TOWN COUNCIL
MINUTES

CALL TO ORDER

Mayor Fredericks called the regular meeting of the Tiburon Town Council to order at 7:30 p.m. on Wednesday, February 4, 2009, in Town Council Chambers, 1505 Tiburon Boulevard, Tiburon, California.

ROLL CALL

PRESENT:	COUNCILMEMBERS:	Berger, Collins, Fredericks, Gram, Slavitz
PRESENT:	EX OFFICIO:	Town Manager Curran, Town Attorney Danforth, Director of Administrative Services Bigall, Director of Community Development Anderson, Director of Public Works/Town Engineer Nguyen, Chief of Police Cronin, Minutes Clerk Levison

Prior to its regular meeting, the Council met at 6:45 p.m. to discuss the following issues:

CLOSED SESSION

CONFERENCE WITH LEGAL COUNSEL – EXISTING LITIGATION
(Section 54956.9(a))

Wayne et al. v. Town of Tiburon

CONFERENCE WITH LEGAL COUNSEL – PENDING LITIGATION
(Section 54956.9(c))

Initiation of Litigation – One Case

CLOSED SESSION ANNOUNCEMENT

Mayor Fredericks said the Town Council met in closed session and there was no reportable action.

ORAL COMMUNICATIONS

None.

CONSENT CALENDAR

1. **Town Council Minutes** – Adopt minutes of January 7, 2009 (Town Clerk Crane Iacopi)

2. **Town Monthly Investment Summary** – Accept December 2008 Report (Director of Administrative Services Bigall)

3. **Mid-Year Budget Review** – Accept Report (Director of Administrative Services Bigall)

MOTION: To adopt Consent Calendar items, as written.
Moved: Slavitz, seconded by Collins
Vote: AYES: Unanimous

PUBLIC HEARING

1. **Construction Noise on Saturdays and Noise from Tree Work on Weekends and Holidays** – (Director of Community Development Anderson)

   a) Consider introduction and first reading of ordinance amending Title IV, Chapter 13, Section 13-6 of the Town Code to modify hours of construction and use of heavy equipment allowed pursuant to a building permit

Director of Community Development Anderson provided the staff report.

He said that in November of 2008 the Town Council considered an ordinance prohibiting Saturday work pursuant to a building permit. The Council directed staff to return with a revised ordinance that would allow some activities on Saturday while limiting or prohibiting the loudest noise sources associated with construction on those days and to limit Saturday work for Tree Permits and Encroachment Permits.

Anderson said that staff had prepared a revised draft ordinance that limits Saturday work that it is not "plainly audible beyond the property line" and proposes other minor clarifications to construction hour limitations. He said that the Police Department had concluded that the proposed text set forth an enforceable, objective standard. He said that staff had also modified the approval documents for Tree Permits and Encroachment Permits to reflect a similar approach for limiting week-end and holiday work hours.

Director Anderson noted that the Town received two public communications on the item, as well as a "late mail" letter from the Marin Builders Association.

The Director recommended that Council hold a public hearing on the item, make any desired changes, and move to read by title only and pass first reading.

Vice Mayor Berger questioned the language, "work covered by a permit" added to sections B and C on Page 2 of the red-line ordinance. He thought that it may be too specific and provide contractors with a loophole to conduct noisy activities that may not technically be covered by a permit. Director Anderson explained that this section is located in the chapter on building regulations and therefore only comes into play when someone has been issued a building permit pursuant to Chapter 13; if it is unauthorized work not pursuant to a building permit, there are other means of recourse, such as issuing a red tag (stop work order).

Vice Mayor Berger said he would prefer more general terms that govern embellishments to work covered by a permit, as well.

Town Manager Curran further clarified that work performed by a homeowner that does not necessitate a permit is not covered and therefore not restricted by this ordinance.

Councilmember Gram referred to the same section and asked if the delivery of debris boxes is included in "heavy items." Director Anderson said he believes they are covered in Chapter 23 but Town Attorney Danforth noted that it only restricts the parked location, not delivery or pickup time, of debris boxes.

Councilmember Gram stressed that the noise associated with the pickup and delivery of these boxes is quite loud and often occurs very early in the morning. Attorney Danforth said debris boxes do not require a building permit.

Vice Mayor Berger asked and confirmed that a debris box used in conjunction with a permitted project would be considered part of the project and therefore could be covered by this ordinance. Vice Mayor Berger suggested that staff include language pertaining to work done in conjunction with a permitted project, even if not specifically stated.

Attorney Danforth suggested amending the text to read, "heavy items, including but not limited to lumber, concrete, debris boxes, and portable restrooms…"

Mayor Fredericks asked and confirmed that it would be acceptable to read the ordinance by title only, with any amendments.

Mayor Fredericks opened the public comment period.

Casey Mazzoni, Legislative Analyst for the Marin Builders Association, said that in light of the current economic crisis, Marin Builders urges the Council to reject the proposed amendments. She acknowledged the Town's concerns but said the proposed ordinance does nothing to address noise created by unpermitted work. She suggested that an ordinance which simply limits the time in which permitted work can be done as a more appropriate approach and urged the Town to exercise caution when considering ordinances that impact the building industry.

Vice Mayor Berger explained that residents were seeking to prohibit all construction work on Saturdays and Sundays; that this amendment stems from the Council's desire to protect builders by crafting conditions that would allow them the opportunity to continue working, provided that neighbors are not disturbed. He asked Ms. Mazzoni to stress this to the Builders Association.

Mayor Fredericks closed the public comment period.

Councilmember Gram said that staff had done a good job with devising an enforceable standard that provides neighbors with the means to deal with grievances, and this is one of those ordinances that will only be enforced in light of complaints.

Councilmember Slavitz expressed his support for the ordinance, as it addresses one of the greatest complaints Town staff receives.

Councilmember Collins referred to the correspondence from Hal Weiss which judged the revised ordinance to be discriminatory against builders and disagreed, stating that most residents maintain 9:00AM to 5:00PM jobs, just like the builders, and that they have a right to quiet enjoyment in their off-time.

Mayor Fredericks concurred and added that the potential for truly disturbing noise is more likely to come from construction jobs than from a neighbor's household activities.

Director Anderson outlined the Council's proposed amendments to Section C:

> "for work covered by a permit, the arrival or departure of heavy equipment (including but not limited to concrete trucks, graders and backhoes) and/or the delivery of heavy items or materials (including but not limited to lumber ~~and~~**,** concrete**, debris boxes, and portable restrooms**) to a worksite shall occur only on Monday through Friday…"

MOTION: To read by title only, as amended.
Moved: Collins, seconded by Berger
Vote: AYES: Unanimous

Mayor Fredericks read, "An ordinance of the Town Council of the Town of Tiburon amending Municipal Code Title IV, Chapter 13 (Building Regulations) to modify provisions for work on Saturdays allowed pursuant to a building permit, as amended."

MOTION: To pass first reading of above ordinance, as amended.
Moved: Slavitz, seconded by Berger
Vote: AYES: Berger, Collins, Fredericks, Gram, Slavitz

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2. **Sign Ordinance** – (Town Attorney Danforth/Director of Community Development Anderson)

   a) Consider introduction and first reading of ordinance amending and replacing Chapter 16 of the Town Code pertaining to signs (Town Attorney Danforth/Director of Community Development Anderson)

Director of Community Development Anderson presented the staff report. He stated that the Town Council discussed the item at a public hearing on September 17, 2008, provided initial comments on the draft ordinance, and appointed an ad-hoc subcommittee consisting of Councilmembers Gram and Collins to work with staff in preparing revised drafts of the ordinance and policy.

Anderson said the revisions made to the two documents focus largely on areas identified at the hearing and include non-conforming portable signs, flags, owner permission, sign program eligibility, freestanding signs, changeable copy signs, and review of exposed lighting in signs. He said the revised ordinance was distributed to the major downtown property owners and the Chamber of Commerce in December 2008; no comments were received.

Anderson said that staff recommends that the Town Council hold a public hearing on the sign ordinance and policy, make any desired changes, move to read by title only and pass first reading of the ordinance.

Mayor Fredericks opened the item to public comment and seeing there was none, closed the public comment period.

Councilmember Gram thanked staff for the thoroughness of the revised ordinance and noted that it is about twice the size of the current sign ordinance, as necessary to protect freedom of speech rights set forth in the Constitution.

Vice Mayor Berger said he had not seen anything pertaining to exceptions for historical or long-standing signs of significance that violate code, cited Sam's as an example, and suggested including these in the list of exceptions. Councilmember Gram stated that it was already provided for and Director Anderson referenced Section 16A.815, Item C4 of the ordinance's red-lined version which reads:

> "Signs located on, and materially associated with, the historic character of any building located on the Local Historic Inventory of Buildings Located in Downtown Tiburon, adopted by Resolution of the Town Council, may be allowed to be re-constructed or replaced despite their non-conforming status, with the granting of a Major Exception."

Vice Mayor Berger asked staff to be certain it allowed enough latitude for Town-initiated signs and events. Town Manager Curran and Director Anderson both clarified that the ordinance does not pertain to Town activity on Town property.

Mayor Fredericks echoed Councilmember Gram's compliments to staff and added the same to Councilmembers Gram and Collins for their expert work on the subcommittee.

Councilmember Collins asked for clarification on Section 16A.610, Item D. Director Anderson stated that it is repetitive and provided the following amendment:

> "The maximum area of all faces that can be seen at any one time from any location ~~from any one direction at one time~~ shall be counted in the calculation of sign area."

Councilmember Collins questioned Section C on page 28 of the red-lined ordinance which states, "When such a condition is applied, the sign owner must immediately inform the Director in writing of the commencement of operation of the lighting…" He suggested that it may be more suitable to request that the owner inform the Director of the date upon which the operation started.

Director Anderson explained that the wording was intended to provide for signs that are not placed in service (lit up) immediately following their installation, such as a lighted sign installed in summer that may not be lit up until winter months arrive.

Mayor Fredericks reiterated her thanks to Councilmembers Gram and Collins.

MOTION: To read the ordinance by title only.
Moved: Slavitz, seconded by Berger
Vote: AYES: Unanimous

Mayor Fredericks read "An ordinance of the Town Council of the Town of Tiburon replacing Title IV, Chapter 16A (Signs) of the Tiburon Municipal code and adopting a new Title IV, Chapter 16A (Signs), of the Tiburon Municipal code, as amended."

MOTION: To pass first reading of above ordinance, as amended.
Moved: Berger, seconded by Slavitz
Vote: AYES: Berger, Collins, Fredericks, Gram, Slavitz

TOWN COUNCIL REPORTS

None.

TOWN MANAGER'S REPORT

None.

WEEKLY DIGESTS

- Town Council Weekly Digest – January 16, 2009
- Town Council Weekly Digest – January 23, 2009
- Town Council Weekly Digest – January 30, 2009

ADJOURNMENT

There being no further business before the Town Council of the Town of Tiburon, Mayor Slavitz adjourned the meeting at 8:00 p.m.

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ALICE FREDERICKS, MAYOR

ATTEST:

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DIANE CRANE IACOPI, TOWN CLERK