



**Agenda Item No. 15.**

**Staff Report**

**Date:** June 14, 2016

**To:** Mayor Hoertkorn and Council Members

**From:** Heidi Scoble, Planning Manager

**Subject:** Ordinance 674 Amending Ross Municipal Code Chapters 18.46, Exceptions to Basement and Attics

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**Recommendation**

Council consider introduction and first reading of Ordinance No. 674 to amend Ross Municipal Code to revise the applicable findings required in order to grant an exception to certain development standards to allow finished basement and attic areas for storage and living space.

**Background and Discussion**

At the April 14, 2016 meeting, the Council requested staff to provide a discussion of the current Exceptions to Basement and Attics regulations, in addition to providing recommendations regarding possible code amendments to the regulations. On May 12, 2016, staff prepared a staff report regarding the existing regulations and requested direction from the Council regarding code amendments in order to make the existing regulations more clear. At the May 12<sup>th</sup> meeting, the Council directed staff to work with the General Government Committee (Council members Robbins and Kuhl) regarding potential amendments to the regulations.

On May 19, 2016, staff presented to the General Government Committee the following recommended amendments:

- Strike the words “materially” and “visible” from Section 18.46.060(d)(3)b.
- Add a finding to Section 18.46.030(d) that would require the project to substantially conform to relevant design review criteria and standards of 18.41.100.
- Add a definition of “Height” and “Grade” to Chapter 18.12.
- Amend Section 18.16.060 to define “Height Limit” in residential zoning districts.

The General Government Committee agreed to the above changes.

The attached ordinance prepared for the Council's consideration only addresses the proposed amendments to Chapter 18.46 (Exceptions to Basements and Attics). The amendments to Chapters 18.12 and 18.16 regarding the definition of "Height" and "Height Limits" will be brought forward for the Council's consideration at a future date.

The following Sections of Chapter 18.46 would be amended as follows:

1. Section 18.46.030.b would read, "That modifications proposed to the building exterior do not ~~materially~~ increase the ~~visible-mass~~ exterior dimensions of the building and that modifications, such as new windows, are compatible with the design of the existing improvements and shall not create privacy issues. The Council may limit the size of light wells to the minimum size necessary to satisfy California Building Code requirements for light, ventilation and emergency egress."
2. Section 18.46.030(8) would read, "The project substantially conforms to design review criteria and standards in Section 18.41.100, even if design review is not required."

The purpose of the above code amendments would be to first, make the regulations more clear pertaining to exterior modifications related to basements, and secondly, to require that any exterior modifications to a building would be consistent with the Town's design review criteria and standards (Section 18.41.100 of the Ross Municipal Code) to ensure neighborhood compatibility.

**Fiscal, resource and timeline impacts**

No fiscal impact anticipated other than ordinance preparation.

**Environmental review (if applicable)**

Non-applicable

**Attachments**

1. Ordinance 674
2. May 19, 2016 General Government Committee Staff Report, Basements and Attics
3. May 19, 2016 General Government Committee Minutes

# ATTACHMENT 1

## **TOWN OF ROSS**

### **ORDINANCE NO. 674**

#### **AN ORDINANCE OF THE TOWN OF ROSS AMENDING ROSS MUNICIPAL CODE CHAPTER 18.46, EXCEPTIONS FOR BASEMENTS AND ATTICS, TO REVISE THE REQUIRED FINDINGS FOR APPROVING AN EXCEPTION TO CERTAIN DEVELOPMENT STANDARDS FOR BASEMENTS AND ATTICS**

The Town Council of the Town of Ross does ordain as follows:

**SECTION 1:** Subdivision (d)(3)(b) of Section 18.46.030 of the Ross Municipal Code is hereby amended to read as follows:

“b. That modifications proposed to the building exterior do not increase the exterior dimensions of the building and that modifications, such as new windows, are compatible with the design of the existing improvements and shall not create privacy issues. The Council may limit the size of light wells to the minimum size necessary to satisfy California Building Code requirements for light, ventilation and emergency egress.”

**SECTION 2:** Subdivision (d)(8) is hereby added to Section 18.46.030 of the Ross Municipal Code to read as follows:

“(8) The project substantially conforms to design review criteria and standards in Section 18.41.100, even if design review is not required.”

**SECTION 3:** This Ordinance shall go into effect on thirty (30) days from its adoption, and shall be posted in three public places in Town.

THE FOREGOING ORDINANCE was first read at a regular meeting of the Ross Town Council on the 14<sup>th</sup> day of June, 2016, and was adopted at a regular meeting of the Ross Town Council on the \_\_\_\_ day of \_\_\_\_\_, 2016, by the following vote:

**AYES:**

**NOES:**

**ABSENT:**

**ABSTAIN:**

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Kathleen Hoertkorn, Mayor

**ATTEST:**

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Linda Lopez, Town Clerk

## ATTACHMENT 2



## Agenda Item No. 4

### Staff Report

**Date:** May 19, 2016

**To:** Council Member Robbins and Council Member Kuhl

**From:** Heidi Scoble, Planning Manager

**Subject:** Discussion and Direction regarding 18.46, Exceptions to Basement and Attics

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#### Recommendation

Review and provide direction on the recommended code amendments to the Exceptions to Basements and Attics regulations of Chapter 18.46 of the Ross Municipal Code.

#### Background and Discussion

At the April 14, 2016 meeting, the Council requested staff to provide a discussion of the current Exceptions to Basement and Attics regulations, in addition to providing recommendations regarding possible code amendments to the regulations. On May 12, 2016, staff prepared a staff report regarding the existing regulations and requested direction from the Council regarding code amendments in order to make the existing regulations more clear. At the May 12<sup>th</sup> meeting, the Council directed staff to work with the General Government Committee regarding potential amendments to the regulations.

As summarized in the May 12, 2016 staff report, staff is recommending the following code amendments:

1. Amend Section 18.46.030(d) to add an additional finding that would require the project to substantially conform to the relevant design review criteria and standards in Section 18.41.100, even if design review is not required.
2. Amend Section 18.41.020 to require design review for any height increase to an existing building, whether the building is conforming or nonconforming. → Recommendation amended at the May 19<sup>th</sup> meeting to include a finding instead of a design review trigger.
3. Amend the definition of height to omit reference to the amount of stories.
4. Add a new definition of height and grade to Chapter 18.12, definitions.

See attachment 1 regarding how the existing regulations would be amended.

The above amendments 1 and 2 would allow the use of the Town's design review criteria and standards to maintain the existing scale and quality of architecture relative to the "small town" feel and character of its neighborhoods. The third recommended amendment would eliminate the Exceptions to Basements and Attics regulations from approving nonconforming three story residences. The fourth recommended amendment would provide a definition of height and grade where no definitions of height and grade currently exist.

**Fiscal, resource and timeline impacts**

No fiscal impact anticipated other than ordinance preparation.

**Environmental review (if applicable)**

Non-applicable

**Attachments**

1. Recommended Code Amendments
2. May 12, 2016 Town Council Staff Report



## **ATTACHMENT 1**

**Recommended Code Amendments**  
**Chapter 18.46**  
**(See Section 18.46.030(d)(8))**

18.46.030 Review and approval procedures. (a) Application. An application for an exception shall be filed with the town planner on forms prescribed by the town planner, along with any plans or additional information required and the fee as established by a resolution of the town council. The application shall include, in part, evidence supporting the findings required by this chapter.

(b) Review and Approval Authority. The town council shall review and approve, conditionally approve, or deny an exception application at a public meeting. If staff makes a preliminary determination that the required findings may be made, staff may place the application on the town council consent agenda. The Town Council, by resolution, may limit the number of applications that may be accepted per month if a finding is made that staff resources are inadequate to process the number of applications being received.

(c) The town shall mail notice of the meeting at least 10 days prior to the meeting to the property owner and all owners within 300 feet of the property that is the subject of the meeting as shown on the latest equalized assessment roll. In lieu of using the assessment roll, the Town may use records of the county assessor or tax collector which contain more recent information than the assessment roll.

(d) Required Findings. The town council may approve or conditionally approve an exception application if all of the following findings are made:

- (1) That the area to be improved is an existing area created prior to the effective date of this chapter in an existing residence built prior to the effective date of this chapter. Existing area shall not include basement space with a ceiling height less than 5.5 feet.
- (2) If the project involves improvement of an attic, that the improvements proposed shall not change the exterior appearance of the structure, for example, by addition of dormers or raising the roof ridge. However, the Town Council may approve minor changes to the exterior appearance of an attic, such as the addition of windows or skylights, if they will not create view, light or privacy issues for neighbors.
- (3) If the project involves improvement of a basement:
  - a. If the structure is in a Special Flood Hazard Area identified on the town Flood Insurance Rate Map and/or in an area that is known for flooding, that the finished floor level of the improvements shall be above the base flood elevation.

- b. That modifications proposed to the building exterior do not materially increase the visible mass of the building and that modifications, such as new windows, are compatible with the design of the existing improvements and shall not create privacy issues. The Council may limit the size of light wells to the minimum size necessary to satisfy California Building Code requirements for light, ventilation and emergency egress.
  - c. That any modifications to site drainage have been designed by a licensed engineer and shall result in no net increase to the rate or volume of peak runoff from the site compared to pre-project conditions. Any new mechanical pumps or equipment shall not create noise that is audible off site.
- (4) The fire chief has confirmed that there is adequate water supply for firefighting purposes for the site, or that the project includes measures to provide adequate water supply for firefighting purposes.
- (5) The site has adequate parking. For purposes of this section, adequate parking shall mean that the site complies with at least the minimum number of parking spaces required for the zoning district (covered or not covered). If the site does not comply with the covered parking requirement, the Town Council may require covered parking to be provided. The Town Council may consider the size of the residence, number of bedrooms, and the size and use of the proposed attic and/or basement area and may require additional parking up to the following:

<i>Total site floor area (excluding covered parking)</i>	<i>Required off street parking</i>
1,300 square feet to 3,300 square feet	3 spaces
Over 3,300 square feet	4 spaces

- (6) That the project shall comply with the most recent California Residential Code adopted by the Town.
- (7) Excavation, grading or cutting shall not exceed 35 cubic yards for newly created basement floor area. The excavation limit shall apply to excavation required to lower the floor to the finished floor and shall not include up to one foot of over excavation for the floor and foundation or any removal of existing foundation or flooring. Additional excavation is permitted for construction of stairs counted as floor area on an upper floor and for existing areas that meet the definition of floor area. If the project involves excavation, grading or cutting for a basement space, new floor area shall not exceed 20% of the existing floor area.
- (8) **The project substantially conforms to relevant design review criteria and standards in Section 18.41.100, even if design review is not required.**

**Recommended Code Amendments**  
**Chapter 18.41**  
**(See Section 18.41.020(j))**

18.41.020 Improvements subject to design review. Design review is required for all new buildings and for all exterior remodeling resulting in additions, extensions or enlargements to existing buildings exceeding two hundred square feet of new floor area, including enclosing existing open areas. Design review is required for all building relocations.

- (a) Design review is required for all fences, gates or walls, or a combination of these, greater than forty-eight inches in height in any yard adjacent to the street or right-of-way. Design review is required for the construction of any retaining wall greater than forty eight inches in height as measured from bottom of footing to top of wall or any terraced retaining walls totaling more than forty-eight inches in height. Design review is required for retaining walls totaling more than one hundred linear feet. Design review is also required for any sports court fences over 6 feet in height and for gate columns and other decorative fence elements that exceed the permitted fence height limits.
- (b) Design review is required for any project resulting in the removal or alteration of more than twenty-five percent of the exterior walls or wall coverings of a residence, as determined by the town planner.
- (c) Design review is required for any activity or project resulting in more than fifty cubic yards of grading or filling, whether or not a building permit is required.
- (d) Design review is required for any construction, improvements, grading/filling or other site work within twenty-five feet of a creek, waterway or drainageway, whether or not a building permit is required.
- (e) Design review is not required for repainting existing structures involving no exterior remodeling resulting in additions, extensions or alterations.
- (f) In addition to any design review that may be required pursuant to subsections (a) through (e) of this section, design review of residential second units shall be undertaken in accordance with Chapter 18.42 of this code.
- (g) Design review is required for outdoor advertising in the C-L district.
- (h) Design review is required for any project resulting in over 1,000 square feet of new impervious landscape surface, whether or not a building permit is required.
- (i) Design review is not required for an attic or basement improvement permitted under Chapter 18.46 unless the project involves exterior work within twenty-five feet of a creek,

waterway or drainageway, or if the attic or basement project is associated with a larger project that requires design review.

- (j) *Design Review is required for any height increase to an existing building or structure whether the existing height is conforming or nonconforming, with the exception of when the height of a residence needs to be increased to comply with FEMA and/or building code compliance.*

**Recommended Code Amendments**  
**Chapters 18.12**  
**(New definitions added)**

**Section 18.12.XXX Height. The vertical distance from grade to the highest point of a building or structure.**

**Section 18.12.XXX Grade. The ground elevation used as the basis for measurement of allowed structure height. Grade shall be the elevation of the natural or finished grade at the exterior surface of the structure, whichever is more restrictive.**

**Recommended Code Amendments  
Chapter 18.16  
(Amend Section 18.16.060)**

18.16.060 Height. *The ~~M~~maximum height of a building or structure, as measured from the vertical distance from grade to the highest point of a building or structure, shall*  
~~requirements are two stories and an attic, but~~ not to exceed thirty feet at any point when  
measured from either existing or finished grade, *whichever is more restrictive.*





## ATTACHMENT 2



**Agenda Item No. 14.**

**Staff Report**

**Date:** May 12, 2016

**To:** Mayor Hoertkorn and Council Members

**From:** Heidi Scoble, Planning Manager

**Subject:** Discussion and Direction regarding 18.46, Exceptions to Basement and Attics

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**Recommendation**

Town Council receive a presentation on the existing Exceptions to Basements and Attics regulations and provide direction to staff as to whether the current regulations are sufficient or should be amended to meet the intent of Ordinance 624.

**Background and Discussion**

At the April 14, 2016 meeting, the Council requested staff to provide a discussion of the current Exceptions to Basement and Attics regulations, in addition to providing recommendations regarding possible code amendments to the regulations.

On August 11, 2011, the Council adopted Ordinance 624 to allow for certain finished basement and attic areas for storage and living space. The impetus for the regulations was based on the amount of requests for variances to allow improvements of basement and attic areas. The purpose of the regulations was to allow for the improvement of basement and attic spaces which do not add to the visible mass of the structure. Accordingly, the regulations were written to redefine the following terms:

18.12.045 Attic. "Attic" means residual, open space between the ceiling of the uppermost story and the roof ~~not suitable for normal occupancy, not partitioned off into rooms, and not used for living area.~~ If the "attic" is partitioned off into rooms and/or used for living area, it shall be considered a "story."

18.12.050 Basement. "Basement" means a space partly or wholly underground. A finished basement is defined as a space used in conjunction with daily household activities. It includes recreation rooms, wine cellars, laundry rooms and/or any space

which is seven feet ~~six inches~~ or more in height or has sheet rock or paneled walls. If the finished floor level directly above a basement is six feet or more above natural grade for more than twenty-five percent of the basement perimeter, such basement shall be considered as a "story."

18.12.130 Floor area ratio. "Floor area ratio" means the floor area of the building or buildings on a lot, divided by the area of that lot. For the purpose of determining the allowable floor area of a lot, the floor area is the sum of the gross horizontal areas of the several floors of the building or buildings measured from the exterior faces of the exterior walls. Floor area also includes mezzanines, finished basements and attics, garages, carports, porches which are screened or otherwise enclosed, the entirety of porches which have a depth greater than ten feet, and other detached structures which are accessory to a dwelling. Floor area shall not include finished basement space used only for storage with less than five feet of ceiling height and finished attic space used only for storage that does not meet building code requirements for habitable space and is not accessible by permanent stairs.

The regulations were also written to:

- ✓ Exempt design review unless the project was associated with a larger project that requires design review or the improvements are within 25-feet from a creek, waterway, or drainageway. (Section 18.41.020(i) of the Ross Municipal Code)
- ✓ Allows "minor changes to the exterior appearance of an attic, such as the addition of windows or skylights, if they do not create view, light, or privacy issues for neighbors." (Section 18.46.030(d)(2) of the Ross Municipal Code)
- ✓ Allows the Council to approve modifications to the exterior appearance related to a basement provided that the "modifications proposed to the building exterior do not materially increase the visible mass of the building and that the modifications, such as new windows, are compatible with the design of the existing improvements and shall not create privacy issues. (Section 18.46.030(d)(3)b of the Ross Municipal Code).

The benefits associated with the regulations are that the Council may grant flexibility to the floor area ratio standards without requiring a variance. Another benefit is that the regulations provide the Council with the discretion to allow changes to the exterior appearance of a building. Conversely, the challenges of the regulations are also related to the Council's discretion to allow changes to the exterior appearance of a building and what other land use permits may be triggered as a result of the regulations. Specifically, the terminology used is vague and open to interpretation. For example, an 18 inch height increase to one may be a material change that increases the visible mass of the building, but to another would not be considered a change. Would adding 18 inches to the height overall height of the building (but below the 30 foot maximum height limit) visually increase the mass to the building? Other than windows, what other modifications did the Council foresee when writing the regulations that would changes potentially increase the mass of the building?

Knowing a land use permit is discretionary and applying for a permit is not a guarantee, property owners and architects still rely heavily on the Planning Department to provide guidance and direction on whether a potential project would be acceptable. Without having clear definition, specific thresholds, or design review criteria or standards to rely upon regarding when a modification to a basement constitutes a material change to the visible mass of the building, staff will not be able to provide adequate direction to the applicants and decision makers on the merits of the project. Therefore, staff is recommending that the regulations require Design Review for any exterior modifications to the building when requesting a basement and attic exception. The Exceptions to Basements and Attics permit already requires Town Council action and by requiring Design Review, the Town Council is able to utilize the Design criteria and Standards pursuant to Section 18.41.100 of the Ross Municipal Code to vet any material changes to the visible mass of the building.

For further clarity, staff also recommends an amendment to Chapter 18.41, Design Review, to require that any height increase to an existing building (conforming or nonconforming), with the exception of replacing a foundation to meet FEMA and any other building code requirements, is subject to Design Review. Currently, Design Review is not required to increase the height of a conforming building. If an existing building or structure has conforming setbacks, would not add more than 200 feet of new floor area, would be setback at least 25 feet from an existing creek or drainageway, then the height of a building may be increased up to 30 feet without any discretionary review. Requiring Design Review for a height increase would allow the Council the discretion to also vet whether the height increase would be consistent with the Town's Design criteria and standards relative to mass and bulk, in addition to privacy and light and air concerns.

Another issue that staff has identified relative to the Town's definition of height pursuant to Section 18.16.060 of the Ross Municipal Code, and whether the Exceptions to Basements and Attics may be creating nonconforming buildings and structures. The Town's current definition of height allows for two stories and an attic, however, if an exception to the basement is approved, a nonconforming three story building would be created. In order to address this issue, staff is recommending that the definition of height be amended as follows:

18.16.060 Height. Maximum height requirements ~~are two stories and an attic, but is~~ not to exceed thirty feet at any point when measured from either existing or finished grade, whichever is more restrictive.

In summary staff is requesting direction from Council as to whether the current regulations regarding Exceptions to Basements are sufficient or whether staff should return back to the Council to address the following items:

- ✓ Amend the Design Review regulations (Section 18.41.020 of the Ross Municipal Code) to require Design Review when the exterior appearance of a building is being modified.
- ✓ Amend the Design Review regulations (Section 18.41.020 of the Ross Municipal Code) to require Design Review when the height of the existing building or structure is being

increased (with the exceptions when the increase is associated with a foundation replacement when complying with FEMA and/or building code requirements).

- ✓ Amend the current definition of height per Section 18.16.060 of the Ross Municipal Code regarding reference to the amount of stories permitted for a residence.

**Fiscal, resource and timeline impacts**

No fiscal impact anticipated other than ordinance preparation.

**Environmental review (if applicable)**

Non-applicable

**Attachments**

1. Ordinance 624
2. Chapter 18.46, Exceptions to Basements and Attics of the Ross Municipal Code

# ATTACHMENT 1

# **TOWN OF ROSS**

## **ORDINANCE NO. 624**

### **AN ORDINANCE OF THE TOWN OF ROSS AMENDING TITLE 18 “ZONING” OF THE ROSS MUNICIPAL CODE TO ALLOW CERTAIN FINISHED BASEMENT AND ATTIC AREAS FOR STORAGE AND LIVING SPACE**

**WHEREAS**, the existing floor area regulations in the Town of Ross have led to many resident requests for variances to allow the improvement of basement and attic areas and the Town Council desires to reassess the current standards; and

**WHEREAS**, Government Code Section 65850 allows the Town Council to adopt ordinances to regulate the location, height, bulk, number of stories, size and setbacks of buildings and structures and to establish requirements for off street parking; and

**WHEREAS**, the Town Council wishes to establish an ordinance to regulate improvement of attic and basement spaces, which do not add to the visible mass of a structure, but provide areas for clean storage and additional living space; and

**WHEREAS**, the Town Council adopted a *General Plan 2007-2025* on June 14, 2007 and the *Housing Element 2009-2014* on November 4, 2010 and Government Code Section 65860(a) requires zoning ordinances to be consistent with the general plan; and

**WHEREAS**, this ordinance, which does not change any existing land uses in the Town, will allow improvement of existing structures without materially changing their exterior appearance, furthering Housing Policy 2.0 “Maintain and enhance existing housing” and Program H2.3 “Maintenance of Quality Housing and Neighborhoods;” and is otherwise consistent with the *Town of Ross General Plan* and *Housing Element*; and

**WHEREAS**, there may be attics and basements within the Town that were finished without appropriate planning and building department approval and the Town Council wishes to establish an amnesty period for the permitting of these spaces in order to provide for their inspection and to determine conformance with applicable codes and safety regulations; and

**WHEREAS**, allowing property owners to improve existing areas in existing residences allows the owners to enjoy existing site development without altering the Town’s physical appearance. Extending the proposed ordinance to new development could result in new residences that are built with more visible mass and volume that are out of character with surrounding residences; and

**WHEREAS**, the Town held 3 public workshops to review the proposed revisions to the Town code; and

**WHEREAS**, the Town Council sitting as Planning Commission has reviewed the proposed ordinance, held a public hearing on the proposed revisions, and forwarded the proposed language and their recommendations to the Council for consideration and action; and

**WHEREAS**, the Town Council has reviewed the proposed ordinance and the Planning Commission's recommendations at a public hearing; and

**WHEREAS**, the Town Council will review the implementation of the ordinance at a Town Council meeting one year after the ordinance takes effect.

**The Town Council of the Town of Ross does ordain as follows:**

**SECTION 1:** Title 18, Chapter 18.12 "Definitions", Sections 18.12.045, 18.12.050 and 18.12.130 are amended to read as follows (deletions shown by strikethrough, additions shown by underline):

18.12.045 Attic. "Attic" means residual, open space between the ceiling of the uppermost story and the roof ~~not suitable for normal occupancy, not partitioned off into rooms, and not used for living area.~~ If the "attic" is partitioned off into rooms and/or used for living area, it shall be considered a "story."

18.12.050 Basement. "Basement" means a space partly or wholly underground. A finished basement is defined as a space used in conjunction with daily household activities. It includes recreation rooms, wine cellars, laundry rooms and/or any space which is seven feet six inches or more in height or has sheet rock or paneled walls. If the finished floor level directly above a basement is six feet or more above natural grade for more than twenty-five percent of the basement perimeter, such basement shall be considered as a "story."

18.12.130 Floor area ratio. "Floor area ratio" means the floor area of the building or buildings on a lot, divided by the area of that lot. For the purpose of determining the allowable floor area of a lot, the floor area is the sum of the gross horizontal areas of the several floors of the building or buildings measured from the exterior faces of the exterior walls. Floor area also includes mezzanines, finished basements and attics, garages, carports, porches which are screened or otherwise enclosed, the entirety of porches which have a depth greater than ten feet, and other detached structures which are accessory to a dwelling. Floor area shall not include finished basement space used only for storage with less than five feet of ceiling height and finished attic space used only for storage that does not meet building code requirements for habitable space and is not accessible by permanent stairs.

**SECTION 2:** Title 18, Chapter 18.41, Section 18.41.020 "Improvements subject to design review" is amended to add the following subsection:

Design review is not required for an attic or basement improvement permitted under Chapter 18.46 unless the project involves exterior work within twenty-five feet of a creek, waterway or drainageway, or if the attic or basement project is associated with a larger project that requires design review.

**SECTION 3:** Title 18 is amended to add the following new Chapter 18.46 to read as follows:



## Chapter 18.46

### EXCEPTIONS FOR BASEMENTS AND ATTICS

18.46.010 Purpose and intent. The purpose of this chapter is to provide relief from the strict application of the development standards specified in this title to allow basement and attic areas to be used as storage or habitable space where the improvement will not be materially detrimental to the public welfare or injurious to property or improvements in the neighborhood.

18.46.020 Applicability. The town council may grant an exception to setback, story, lot coverage, floor area and building height requirements for improvement of an attic or basement in an existing residential structure created prior to the effective date of this chapter in any single-family residence district or special building site district. The town council may grant an exception under this chapter for improvements to a nonconforming structure. Any addition intended to be used as a second unit shall comply with the provisions of Chapter 18.42 (Residential Second Units).

18.46.030 Review and approval procedures.

- (a) Application. An application for an exception shall be filed with the town planner on forms prescribed by the town planner, along with any plans or additional information required and the fee as established by a resolution of the town council. The application shall include, in part, evidence supporting the findings required by this chapter.
- (b) Review and Approval Authority. The town council shall review and approve, conditionally approve, or deny an exception application at a public meeting. If staff makes a preliminary determination that the required findings may be made, staff may place the application on the town council consent agenda. The Town Council, by resolution, may limit the number of applications that may be accepted per month if a finding is made that staff resources are inadequate to process the number of applications being received.
- (c) The town shall mail notice of the meeting at least 10 days prior to the meeting to the property owner and all owners within 300 feet of the property that is the subject of the meeting as shown on the latest equalized assessment roll. In lieu of using the assessment roll, the Town may use records of the county assessor or tax collector which contain more recent information than the assessment roll.
- (d) Required Findings. The town council may approve or conditionally approve an exception application if all of the following findings are made:
  - (1) That the area to be improved is an existing area created prior to the effective date of this chapter in an existing residence built prior to the effective date of this chapter. Existing area shall not include basement space with a ceiling height less than 5.5 feet.
  - (2) If the project involves improvement of an attic, that the improvements proposed shall not change the exterior appearance of the structure by adding dormers, raising the roof ridge, addition of windows, or any other exterior modifications.

- (3) If the project involves improvement of a basement:
  - a. If the structure is in a Special Flood Hazard Area identified on the town Flood Insurance Rate Map and/or in an area that is known for flooding, that the finished floor level of the improvements shall be above the base flood elevation.
  - b. That modifications proposed to the building exterior do not materially increase the visible mass of the building and that modifications, such as new windows, are compatible with the design of the existing improvements and shall not create privacy issues. The Council may limit the size of light wells to the minimum size necessary to satisfy California Building Code requirements for light, ventilation and emergency egress.
  - c. That any modifications to site drainage have been designed by a licensed engineer and shall result in no net increase to the rate or volume of peak runoff from the site compared to pre-project conditions. Any new mechanical pumps or equipment shall not create noise that is audible off site.
- (4) The fire chief has confirmed that there is adequate water supply for firefighting purposes for the site, or that the project includes measures to provide adequate water supply for firefighting purposes.
- (5) The site has adequate parking. For purposes of this section, adequate parking shall mean that the site complies with at least the minimum number of parking spaces required for the zoning district (covered or not covered). If the site does not comply with the covered parking requirement, the Town Council may require covered parking to be provided. The Town Council may consider the size of the residence, number of bedrooms, and the size and use of the proposed attic and/or basement area and may require additional parking up to the following:

<i>Total site floor area (excluding covered parking)</i>	<i>Required off street parking</i>
1,300 square feet to 3,300 square feet	3 spaces
Over 3,300 square feet	4 spaces

- (6) That the project shall comply with the most recent California Residential Code adopted by the Town.
  - (7) Excavation, grading or cutting shall not exceed 35 cubic yards. If the project involves excavation, grading or cutting for a basement space, new floor area shall not exceed 20% of the existing floor area.
- (e) Terms and Conditions. Any exception approval may include such terms and conditions as deemed necessary or appropriate by the town planner and town council to effect the purposes of this title. The following conditions shall apply to all projects:
- (1) Floor area exempted under this chapter shall not be traded off for non-basement and non-attic floor area.
  - (2) Project construction shall comply with the most recent Construction Mitigation Measures adopted by the Bay Area Air Quality Management District and grading activities shall include Best Management Practices (BMPs) designed to limit potential erosion.

- (3) As provided in Title 15, Section 15.50.060, no building permit shall be issued within nine months of final inspection or expiration of an antecedent building permit.
- (f) Any exception request that does not comply with the prescribed limitations set forth in this chapter shall require a variance, pursuant to Chapter 18.48.

18.46.040 Amnesty Period. Commencing on the effective date of this ordinance, an amnesty period of one year is established for planning and building permit applications for basements and attics that were finished without prior town approval, unless extended for an additional year by resolution of the Town Council. During the amnesty period, planning and building applications for finished attic and basement areas shall not be subject to penalties and inspection fees as provided in the Ross Municipal Code and by resolution of the town council for work without permit, but instead shall be subject to only the standard application and permit fees.

18.46.050 Revocation or modification.

(a) Whenever revocation because of noncompliance with conditions, or modification of a variance is proposed, notice of public meeting to be held on such revocation or modification shall be given to the permittee in writing at least ten days prior to the meeting and shall also be given as provided in Section 18.48.040.

(b) Failure to secure a building permit and/or commence construction shall cause exception approval to expire one year from the date of approval without further notice. The town council may grant an extension of time of up to one year from the expiration date upon determining that the findings made in the original approval remain valid. An application for an extension of time must be filed with the planning department prior to the original expiration date. A second extension of up to one year may be granted upon submittal of a request prior to the expiration of the first extension if the council determines that the original findings remain valid.

SECTION 4: CEQA. The Town Council has determined that the ordinance is categorically exempt from the requirement for the preparation of environmental documents under the California Environmental Quality Act (CEQA). The Town Council finds the project categorically exempt under the CEQA Guidelines, which include classes of projects that the Secretary for Resources has determined not to have a significant effect on the environment and which are, therefore, exempt from the provisions of CEQA. The project is exempt under CEQA Guideline Section 15301, existing facilities (*14 Cal. Code Regs. §15301*). The ordinance would allow alteration of existing private structures with no expansion of use beyond the existing permitted single family zoning use. The ordinance applies only to existing residential structures. The ordinance will permit development within the footprint of existing residential structures and would maintain the existing residential zoning and land use designations within the Town. The ordinance does not involve any zone changes or changes to existing land use designations that would increase population density in the existing single-family neighborhoods. The ordinance will permit the Town Council, on a case-by-case basis after a public meeting, to permit existing areas to be improved. Any new living space will be created on a developed site where required parking and all public services and facilities are available. Each project would be subject to discretionary review and, where appropriate, the Town Council would require environmental review based on the specific site circumstances.

The exemption is also consistent with CEQA Guideline Section 15303, which exempts the construction of single-family residences and second units (14 Cal. Code Regs. §15303). The improvement of an existing area in an existing residence would have less environmental impact than construction of a new residence. The Town Council also considers the project exempt from review under the California Environmental Quality Act under the "common sense" exemption. (14 Cal. Code Regs. §15061(b)(3)) since "it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment." No exception set forth in Section 15300.2 of the CEQA Guidelines (including but not limited to Subsection (b), which relates to cumulative impacts and Subsection (c) which relates to unusual circumstances) applies to the project (14 Cal. Code Regs. §15300.2).

**SECTION 5:** Severability. The Town Council hereby declares every section, paragraph, sentence, cause and phrase is severable. If any section, paragraph, sentence, clause or phrase of this ordinance is for any reason found to be invalid or unconstitutional, such invalidity, or unconstitutionality shall not affect the validity or constitutionality of the remaining sections, paragraphs, sentences, clauses or phrases.

**SECTION 6:** Inclusion in the Ross Municipal Code. It is the intention of the Ross Town Council that the text in Sections 1, 2 and 3 be made a part of the Ross Municipal Code and that the text may be renumbered or relettered and the word "Ordinance" may be changed to "Section", "Chapter", or such other appropriate word or phrase to accomplish this intention.

**SECTION 7:** This Ordinance shall go into effect on September 12, 2011, and shall be posted in three public places in Town.


THE FOREGOING ORDINANCE was introduced at a regular meeting of the Ross Town Council on the 14<sup>th</sup> day of July, 2011, and was adopted at a regular meeting of the Ross Town Council on the 11<sup>th</sup> day of August, 2011 by the following vote:

**AYES:** Council Members Small, Martin, Russell

**NOES:**

**ABSENT:** Council Members Hunter, Strauss

**ABSTAIN:**

  
Carla Small, Mayor

**ATTEST:**

  
Gary Broad, Town Manager

## ATTACHMENT 2

## Chapter 18.46

### EXCEPTIONS FOR BASEMENTS AND ATTICS

#### Sections:

- 18.46.010 Purpose and intent.
- 18.46.020 Applicability.
- 18.46.030 Review and approval procedures.
- 18.46.040 Amnesty Period.
- 18.46.060 Prior conditions not applicable.

18.46.010 Purpose and intent. The purpose of this chapter is to provide relief from the strict application of the development standards specified in this title to allow basement and attic areas to be used as storage or habitable space where the improvement will not be materially detrimental to the public welfare or injurious to property or improvements in the neighborhood. (Ord. 624 (part), 2011).

18.46.020 Applicability. The town council may grant an exception to setback, story, lot coverage, floor area and building height requirements for improvement of an attic or basement in an existing residential structure created prior to the effective date of this chapter in any single-family residence district or special building site district. The town council may grant an exception under this chapter for improvements to a nonconforming structure. Any addition intended to be used as a second unit shall comply with the provisions of Chapter 18.42 (Residential Second Units). (Ord. 624 (part), 2011).

18.46.030 Review and approval procedures. (a) Application. An application for an exception shall be filed with the town planner on forms prescribed by the town planner, along with any plans or additional information required and the fee as established by a resolution of the town council. The application shall include, in part, evidence supporting the findings required by this chapter.

(b) Review and Approval Authority. The town council shall review and approve, conditionally approve, or deny an exception application at a public meeting. If staff makes a preliminary determination that the required findings may be made, staff may place the application on the town council consent agenda. The Town Council, by resolution, may limit the number of applications that may be accepted per month if a finding is made that staff resources are inadequate to process the number of applications being received.

(c) The town shall mail notice of the meeting at least 10 days prior to the meeting to the property owner and all owners within 300 feet of the property that is the subject of the meeting as shown on the latest equalized assessment roll. In lieu of using the assessment roll, the Town may use records of the county assessor or tax collector which contain more recent information than the assessment roll.

(d) Required Findings. The town council may approve or conditionally approve an exception application if all of the following findings are made:

- (1) That the area to be improved is an existing area created prior to the effective date of this chapter in an existing residence built prior to the effective date of this

chapter. Existing area shall not include basement space with a ceiling height less than 5.5 feet.

- (2) If the project involves improvement of an attic, that the improvements proposed shall not change the exterior appearance of the structure, for example, by addition of dormers or raising the roof ridge. However, the Town Council may approve minor changes to the exterior appearance of an attic, such as the addition of windows or skylights, if they will not create view, light or privacy issues for neighbors.
- (3) If the project involves improvement of a basement:
  - a. If the structure is in a Special Flood Hazard Area identified on the town Flood Insurance Rate Map and/or in an area that is known for flooding, that the finished floor level of the improvements shall be above the base flood elevation.
  - b. That modifications proposed to the building exterior do not materially increase the visible mass of the building and that modifications, such as new windows, are compatible with the design of the existing improvements and shall not create privacy issues. The Council may limit the size of light wells to the minimum size necessary to satisfy California Building Code requirements for light, ventilation and emergency egress.
  - c. That any modifications to site drainage have been designed by a licensed engineer and shall result in no net increase to the rate or volume of peak runoff from the site compared to pre-project conditions. Any new mechanical pumps or equipment shall not create noise that is audible off site.
- (4) The fire chief has confirmed that there is adequate water supply for firefighting purposes for the site, or that the project includes measures to provide adequate water supply for firefighting purposes.
- (5) The site has adequate parking. For purposes of this section, adequate parking shall mean that the site complies with at least the minimum number of parking spaces required for the zoning district (covered or not covered). If the site does not comply with the covered parking requirement, the Town Council may require covered parking to be provided. The Town Council may consider the size of the residence, number of bedrooms, and the size and use of the proposed attic and/or basement area and may require additional parking up to the following:

<i>Total site floor area (excluding covered parking)</i>	<i>Required off street parking</i>
1,300 square feet to 3,300 square feet	3 spaces
Over 3,300 square feet	4 spaces

- (6) That the project shall comply with the most recent California Residential Code adopted by the Town.
- (7) Excavation, grading or cutting shall not exceed 35 cubic yards for newly created basement floor area. The excavation limit shall apply to excavation required to lower the floor to the finished floor and shall not include up to one foot of over excavation for the floor and foundation or any removal of existing foundation or flooring. Additional excavation is permitted for construction of stairs counted as floor area on an upper floor and for existing areas that meet the definition of floor area. If the project involves excavation, grading or cutting for a basement space, new floor area shall not exceed 20% of the existing floor area.

(e) Terms and Conditions. Any exception approval may include such terms and conditions as deemed necessary or appropriate by the town planner and town council to effect the purposes of this title. The following conditions shall apply to all projects:

- (1) Floor area exempted under this chapter shall not be traded off for non-basement and non-attic floor area.
- (2) Project construction shall comply with the most recent Construction Mitigation Measures adopted by the Bay Area Air Quality Management District and grading activities shall include Best Management Practices (BMPs) designed to limit potential erosion.
- (3) As provided in Title 15, Section 15.50.060, no building permit shall be issued within nine months of final inspection or expiration of an antecedent building permit.

(f) Any exception request that does not comply with the prescribed limitations set forth in this chapter shall require a variance, pursuant to Chapter 18.48. (Ord. 645, 2013; Ord. 636 (part), 2012; Ord. 624 (part), 2011).

18.46.040 Amnesty Period. An amnesty period is established for planning and building permit applications for basements and attics that were finished without prior town approval until September 12, 2013. During the amnesty period, planning and building applications for finished attic and basement areas shall not be subject to penalties and inspection fees as provided in the Ross Municipal Code and by resolution of the town council for work without permit, but instead shall be subject to only the standard application and permit fees. This section shall apply to any complete applications received by the planning department prior to the expiration of the amnesty period and, if no planning approval is required, to building permit applications received prior to September 12, 2013. (Ord. 636 (part), 2012; Ord. 624 (part), 2011).

18.46.060 Prior conditions not applicable. This chapter supersedes any town council conditions limiting improvement of attic and basement areas imposed prior to the effective date of this section. (Ord. 636 (part), 2012).



## ATTACHMENT 3



## Minutes

### Special Meeting of the General Government Committee Ross Town Council Thursday, May 19, 2016

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1. **9:00 a.m. commencement.** The meeting commenced at 9:02AM
2. **Open time for public comments** (Limit 3 minutes per speaker on items not on agenda).  
None
3. **Discussion of Nonconforming Structures and Uses Regulations**

Planning Manager Scoble discussed recommended changes to the Nonconforming Structures and Uses regulations as summarized in the General Government Committee staff report dated May 19, 2016. The Committee members agreed on the following changes to the provide clarity to language and process regarding the treatment to nonconforming structures and buildings.

- Wordsmith Section 18.52.030 to make the language more clear when a Nonconformity Permit is required.
- Add language whereby flexibility may be considered when reviewing nonconformity permits subject to specific criteria such as consistency with the design review criteria and standards, the project would not create any adverse impacts on neighboring properties, and that the project would bring the structure into closer conformity.
- Add a provision to Chapter 18.16 to prohibit the conversion of a garage structure when the garage structure is located within the maximum required setbacks for the appropriate zoning district.
- Add a Design Review trigger per Section 18.41.020 that would require design review for the conversion of a garage into livable space when the garage structure is in compliance with the maximum required setbacks for the appropriate zoning district.

The Committee members concluded their discussion and directed staff to prepare the zoning ordinance code amendments and return to the Town Council with an ordinance accordingly.

#### **4. Discussion of Exceptions to Basement and Attics Regulations**

Planning Manager Scoble discussed recommended changes to the Exceptions to Basements and Attics regulations as summarized in the General Government Committee staff report dated May 19, 2016. The Committee members agreed on the following changes relative to staff's recommendation:

- Strike the words "materially" and "visible" from Section 18.46.060(d)(3)b.
- Add a required finding to Section 18.46.030(d) that would require the project to substantially conform to relevant design review criteria and standards of 18.41.100.
- Add a definition of "Height" and "Grade" to Chapter 18.12.
- Amend Section 18.16.060 to define "Height Limit" in residential zoning districts.

The Committee members concluded there discussion and directed staff to prepare the zoning ordinance code amendments and return to the Town Council with an ordinance accordingly.

**5. Future agenda items.** None

**6. Next meeting date | TBD.** None

**7. Adjournment.** The meeting adjourned at 10.25AM.

*The General Government Committee is a Town Council committee composed of two Council members: Council member Elizabeth Robbins as chairperson and Council member Beach Kuhl. The meeting will be held at Ross Town Hall located at 31 Sir Francis Drake Boulevard in Ross. In compliance with the Americans with Disabilities Act, if you need special assistance to participate in this meeting, please contact the Town Manager at (415) 453-1453, extension 107 or (415) 453-1950 (Fax). Notification at least 48 hours prior to the meeting will enable the town to make reasonable accommodation to help insure accessibility to this meeting.*