



Legislation Text

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TO: Mayor Collins and Town Council

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DATE: May 10, 2018

CONTACT:

AGENDA TITLE:

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

Town Value(s):

- ☒ Primarily one-acre, residential community
- ☐ Limited government
- ☐ Creating a sense of community
- ☐ Partnerships with existing schools and resorts to enhance recreational opportunities
- ☐ Improving aesthetics/creating a brand
- ☒ Preserving natural open space

The Hillside Code Update will aid in the protection of the hillside environment and help provide for the safety and welfare of the Town.

Council Goals or Statutory Requirements:

The Hillside Code Update meets a Town Council Quality of Life Initiative.

Council Goals or Statutory Requirements:

RECOMMENDATION:

Adopt Ordinance 2018-08 and Resolution 2018-07 regarding the Hillside Code Updates (Article XXII of the Town Zoning Ordinance)

BACKGROUND

The existing Hillside Development Regulations in Article XXII of the Town Zoning Ordinance will be repealed and replaced with the updated Hillside Development Regulations (May 2018 version) by the adoption of Ordinance 2018-08 and Resolution 2018-07. A "track changes" version of the draft Hillside Development Regulations is enclosed to identify all of the proposed changes. Also, a "clean copy" version of the draft Hillside Development Regulations is enclosed for reference.

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,” which shall be the reference used throughout the rest of this report (or simply “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 to prepare 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 at a 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 was a significant amount of work already done on the draft ordinance, the SOD identified which updates or topics the Council agreed with (and thus did not require further changes) and which topics would need additional study and review by the Planning Commission. The first ten topics listed below were deemed acceptable by the Town Council and the Town Council requested Planning Commission review and recommendations on the subsequent nine topics. The Planning Commission then reviewed the Hillside Code update at six work sessions (starting on July 11, 2017) and 3 public hearings/meetings. On December 19, 2017, the Planning Commission voted 5 to 1, to forward the draft Hillside Code to the Town Council with a recommendation of approval.

During the April 26th Town Council work session, the consensus of the Council was in agreement with the proposed Code updates (including the new topic of a Conservation easement - highlighted in [blue](#)). However, the Council requested additional information regarding the driveway disturbance credit and the estimated costs associated with the proposed updates.

In summary, the draft Hillside Code addresses the following topics:

1. Material Palette & Light Reflective Value.
2. Disturbed Area Calculation.
3. Demolition on Hillside Properties.
4. Hillside Models.
5. Accessory Structures & Accessory Structure Height Limits.
6. 40' Overall Height Measurement.
7. Process to Remove a Property from the Hillside Designation.
8. Pool Barriers & Perimeter Fencing Standards.
9. Retaining Walls & Screen Walls.
10. Retaining Walls.
11. Driveway Disturbance Credit.
12. Lighting.
13. La Place du Sommet Subdivision and applicable Code.
14. Solar Panels and Hillside Review Process.

- 15. Cantilever Limitations.
- 16. Reviews & Administrative Hillside Chair Review.
- 17. Hillside Assurance/Bond.
- 18. On-Site Retention (e.g. further discussion regarding Code conflict on washes)
- 19. Hillside Safety Improvement Ordinance (moved from Article XXII of the Town Zoning Ordinance and Chapter 5 of the Town Code). This topic is scheduled for Council work study review on May 10, 2018.
- 20. Conservation Easement

Municipal Hillside Requirements

Staff compared the Town's draft Hillside Code with the hillside codes for the City of Scottsdale, the Town of Cave Creek, the Town of Fountain Hills, and the City of Phoenix. Please reference Exhibits A, B, and C for a brief comparison of primary hillside regulations such as allowable disturbance, driveway slope, safety, and ridgeline protection.

Grammatical and Clarifying Edits

Via Council direction from the March 22nd meeting, staff worked with Council Member Moore to make grammatical and clarifying edits to the Hillside Code. However, as a result of this cursory or clarifying review, four issues were identified for additional discussion and direction from Town Council: 1) allowing the Hillside Chair to review a 6-foot increase in the height of the main house; 2) a conflict between the Hillside Code and the Storm Drainage Design Manual regarding washes; 3) the minimum driveway turning radiuses and 4) adding a conservation easement section. Those edits were reviewed by the Council at the April 26th meeting and found to be acceptable.

April 26, 2018 Town Council Work Session

During the April 26th review, the Council provided the following direction:

- Hillside Chair Review. There was concern that a 6-foot increase in the height of the house should be reviewed by the full Hillside Committee, instead of the Hillside Chair, due to the potential adverse visual impacts. The Council identified that the Hillside Chair should not be able to review projects that result in an increase in the height of the house. As a result, the draft Hillside Code was modified to reflect this (please reference Section I on page 11 of the track change version of the draft ordinance regarding this issue).
- Washes. There is conflicting language between the Hillside Code and the Town Code regarding washes. The Hillside Code states that a hillside wash cannot be diverted or relocated. However, Chapter 5 of the Town Code and the Storm Drainage Design Manual allows washes to be diverted or relocated based upon specified conditions or criteria. The Council identified that the hillside washes should be subject to the same requirements as other washes. Language was added to the Hillside Code clarifying that a hillside wash may be realigned in accordance with Chapter 5 of the Town Code and the Town's Storm Drainage Design Manual (please reference Section G on page 36 of the track change version of the draft ordinance).
- Driveway Turning Radiuses. There was concern that the driveway turning radiuses are too large; which may be difficult to meet and may encourage larger driveways on the hillside. Council agreed with the language that was added to the draft Hillside Code to clarify that the turning radiuses may be adjusted as deemed appropriate by the Town Fire Marshall (please reference Section C on page 34 of the draft ordinance).

- Conservation Easement. Council agreed that adding a conservation easement section to the Hillside Code was appropriate to encourage hillside property owners to dedicate a conservation easement over undeveloped portions of their property (please reference Section II on page 2 of the draft ordinance).
- Driveway Disturbance Credit. The Council requested that staff identify the Planning Commission's reasoning for the proposed changes to the driveway credit and provide a table comparing the current Hillside Code and proposed Hillside Code requirements, with associated pros and cons (please reference Exhibit I).
- Estimated Costs of Proposed Code Changes. The Council requested that staff provide a "short list" of the changes in the draft Hillside Code that will result in increased application costs. Staff prepared an exhibit identify the primary topics that will result in increased application fees and site project examples/case studies, where applicable (please reference Exhibit J).

Staff revised the appropriate sections of the draft Ordinance and included exhibits for reference, where applicable.

1. ***Material Palette and Light Reflective Values (LRV)***. There are two issues related to this topic: 1) often, applicants choose colors that meet the LRV requirement but do not blend in with the surrounding hillside, and 2) the Hillside Building Committee (HBC) is very limited in approving contrasting colors. Language has been added to the Code to emphasize that the color palette for the improvements must blend in with the surrounding hillside. Language was added to the Code to give the HBC more latitude in approving contrasting colors when deemed appropriate. This allows the HBC to determine if accent materials and colors can be placed on the house that is fully screened by the hillside. Please reference page 29 of the track change version of the draft ordinance regarding this amendment.
2. ***Disturbed Area Calculation***. Livable footprint and garage footprint do not count as disturbed area under the current Code. The issue related to this topic is the concern that the Code encourages larger homes on the hillside because the footprint is not included in the disturbance calculation. However, it was decided not to modify this section of the Code because counting the footprint as disturbance would create many non-conformities by causing existing homes to exceed their allowable disturbance and concerns that this amendment may trigger Prop 207 issues.
3. ***Demolition on Hillside Properties***. The issue regarding this topic is that some contractors exceed the scope of demolition and grade undisturbed areas of the property during demolition. Language was added to the Code to require the existing disturbance boundary to be staked prior to demolition (in an attempt to help ensure the native hillside is not disturbed). Please reference page 30 of the track change version of the draft ordinance regarding this amendment.
4. ***Hillside Model***. The Code requires a physical model. However, model making appears to be a dying art as applicants are having a difficult time finding model makers. Language was added to the Code which allows applicants to submit computer generated models and establishes criteria for the computer models. Please reference page 20 of the track change version of the draft ordinance regarding this amendment.

5. **Accessory Structures & Heights.** The Code identifies a 24' height limit for the house but does not clearly define the height for accessory structures. Language was added to the Code to clarify that accessory structures are limited to a maximum height of 16'. Also, the Code is unclear regarding structures such as a raised pool and raised patio deck. Language was added to the Code to clarify that these structures must meet the same setback requirements as pools and spas. Please reference pages 8, 23, 24, and 25 of the track change version of the draft ordinance regarding this amendment.
6. **40' Overall Height Limit.** The Code identifies that the maximum overall height of a building or structure shall not exceed 40'. However, the Code does not clearly identify where the height measurement is taken from. Language was added to the Code to clarify that this measurement is taken from the natural grade of the lowest structure to the top of the tallest structure. Please reference pages 24 and 25 of the track change version of the draft ordinance regarding this amendment.
7. **Process to Remove Property from Hillside.** The Code does not identify the process to remove the hillside designation from a property. Language was added to the Code to identify this process. Please reference pages 48 and 49 of the track change version of the draft ordinance regarding this amendment.
8. **Pool Barriers and Perimeter Fencing Standards.** The only fences or walls allowed on hillside properties are pool barrier view fences, retaining walls, screen walls, and view guard rails. As a result, many applicants expand their pool barriers in an attempt to create a yard. Language was added to the Code to clarify that the pool barrier must be appropriate for the site and the minimum amount needed to secure the pool. Please reference page 38 of the track change version of the draft ordinance regarding this amendment.
9. **Retaining Walls & Screen Walls.** The Code does not clearly identify if retaining walls and screen walls need to meet the setback for fences. Therefore, language was added to the Code to clarify that all walls must meet setbacks, unless needed to access the property (such as driveway retaining walls) or if the walls are needed to prevent erosion or flooding. Also, retaining walls are currently limited to a height of 6" above the material they retain. However, due to safety concerns, staff received requests to allow driveway retaining walls to extend higher than 6" in order to serve as a vehicle wheel stop. Language was added to the Code to allow driveway retaining walls to extend 18" above the material they retain, provided they comply with the 8' maximum retaining wall height limit. Please reference pages 36 - 38 of the track change version of the draft ordinance regarding this amendment.
10. **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 was 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 version of the draft ordinance regarding this amendment.
11. **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 and auto courts on remodeled homes because the decorative drives do not count as disturbed area. For instance, when an applicant remodels a house, there is no limit on the amount of decorative driveway and auto court that can be constructed (other than a maximum driveway slope of 30% and minimum driveway width of 12'). In theory, an applicant can enlarge the driveway and auto court with each remodel of the house without limit. There was also concern that the partial driveway credit for new homes also encouraged larger driveways, which may create more scarring to the hillside.

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 and auto courts. 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 surfaced 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 33 and 34 of the track change version of the draft ordinance regarding this amendment and Exhibit I.

12. ***Lighting. SOD - Evaluate only the hillside lighting standards to address Kelvin requirements, adding Lux as another light measurement, and extending holiday lighting to October 15th.*** The draft ordinance was updated to reflect the three changes outlined in the SOD. A definition of Lux was added to the Code, a color temperature of 3,000 Kelvins was added to the Code, and the start date for holiday lights was changed from November 15th to October 15th. Please reference pages 41 - 46 of the track change version of the draft ordinance regarding this amendment.
13. ***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, so no Code update is necessary.
14. ***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 sight 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 because 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 a 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 29 of the track change version of the draft ordinance regarding this amendment.

15. ***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' long. 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 cantilever figures or illustrations were updated to provide more clarity. Please reference pages 6, 26, 27, and 28 of the track change version of the draft ordinance regarding this amendment.

16. ***Hillside Reviews and Administrative Hillside Chair Reviews.*** There are two issues related with this topic: 1) the Code does not clearly identify all four hillside reviews: Chair Review, Combined Review, Concept Review, and Formal Review. Language was added to the Code to clarify the type and scope of each review. 2) was to examine the scope of the Hillside Chair review. Currently, the Code does not allow the Chair to review projects that result in additional disturbance, additional site walls, increase the height of the house, add more than 1,000 square feet of footprint, or create an adverse visual impact. Often, smaller projects such as adding planters or modifying an existing pool require the full Committee review due to small increases in disturbance, walls, etc. Language was added to the Code to allow the Chair to review applications with a request of up to 100 square feet of additional disturbance and add up to 15 lineal feet of additional site walls. Also, the amount of additional building footprint was reduced from 1,000 square feet of footprint to 100 square feet of footprint. Please reference pages 11 - 12 of the track change version of the draft ordinance regarding the complete amendment on the hillside review topic.

17. ***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 assurance/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 assurance 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 14 - 17 of the track change version of the draft ordinance regarding this amendment.

During the March 22nd work session, Council requested that staff research the costs to restore or mitigate a site, provide examples of construction projects with the calculated assurance amounts, the costs for a letter of credit, and the cost for a bond. Please reference Exhibit D for a comparison of current Code and proposed Code assurance amounts on specific projects, information regarding letters of credit, and estimated costs to restore an abandoned project.

18. **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 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.

Staff's work with Council Member Moore identified conflicting language between the Hillside Code and the Town Code regarding washes. The Hillside Code states that a hillside wash cannot be diverted or relocated. However, Chapter 5 of the Town Code and the Storm Drainage Design Manual allows washes to be diverted or relocated based upon specified conditions or criteria (please reference Section G on page 36 of the draft Code). It is recommended that language be added to the draft Hillside Code to allow a wash to be relocated in accordance with Town Code and the Town's Storm Drainage Design Manual. Also, please reference pages 31, 35, and 36 of the track changes version of the draft ordinance regarding the complete amendment regarding the on-site retention topic.

20. **Conservation Easement.** Staff worked with Council Member Moore to make grammatical and clarifying edits to the Code. As a result of this review, there was discussion that adding a conservation easement section to the Code may be appropriate to encourage hillside property owners to dedicate a conservation easement over undeveloped portions of their property. During the April 26th meeting, the Council agreed with adding a conservation easement section to the Code (please reference Section II on page 2 of the track changes version of the draft ordinance and the enclosed Mummy Mountain Preserve Trust memo).

Additional Updates by the Planning Commission

The Commission also made several clarifying edits to Section 2209 (Lot Split Standards). A sentence and figure were added to this section of the Code to clarify how the slope lines are calculated when splitting a hillside lot. Also, Figure 4 and Figure 5 were updated to clarify the Code requirements.

Attachments

- Hillside Code Statement of Direction (SOD)
- Ordinance 2018-08
- Resolution 2018-07
- Draft Article XXII Hillside Development Regulations May 2018 (Track Changes & Clean Copy)
- Exhibits A - D
- Exhibits I & J
- Power Point Presentation
- Mummy Mountain Preserve Trust Memo
- Public Comment Letters/Emails
- Alternate Planning Commission Draft Hillside Ordinance