



## Legislation Text

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**TO:** Chair and Planning Commission

**FROM:** Eva Cutro, Community Development Director  
Paul Michaud, Senior Planner  
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**DATE:** December 19, 2017

**CONTACT:**

**AGENDA TITLE:**

Consideration of Hillside Code Updates (Article XXII of the Town Zoning Ordinance)

**RECOMMENDATION**

It is recommended that the Planning Commission forward to the Town Council a recommendation of approval of Ordinance 2016-09, proposed amendments to Article XXII, Hillside Development Regulations, of the Town Zoning Ordinance.

**BACKGROUND**

History

Hillside related matters can be found throughout the Town Code but are most prevalent in Article XXII, Hillside Development Regulations, of the Zoning Ordinance which is often referred to as the "Hillside Code."

On July 21, 2015, staff presented a list of topics relating to the Hillside Code to the Planning Commission as part of a periodic review and update of the Town Code. In January of 2016, the Town Council identified several Quality of Life Initiatives including an update to the Hillside Code. Staff worked with then Planning Commissioner Moore in preparing a draft ordinance identifying topics of discussion and potential amendments. The draft ordinance was reviewed by the Planning Commission at the December 20, 2016 and January 3, 2017 work sessions and the January 17, 2017 citizen review work session. In March and May of 2017, the Town Council identified hillside as one of its top five initiatives for the 2017-2018 term. On June 22, 2017, the Town Council issued a Statement of Direction (SOD) for the Hillside Code update.

**DISCUSSION/FACTS**

Since there has been a significant amount of work already done on the draft ordinance, the SOD identifies which updates or topics the Council agrees with (and do not require further changes) and identifies which topics need additional study and review by the Planning Commission.

The Town Council identified the following topics in the draft ordinance as appropriate and acceptable: Material Palette & Light Reflective Value, Reviews & Administrative Hillside Chair Review, Disturbed

Area Calculation, Demolition on Hillside Properties, Hillside Models, Accessory Structures & Accessory Structure Height Limits, the 40' Overall Height Measurement, the Process to Remove a Property from the Hillside Designation, and Pool Barriers & Perimeter Fencing Standards. These topics are subject to a final non-substantive review and red-line revision by a Town Manager working group (comprised of Councilmembers Moore and Pace). The Planning Commission is directed not to change the content of these items during subsequent reviews, unless the Commission submits a request to the Council for further direction.

The SOD identifies nine topics for Planning Commission review:

1. Retaining Walls.
2. Driveway Disturbance Credit.
3. Lighting.
4. Hillside Assurance/Bond.
5. La Place du Sommet Subdivision and applicable code.
6. Solar Panels and Hillside Review Process.
7. Cantilever Limitations.
8. On-Site Retention.
9. Add a Safety Section in the Code.

#### August 1, 2017 Planning Commission Work Session

The Commission reviewed and discussed the nine topics during the August 1, 2017 work session. There was consensus on three of the nine topics (e.g. limiting guard rail height to a maximum of 42" tall, including the area under a cantilever as disturbed area and floor area, and consensus that retention basins that do not use retaining walls and are revegetated back with native plants should receive partial disturbance credit). The Commission directed staff to work with Commissioner Campbell on Driveway Disturbance Credit and Hillside Assurance, Commissioner Strom on Lighting, and Commissioner Covington regarding stealth solar on pitched roofs.

#### September 19, 2017 Planning Commission Work Session

The Commission reviewed and discussed the six remaining topics at the September 19, 2017 work session. There was consensus on three of the six remaining topics (that no edits were needed regarding driveway disturbance credit, hillside assurance/bond, and cantilevers).

The Commission made the following recommendations:

- Solar Panels. Divide the solar section of the code into two paragraphs: one paragraph to address solar panels and a second paragraph to address stealth solar technology.
- Safety Section. Add objective criteria to the safety section of the code and examine the possibility of imposing insurance requirements on projects.
- Lighting. Forward the Statement of Direction back to the Town Council for clarification on hillside lighting.
- Cantilevers. Add another illustration to Figure 7, showing a cantilever on a building.

#### October 17, 2017 Planning Commission Work Session

The Commission reviewed and discussed the four remaining topics at the October 17, 2017 work session. There was consensus that no additional edits were needed regarding the solar and lighting topics.

The Commission made the following edits regarding the following topics:

- Safety Section. The Commission identified safety triggers such as unique topography, difficult access to a site, unstable rock formations, and steep slopes. The Commission also identified limiting this section to three safety plans of site construction, geological reports & seismic refraction surveys, and blasting.
- Cantilevers. Add width and height dimensions to the new illustration and update the definition of cantilever to address allowable overhangs.
- Ridgeline Figure - Figure 4. Update the graphic to clarify the “no construction” area.

#### November 7, 2017 Planning Commission Work Session

Staff reviewed the nine topics from the Statement of Direction. Hillside Committee members Scott Jarson and Scott Tonn provided their input. The following topics were discussed:

- La Place du Sommet subdivision regulations will be done through a staff interpretation and will not be part of the Hillside Code,
- Comments on the Safety section from Councilmember Moore were reviewed and shall be incorporated into the Hillside Code. Traffic and parking shall be added to the list of safety concerns.
- Hillside Bond language will be revised to reference the fee schedule,
- Additional language regarding the reflectivity of solar shingles shall be added to the draft, and
- Storm Water shall receive its own section to be reviewed by the Town Engineer.

Staff has revised these sections of the Ordinance and the revisions are in the attached draft dated November 21, 2017.

#### November 21, 2017 Planning Commission Public Hearing

The Commission reviewed the draft ordinance and addressed grammatical and clarification issues noted by Commissioner Strom. The following topics were discussed:

- Chair Wastchak and Commissioner Strom will prepare a separate draft ordinance that will incorporate non-SOD revisions. The Commission will review both drafts and both versions may be sent to the Town Council.
- The Commission confirmed that new single-family residences and major remodels/additions should have different hillside financial assurance standards than minor remodels and minor site improvements.
- Add language to the overall 40' height limit to clarify that driveway entry gates and retaining walls needed to prevent erosion or flooding area excluded from this height measurement.
- Commission consensus to use the Town's Engineer's language regarding Off-site storm water.
- The Commission continued the public hearing to December 19, 2017.

#### December 5, 2017 Planning Commission Work Session

The Commission reviewed the draft ordinance and discussed the Financial Assurance and illustrations/figures. The Commission identified that the language regarding the Consumer Price should be removed from the code, arrows shall be added to all illustrated dimensions, staff will work with Commissioner Strom regarding additional edits to the Financial Assurance section of the code, and staff will provide responses to Hillside Committee Member Tonn's comments regarding the proposed code amendments.

Staff revised these sections of the Ordinance and the revisions are in the attached draft code dated December 19, 2017. Also, the November 7, 2017, November 21, 2017, and December 5, 2017 draft ordinances are included in this packet for reference. To provide a history of the edits and identify how the language has progressed, the primary changes or edits from November 7<sup>th</sup> through December 5<sup>th</sup> are highlighted in yellow on each draft code. The changes from the December 5<sup>th</sup> Commission meeting are highlighted in grey (on the draft code dated December 19<sup>th</sup>).

### Discussion

The summary below identifies the Statement of Direction (SOD) criteria and summarizes the scope and modifications made to the nine SOD topics:

1. **Retaining Walls. SOD - Allow HBC to determine appropriate guard rail height between 36" and 42".** The International Residential Code (IRC) requires a 36" tall guard rail adjoining walkways that have a fall potential of 30" or more. However, many applicants request a 42" guard rail due to safety concerns and ergonomics (e.g. that a 42" rail is easier to grasp than a 36" guard rail). Language has been added to the code to identify that the guardrail shall be the minimum height per building code and a maximum height of 42", as determined by the Hillside Building Committee. Please reference page 37 of the "track change" draft ordinance and page 32 of the "clean" draft ordinance regarding this amendment.
2. **Driveway Disturbance Credit. SOD - The disturbance credit for decorative driveways that service new homes and remodeled homes should be further researched to develop standards and credits for driveways that serve new homes and remodeled homes.** The current code has different standards for driveways that serve new homes and driveways that serve remodeled homes. Decorative driveways that serve new homes receive a partial credit toward their disturbed area calculation. However, decorative driveways that serve remodeled homes do not count as disturbed area. There is concern that the current code encourages and allows for excessively large driveways on remodeled homes since the decorative drives do not count as disturbed area.

The draft code language changes the amount of credit given for new driveways and addresses the concern in which the current code may encourage excessively large driveways associated with remodeled homes. For new homes, decorative driveways will receive partial disturbance credit provided the driveway is located within 18" from natural grade. For remodeled homes, existing driveways that are resurfaced or reconstructed with decorative materials receive 100% disturbance credit. Any new portions of the driveway that extend beyond the existing driveway layout will receive a partial disturbance credit (provided the new portion of driveway is located within 18" from natural grade). A table was added to the code summarizing the disturbance credits. Please reference pages 32 - 33 of the "track change" draft ordinance and page 27 - 28 of the "clean" draft ordinance regarding this amendment.

3. **Lighting. SOD - Evaluate only the hillside lighting standards to address Kelvin requirements, adding Lux as another light measurement, and extending holiday lighting to October 15<sup>th</sup>.** The draft ordinance has been updated to reflect the three changes outlined in the SOD. Please reference pages 29 - 44 of the "track change" draft ordinance and pages 33 - 36 of the "clean" draft ordinance regarding this amendment.

4. **Hillside Assurance/Bond. SOD - Update the code to ensure that the hillside bond will be of a sufficient amount to restore the hillside on an abandoned or unfinished project back to undisturbed condition. The Commission shall explore different ways to establish a realistic and enforceable amount of assurance. Planning Commission should also establish thresholds for when the assurance should be called to mitigate impacts including storm water, safety, visual, boulders, etc. to existing properties. Identify a landscape assurance solution.**

The hillside bond places the Town in a position to do or contract work necessary to cover, restore, and landscape an unfinished or abandoned hillside project. Currently, the minimum hillside bond is based upon \$25 of total cut and fill associated with a project. There is concern that this amount is not sufficient to restore an abandoned or unfinished site.

The draft language identifies that the amount of the assurance is based upon 35 times the grading and permit fee associated with the project. However, the draft code also identifies two standards for the assurance: one standard for new single-family residences, major remodel/additions, and major site improvements and another standard for minor remodels/additions and minor site improvements.

The grading permit for new single-family residences, major remodel/additions, and major site improvements shall be based upon the total cut and fill amounts needed to restore the property back to natural grade. The grading permit for minor remodels/additions and minor site improvements shall be based upon the total cut and fill amounts associated with the project that is needed to restore the affected portions of the property back to natural grade.

Also, language was added to the code to allow an applicant to request a temporary deferment on the installation of the landscaping; in which the Town may hold the assurance until the landscaping is installed in accordance with the approved plans. Please reference pages 13 - 16 of the "track change" draft ordinance and pages 11 - 12 of the "clean" draft ordinance regarding this amendment.

5. **Define which Hillside Code applies to La Place du Sommet. SOD - Incorporate amendments from Town Attorney related to which Hillside Code applies to La Place du Sommet Subdivision.** The Town has traditionally applied the 1984 Hillside code to the La Place du Sommet subdivision. Staff was proposing to update the code to clarify this; however, the Town Attorney was researching this to determine which code or which portions of the 1984 code apply to the La Place du Sommet subdivision. The Town Attorney's research identified that only the disturbance limits from the 1984 code apply to several lots in this subdivision.
6. **Solar Panels. SOD - The Commission shall explore the use of stealth solar technology on hillside properties and evaluate the placement of solar on pitched roofs.** The code currently requires solar panels to be integrated into the building design and requires the panels to be hidden from view when viewed at the same elevation or lower. Staff has received requests to place solar panels on pitched roofs; however, this does not meet code since the panels must be screened from the same elevation or lower (essentially limiting solar panels to flat roofs or pitched roofs that are fully screened by the surrounding hillside).

The draft language allows solar panels to be placed on pitched roofs when the panels are screened from the same elevation or lower by the adjoining hillside or hillside cut. The draft language also allows solar shingle and solar tiles to be placed on pitched roof provided they blend in with the design of the building and have a light reflective value of 38% or less. This section of code was also divided into two separate paragraphs, with one paragraph addressing solar panel requirements and the other paragraph addressing stealth solar technology requirements. Please reference page 28 of the “track change” draft ordinance and page 23 of the “clean” draft ordinance regarding this amendment.

7. ***Cantilever Limitations. SOD - Add language to the code to prohibit cantilevered driving surfaces. May require definition of driveway. Establish or revise criteria that minimizes the visual impact and discourages the use of cantilevers in construction of structures. In no circumstance should the cantilever standard exceed 8’ vertical and 4’ horizontal.***

Currently, the code limits the vertical element of a cantilever to a maximum height of 8’ tall and the horizontal element to a maximum length of 16’ tall. Also, half of the area under the cantilever counts as disturbed area.

The draft ordinance organizes this section of code into four categories or criteria: prohibits cantilevered driveways, establishes standards for the treatment of the area under a cantilever, establishes criteria for cantilevered structures such as pool decks, and establishes criteria for cantilevers on the primary residence and accessory buildings. All cantilevers will be limited to a maximum vertical height of 8’ and a maximum horizontal length of 4’. The area underneath all cantilevers will be counted as disturbed area, must meet the setbacks associated with the structure they are attached to, and must be finished to blend in with the structure and surrounding setting. Lastly, the area of a cantilever that is attached to the primary residence or accessory building must be included in the floor area ratio. The figures or illustrations were updated to provide more clarity. Please reference pages 25 - 27 of the “track change” draft ordinance and pages 21 - 22 of the “clean” draft ordinance regarding this amendment.

8. ***On-Site Retention. SOD - Identify that on-site retention and detention shall be in accordance with the Town’s Storm Drainage Design Manual and develop standards that will allow retention basins without retaining walls to receive partial disturbance credit.***

Depending upon the scope of improvements, on-site retention is required on hillside properties. The most common form of on-site retention is the use of retention basins. The retention basins must be designed in accordance with the Town’s Storm Drainage Design Manual and are included in the disturbed area calculation. However, applicants have expressed concern that the retention basins can use up a large portion of the allowable site disturbance. Also, some applicants use retaining walls to create retention areas. The requirement for on-site retention was not intended to increase the amount of retaining walls or increase the amount of disturbance on the hillside. The draft code identifies that on-site retention and detention shall be in accordance with the Town’s Storm Drainage Design Manual and identifies a 50% disturbance credit for retention areas that do not use retaining walls and are vegetated with native plants. Please reference pages 34 - 35 of the “track change” draft ordinance and page 29 of the “clean” draft ordinance regarding this amendment.

9. ***Add a Safety Section in the Code. SOD - Identify standards and processes that trigger***

***additional safety measures and reviews (such as enabling the Town to hire consultants to help review geotechnical reports or examine potential grading and drainage issues). The additional safety measures and reviews may be required at the Town's discretion during the plan review process and or construction. Examine the typical cost of the additional review in those standards and modify the application fee.***

The Council directed the Commission to identify standards and processes that trigger additional safety measures and reviews (such as enabling the Town to hire consultants to help review geotechnical reports or examine potential grading and drainage issues). The draft language identifies that the Town may require construction staging and safety plans and that the Town may hire an outside firm to assist with or provide a safety review. Safety triggers such as unique topography, difficult access to a site, unstable rock formations, and steep slopes have been added to the code that will enable the Town to require a safety plan. Council Member's Moore's edits were added to this section of code, including additional language regarding traffic and parking. Please reference pages 11 - 12 of the "track change" draft ordinance and page 10 of the "clean" draft ordinance regarding this amendment.

#### Next Steps

Forward the draft ordinance to the Town Council with a recommendation of approval, forward the draft ordinance with a recommendation of denial, or continue the public hearing for additional review.

#### Attachments

- Statement of Direction (SOD)
- December 19, 2017 Draft Hillside Ordinance (Track Change & Clean Version)
- Response to Committee Member Tonn's Comments
- December 5, 2017 Draft Hillside Ordinance
- November 21, 2017 Draft Hillside Ordinance
- November 7, 2017 Draft Hillside Ordinance