding citizen’s right to possess an operable handgun in the home for self-defense. (*District of Columbia v. Heller*, 554 U.S. 570 (2008).) The Court noted, however, that the right is limited. Among other limitations, the Court recognized that the Second Amendment would not preclude banning “dangerous and unusual weapons”;

II. Seven states (Colorado, Connecticut, Hawaii, Maryland, Massachusetts, New York and New Jersey) already prohibit the possession of large capacity magazines. Cook County, Illinois has also enacted an ordinance of this type. Federal district courts in Connecticut and New York have held that these laws do not violate the Second Amendment, and cases raising similar claims are still pending in Colorado, Illinois, and Maryland;

JJ. In 2013, the City of Sunnyvale and the City and County of San Francisco both adopted ordinances prohibiting the possession of large capacity magazines.

- (2) Accordingly, the Town Council finds and declares that the purposes of this ordinance are to preserve the peace and protect the public health, safety and general welfare of the residents of the Town by reducing firearms related injuries and crime.
- (3) The Town Council further finds it is within its basic police power to implement and enforce the provisions of this ordinance.

- (4) The Town Council finds that the amendments adopted herein are exempt from review under the California Environmental Quality Act (CEQA) pursuant to Sections 15305 and 15061(b)(3) of the CEQA Guidelines. The amendments constitute minor alterations in land use limitations and it can be seen with certainty that there is no potential for a significant effect on the environment as a result of the amendments.

SECTION 2. ADOPTION OF AMENDMENTS TO MUNICIPAL CODE FOR REPORTING LOSS OR THEFT OF FIREARMS.

- A. Title VI, Chapter 32, Section 32-27 is added to the Tiburon Municipal Code as follows:

32-27 – Reporting of Loss or Theft of Firearm

It is unlawful for any person to fail to report to the Police Department the theft or loss of a firearm he or she owns or possesses within forty-eight (48) hours of the time he or she knew or reasonably should have known that the firearm has been stolen or lost, if the person resides in the Town or the loss or theft occurs in the Town.

After July 5, 2016, it is unlawful for any person to fail to report to the Police Department the theft or loss of a firearm he or she owned or possessed within the five years prior to May 6, 2016 if the person resided in the Town at the time of the loss or theft, or the loss or theft occurred in the Town, unless the firearm has been recovered.

Pursuant to California Penal Code § 11108, the Chief of Police shall submit a description of each firearm that has been reported lost or stolen directly to the California Department of Justice automated property system for firearms.

- B. Title VI, Chapter 32, Section 32-28 is added to the Tiburon Municipal Code as follows:

32-28 – Exceptions to Reporting of Loss or Theft of Firearm

Section 32-27 shall not apply to the following persons:

- (a) Law enforcement officials while engaged in their official duties;
- (b) Members of the Armed Forces of the United States or the National Guard while engaged in their official duties;
- (c) Firearms dealers and manufacturers licensed under federal and state law while engaged in the course and scope of their activities as licensees.

- C. Title VI, Chapter 32, Section 32-29 is added to the Tiburon Municipal Code as follows:

32-29 – Penalty for Failing to Report Loss or Theft of Firearm

- (a) Any person violating Section 32-27 is guilty of a misdemeanor;

(b) Any person who reports to any law enforcement officer, pursuant to Section 32-27 of this Chapter that a firearm has been lost or stolen, knowing the report to be false, is guilty of a misdemeanor.

SECTION 3. ADOPTION OF AMENDMENTS TO MUNICIPAL CODE REGULATING HANDGUN STORAGE.

A. Title VI, Chapter 32, Section 32-30 is added to the Tiburon Municipal Code as follows:

32-30 – Required Storage of Handgun in Residence

No person shall keep a handgun within a residence owned or controlled by that person unless the handgun is stored in a locked container or disabled with a trigger lock that has been approved by the California Department of Justice.

B. Title VI, Chapter 32, Section 32-31 is added to the Tiburon Municipal Code as follows:

32-31 – Definitions Related to Handgun Storage Requirements

(a) “Residence.” As used in this Section, "residence" is any structure intended or used for human habitation including but not limited to houses, condominiums, rooms, in-law units, motels, hotels, time-shares, recreational and other vehicles where human habitation occurs.

(b) “Locked container.” As used in this Section, "locked container" means a secure container that is fully enclosed and locked by a padlock, key lock, combination lock or similar locking device.

(c) “Handgun.” As used in this Section, "handgun" means any pistol, revolver, or other firearm that is capable of being concealed upon the person, designed to be used as a weapon, capable of expelling a projectile by the force of any explosion or other form of combustion, and has a barrel less than 16 inches in length.

(d) “Trigger lock.” As used in this Section, a "trigger lock" means a trigger lock that is listed in the California Department of Justice's list of approved firearms safety devices and that is identified as appropriate for that handgun by reference to either the manufacturer and model of the handgun or to the physical characteristics of the hand gun that match those listed on the roster for use with the device under California Penal Code Section 12088(d).

C. Title VI, Chapter 32, Section 32-32 is added to the Tiburon Municipal Code as follows:

32-32 – Exceptions to Handgun Storage Requirements Set Forth in Section 32-30

Section 32-31 shall not apply in the following circumstances:

(a) The handgun is carried on the person of an individual over the age of 18.

(b) The handgun is under the control of a person who is a peace officer under California Penal Code Section 830.

D. Title VI, Chapter 32, Section 32-33 is added to the Tiburon Municipal Code as follows:

32-33 – Penalty for Failing to Properly Store Handgun in Residence

Every violation of Section 32-30 shall constitute a misdemeanor and upon conviction shall be punished by a fine not to exceed \$1,000.00 or by imprisonment in the county jail not to exceed six months, or by both.

SECTION 4. ADOPTION OF AMENDMENTS TO MUNICIPAL CODE TO BAN THE POSSESSION OF LARGE CAPACITY MAGAZINES.

A. Title VI, Chapter 32, Section 32-34 is added to the Tiburon Municipal Code as follows:

32-34 - Definition of Large Capacity Magazine

“Large capacity magazine” means any detachable ammunition feeding device with the capacity to accept more than 10 rounds, but shall not be construed to include any of the following:

- (a) A feeding device that has been permanently altered so that it cannot accommodate more than 10 rounds;
- (b) A .22 caliber tube ammunition feeding device; or
- (c) A tubular magazine that is contained in a lever-action firearm.

B. Title VI, Chapter 32, Section 32-35 is added to the Tiburon Municipal Code as follows:

32-35 - Prohibition on Possession of Large Capacity Magazines

- (a) No person, corporation, or other entity in the Town may possess a large capacity magazine.
- (b) Any person who, prior to May 6, 2016, was legally in possession of a large capacity magazine shall have until August 4, 2016 to do either of the following without being subject to prosecution:
 - (1) Remove the large capacity magazine from the Town;
 - (2) Surrender the large capacity magazine to the Police Department for destruction; or
 - (3) Sell or transfer the large capacity magazine lawfully in accordance with Part 6 of the California Penal Code.

C. Title VI, Chapter 32, Section 32-36 is added to the Tiburon Municipal Code as follows:

32-36 - Exceptions to Prohibition on Possession of Large Capacity Magazines

Section 32-35 shall not apply to the following:

- (a) Any government officer, agent, or employee, member of the armed forces of the United States, or peace officer, to the extent that such person is otherwise authorized to possess a large capacity magazine, and does so while acting within the scope of his or her duties;
- (b) A person licensed pursuant to California Penal Code §§ 26500-26915;
- (c) A gunsmith for the purposes of maintenance, repair or modification of the large capacity magazine;
- (d) Any entity that operates an armored vehicle business pursuant to the laws of the state, and an authorized employee of such entity, while in the course and scope of his or her employment for purposes that pertain to the entity's armored vehicle business;
- (e) Any person, corporation or other entity that manufactures the large capacity magazine for a person mentioned in subsection (a) or for export pursuant to applicable federal regulations;
- (f) Any person using the large capacity magazine solely as a prop for a motion picture, television or video production, or entertainment event;
- (g) Any holder of a special weapons permit issued pursuant to California Penal Code §§ 18900, 31000, 32650, 32700-32720, or 33300, in accordance with the terms of the permit;
- (h) Any person issued a permit pursuant to California Penal Code § 32315 by the California Department of Justice upon a showing of good cause for the possession, transportation, or sale of large capacity magazines between a person licensed pursuant to California Penal Code §§ 26500-26915 and an out-of-state client, when those activities are in accordance with the terms and conditions of that permit;
- (i) Any federal, state or local historical society, museum, or institutional collection which is open to the public, provided that the large capacity magazine is properly housed, secured from unauthorized handling, and unloaded;
- (j) Any person who finds the large capacity magazine, if the person is not prohibited from possessing firearms or ammunition pursuant to federal or state law, and the person possesses the large capacity magazine no longer than is necessary to deliver or transport the same to a law enforcement agency for that agency's disposition according to law;

(k) A forensic laboratory or any authorized agent or employee thereof in the course and scope of his or her authorized activities;

(l) Any person in the business of selling or transferring large capacity magazines in accordance with Part 6 of the California Penal Code, who is in possession of a large capacity magazine solely for the purpose of doing so; or

(m) Any person lawfully in possession of a firearm that the person obtained prior to January 1, 2000 if no magazine that holds 10 or less rounds of ammunition is compatible with that firearm and the person possesses the large capacity magazine solely for use with that firearm.

D. Title VI, Chapter 32, Section 32-37 is added to the Tiburon Municipal Code as follows:

32-37 - Penalty for Possession of Large Capacity Magazines in Violation of Section 32-35

Any person violating Section 32-35 is guilty of a misdemeanor.

SECTION 5. ADOPTION OF AMENDMENTS TO MUNICIPAL CODE REGARDING SEVERABILITY.

Title VI, Chapter 32, Section 32-38 is added to the Tiburon Municipal Code as follows:

32-38 - Severability

If any section, subsection, sentence or clause of this Chapter is for any reason declared unconstitutional or invalid or unenforceable by any court of competent jurisdiction, such decision shall not affect the validity or the enforceability of the remaining portions of this Chapter or any part thereof. The Town Council of the Town of Tiburon hereby declares that it would have adopted this Chapter notwithstanding the unconstitutionality, invalidity or unenforceability of any one or more of its sections, subsections, sentences or clauses.

SECTION 6. PUBLICATION AND EFFECTIVE DATE.

This ordinance shall be in full force and effect thirty (30) days after the date of adoption. Pursuant to the provisions of the California Government Code, a summary of this ordinance shall be prepared by the Town Attorney. At least five (5) days prior to the Town Council meeting at which adoption of the ordinance is scheduled, the Town Clerk shall (1) publish the summary in a newspaper of general circulation in the Town of Tiburon, and (2) post in the office of the Town Clerk a certified copy of this ordinance. Within fifteen (15) days after the adoption of this ordinance, the Town Clerk shall (1) publish the summary in a newspaper of general circulation in

the Town of Tiburon, and (2) post in the office of the Town Clerk a certified copy of the ordinance along with the names of those Council members voting for and against the ordinance.

This ordinance was introduced at a regular meeting of the Town Council of the Town of Tiburon on March 16, 2016, and was adopted at a regular meeting of the Town Council of the Town of Tiburon on April 6, 2016, by the following vote:

AYES: COUNCILMEMBERS:

NAYS: COUNCILMEMBERS:

ABSENT: COUNCILMEMBERS:

ERIN TOLLINI, MAYOR
Town of Tiburon

ATTEST:

DIANE CRANE-IACOPI, TOWN CLERK

ORDINANCE NO. 564 N. S. (DRAFT)

**AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF TIBURON
AMENDING MUNICIPAL CODE TITLE IV, CHAPTER 16 (ZONING) REGARDING
SETBACKS, YARDS, MARIJUANA SALE AND CULTIVATION, USE-FOR-USE
CHANGES, FIREARMS-RELATED REGULATIONS, AND OTHER
MISCELLANEOUS AMENDMENTS**

SECTION 1. FINDINGS.

- A. On February 24, 2016, the Planning Commission adopted Resolution No. 2016-04 recommending to the Town Council that various text amendments be made to Title IV, Chapter 16 (Zoning) of the Tiburon Municipal Code.
- B. The Town Council held a duly noticed public hearing on March 16, 2016, and has heard and considered all public testimony on the proposed Ordinance.
- C. The Town Council finds that all notices and procedures required by law attendant to the adoption of this Ordinance have been followed.
- D. The Town Council finds that the amendment actions made by this Ordinance are necessary for the protection of the public health, safety, and welfare and to comply with federal law.
- E. The Town Council has found that the amendments made by this Ordinance are consistent with the goals and polices of the Tiburon General Plan and other adopted ordinances and regulations of the Town of Tiburon, and further the intent and purposes of General Plan goals and policies.
- F. The Town Council finds that adoption of this ordinance is exempt from the requirements of the California Environmental Quality Act (CEQA) pursuant to Section 15305 (Minor Alterations to Land Use Limitations) of the CEQA Guidelines, as well as Section 15061(b)(3) of the CEQA Guidelines. It can be seen with certainty that the text amendments will not result in a significant adverse effect on the environment.

SECTION 2. ADOPTION OF AMENDMENTS TO MUNICIPAL CODE.

- (A) Title IV, Chapter 16, Section 16-10.050D.2. of the Tiburon Municipal Code is amended to read as follows:

2. Development standards. The proposed use of land or structure shall satisfy all applicable requirements of this chapter, including, but not limited to, minimum lot area, height limits, required setbacks, residential density, lot coverage, and floor area limits; and

- (B) Title IV, Chapter 16, Section 16-21.020B.1 of the Tiburon Municipal Code is amended to read as follows:
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 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 setbacks established in section 16-21.040 (residential zones development standards).
- (C) Title IV, Chapter 16, Section 16-21.020B.2 of the Tiburon Municipal Code is amended to read as follows:
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 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 setbacks established in section 16-21.040 (residential zones development standards).
- (D) Title IV, Chapter 16, Section 16-30.030C of the Tiburon Municipal Code is amended to read as follows:
- 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 minimum distance specified in Article II for the zone in which the property is located. 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.

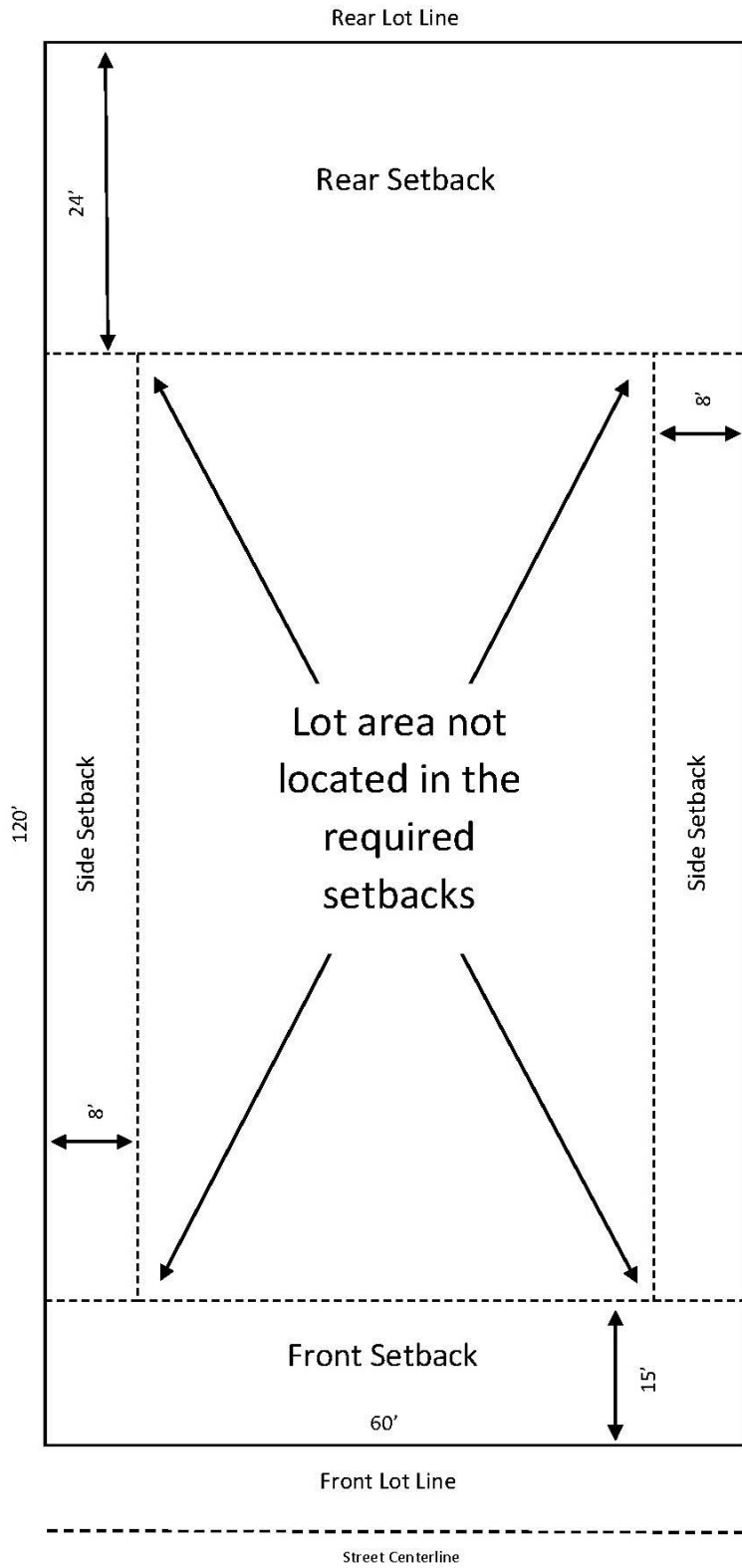


Figure 3.1. Setbacks (Example using R-1 zone setbacks)

(E) Title IV, Chapter 16, Section 16-30.030E.1 of the Tiburon Municipal Code is amended to read as follows:

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 setback, provided that such buildings do not occupy more than twenty-five percent of the area of the rear setback. Swimming pools and spas may also be located on a rear setback, but not within a front setback or side setback.

(F) Title IV, Chapter 16, Section 16-30.030E.5.c of the Tiburon Municipal Code is deleted.

(G) Title IV, Chapter 16, Section 16-30.030G of the Tiburon Municipal Code is amended to read as follows:

G. Restrictions on the use of front 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) Title IV, Chapter 16, Section 16-30.040B.2.a.iii of the Tiburon Municipal Code is amended to read as follows:

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 property at the property line, but in no instance more than nine feet;

(I) Title IV, Chapter 16, Section 16-30.100B of the Tiburon Municipal Code is amended to read as follows:

B. The area of such lots that is below the mean high tide line shall not be used in the determination of lot coverage, floor area ratio, or any other land and structure regulation of the zone in which it is located, but submerged land under the same ownership may be applied toward the minimum lot area requirements and the required rear setback of a lot.

(J) Title IV, Chapter 16, Section 16-30.120B.1 of the Tiburon Municipal Code is amended to read as follows:

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 outdoor 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.

(K) Title IV, Chapter 16, Section 16-40.020H.f of the Tiburon Municipal Code is amended to read as follows:

f. No side setback or rear setback variances shall be allowed for the project.

(L) Title IV, Chapter 16, Section 16-40.050D.2.a of the Tiburon Municipal Code is amended to read as follows:

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 setback or within a traffic safety visibility area. All fences or walls shall provide for safety with controlled points of entry in compliance with section 16-30.040 (fences and walls).

(M) Title IV, Chapter 16, Section 16-42.030.2 of the Tiburon Municipal Code is amended to read as follows:

2. 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 setback for the main building, in front of the main building, within a required side 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;

(N) Title IV, Chapter 16, Section 16-42.030.3 of the Tiburon Municipal Code is amended to read as follows:

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 setback for the main building, in front of the main building, within a required side 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;

- (O) Title IV, Chapter 16, Section 16-52.040J.1 of the Tiburon Municipal Code is amended to read as follows:
1. Special setbacks, open spaces and buffers;
- (P) Title IV, Chapter 16, Section 16-62.020B.1.c of the Tiburon Municipal Code is amended to read as follows:
- b. A building with a setback less than that required in its zone and that did not receive a variance for the reduced setback area.
- (Q) Title IV, Chapter 16, Section 16-100.020A of the Tiburon Municipal Code is amended such that the definition of “Access Corridor” reads as follows:
- “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 setback.
- (R) Title IV, Chapter 16, Section 16-100.020A of the Tiburon Municipal Code is amended such that the definition of “Accessory building or structure” reads as follows:
- “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.
- (S) Title IV, Chapter 16, Section 16-100.020F of the Tiburon Municipal Code is amended to add the definition of “Firearms sales” to read as follows:
- “Firearms sales”. A business licensed to sell, lease or transfer firearms or ammunition pursuant to California Penal Code Sections 26700 to 26915 and 30300 to 30365, or successor sections thereto.
- (T) Title IV, Chapter 16, Section 16-100.020F of the Tiburon Municipal Code is amended such that the definition of “Front setback” reads as follows:
- “Front setback”. An area extending across the full width of a lot or parcel, the depth of which is the minimum distance from the front lot line (see “Lot line, front) as set forth in article II of this chapter for the zone in which the lot or parcel is located.
- (U) Title IV, Chapter 16, Section 16-100.020L of the Tiburon Municipal Code is amended such that subsection 6. Reversed corner lot of the definition of “Lot” reads as follows:

6. Reversed corner lot. A corner lot, the rear setback of which abuts the side setback of another lot.

- (V) Title IV, Chapter 16, Section 16-100.020L of the Tiburon Municipal Code is amended such that the definition of “lot line, front” reads as follows:

“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.

- (W) Title IV, Chapter 16, Section 16-100.020R of the Tiburon Municipal Code is amended to add the definition of “Rear setback” to read as follows:

“Rear Setback”. An area extending across the full width of a lot or parcel, the depth of which is the minimum distance from the rear lot line (see “Lot line, rear”) as set forth in article II of this chapter for the zone in which the lot or parcel is located.

- (X) Title IV, Chapter 16, Section 16-100.020S of the Tiburon Municipal Code is amended such that the definition of “Setback” reads as follows:

“Setback”. A portion of a lot or parcel in which certain uses, buildings or structures are regulated or restricted. Setback distances are based on the zone in which the lot or parcel is located. See article II for specifics and see section 16-30.030C (Figure 3.1) for a graphic representation. See also “Front setback”, “Rear setback”, and “Side setback”.

- (Y) Title IV, Chapter 16, Section 16-100.020S of the Tiburon Municipal Code is amended to add the definition of “Side Setback” to read as follows:

“Side setback”. An area extending from the front setback to the rear setback of the lot or parcel, the width of which is the minimum distance from the side lot line (see “Lot line, side”), as set forth in article II of this chapter for the zone in which the lot or parcel is located.

- (Z) Title IV, Chapter 16, Section 16-100.020S of the Tiburon Municipal Code is amended such that the definition of “Special setback” reads as follows:

“Special setback”. A setback different than normally required pursuant to article II of this chapter that is required through the course of a conditional permit or other discretionary zoning permit review.

(AA) Title IV, Chapter 16, Section 16-100.020Y of the Tiburon Municipal Code is amended such that Figure 10-5 Yards is deleted and the definition of “Yard” reads as follows:

“Yard”. When used in the context of a physical portion of a lot or parcel, “yard” is synonymous with “setback”.

(BB) Title IV, Chapter 16, Section 16-100.020Z of the Tiburon Municipal Code is amended such that the definition of “Zone” reads as follows:

"Zone". An area within which certain uses of land, buildings and structures are permitted and certain others are regulated or prohibited; setbacks are required, and lot areas, building height limits, and other requirements are established.

(CC) Title IV, Chapter 16, Section 16-20.030A.4 [Prohibited uses] is revised to read as follows:

4. Prohibited Uses.

- a. Marijuana Dispensaries are prohibited in all zones.
- b. The sale of marijuana is prohibited in all zones.
- c. The cultivation of marijuana is prohibited in all zones. For purposes of this section, “cultivation of marijuana” means any activity involving the planting, growing, harvesting, drying, curing, grading, or trimming of cannabis.

(DD) Title IV, Chapter 16, Section 16-52.110B is revised to read as follows:

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

1. Art and craft work (ceramics, painting, photography, sculpture, etc.);
2. 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.
4. Firearms sales, as defined in article X (Definitions) of this chapter, are not permitted as a home occupation.

Home Occupations may also include any other uses that may be determined by the Review Authority to be of the same general character as the above-allowed occupations,

and not objectionable or detrimental to the zone in which they are located.

(EE) Title IV, Chapter 16, Section 16-22.030A.2 [Conditional uses permitted in the NC zone] is revised to add the term “Firearms sales” to the alphabetical list of uses set forth therein.

(FF) Title IV, Chapter 16, Section 16-22.030A.1.a is revised to read as follows:

- a. Use-for-use changes (e.g., restaurant to restaurant) or minor structural alterations when no substantive intensification of use, as determined by the Director, is proposed; except as set forth in Subsection A.1.e below. Substantive 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. The term “use for use changes” is qualified to limit its applicability to situations where the replacement use is substantially similar to the prior use in the reasonable discretion of the Director.

SECTION 3. SEVERABILITY.

If any section, subsection, clause, sentence, or phrase of this Ordinance is for any reason held to be invalid or unconstitutional by a decision of a Court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of the Ordinance. The Town Council of the Town of Tiburon hereby declares that it would have passed this Ordinance, any section, subsection, sentence, clause or phrase thereof, irrespective of the fact that anyone or more sections, subsections, sentences, clauses, or phrases may be declared invalid or unconstitutional.

SECTION 4. PUBLICATION AND EFFECTIVE DATE.

This ordinance shall be in full force and effect thirty (30) days after the date of adoption. Pursuant to the provisions of the California Government Code, a summary of this ordinance shall be prepared by the Town Attorney. At least five (5) days prior to the Town Council meeting at which adoption of the ordinance is scheduled, the Town Clerk shall (1) publish the summary in a newspaper of general circulation in the Town of Tiburon, and (2) post in the office of the Town Clerk a certified copy of this ordinance. Within fifteen (15) days after the adoption of this ordinance, the Town Clerk shall (1) publish the summary in a newspaper of general circulation in the Town of Tiburon, and (2) post in the office of the Town Clerk a certified copy of the ordinance along with the names of those Council members voting for and against the ordinance.

This ordinance was introduced at a regular meeting of the Town Council of the Town of Tiburon on March 16, 2016, and was adopted at a regular meeting of the Town Council of the Town of Tiburon on April 6, 2016, by the following vote:

AYES: COUNCILMEMBERS:

NAYS: COUNCILMEMBERS:

ABSENT: COUNCILMEMBERS:

ERIN TOLLINI, MAYOR
Town of Tiburon

ATTEST:

DIANE CRANE IACOPI, TOWN CLERK