



Staff Report

RESOLUTION PLACING A PROPOSITION ON THE BALLOT FOR THE NOVEMBER 8, 2005 MUNICIPAL ELECTION REQUIRING VOTER APPROVAL OF CERTAIN AMENDMENTS TO THE HILLSIDE DEVELOPMENT STANDARDS; AND DIRECTING CITY ATTORNEY TO PREPARE AN IMPARTIAL ANALYSIS OF SAID PROPOSITION

Honorable Mayor and Council Members:

Summary

On July 12, 2005, the City Council considered this matter and asked staff to follow up on four items:

1. Simplifying the title of the proposition;
2. Analyzing whether specific provisions of the San Juan Hills Area Plan and the Western Hills Area Plan should be included in the proposition;
3. Including road development standards, which are currently contained in the Municipal Code, in the proposition; and
4. Determining whether a proponent of any amendments subject to a vote of the people under the proposed ordinance could be required to bear the costs associated with placing those amendments on the ballot.

The July 12, 2005 Staff Report and attached Resolution, Proposed Ordinance, and Belmont Zoning Ordinance Section 4.7 et seq. are attached hereto as Exhibit A for reference.

Background

As noted above, this item was considered at the July 12, 2005 meeting and referred back to staff for further analysis.

Discussion

The first issue raised was whether the title of the measure to be submitted to the voters could be simplified. It is critical that the title capture the essential elements of the measure, but staff has

modified the title for ease of reading. As an alternative, the Council could consider a much shorter, but less complete version as follows: “Shall the City of Belmont adopt an ordinance requiring a vote of the people for certain amendments to the City’s Hillside Development Standards?”

The second issue relates to whether certain policies of the Western Hills Area Plan and the San Juan Hills Area Plan should also be included in the language of the initiative. Those plans, which operate at the level of the General Plan, contain policy statements and other material such as identification of particular geologic hazards, vegetation, and wildlife. Rather than subjecting any changes to these documents to a vote of the people, staff has included the Zoning Map, in addition to the General Plan Land Use Map, in the revised proposition. This addresses the Council’s concerns that properties currently in HRO zones could be re-designated in violation of the intent of the proposition.

The third issue is whether amendments to the City’s current road development standards should be subject to a vote of the people. These standards, contained in Municipal Code sections 7-11, 7-12, and 7-14 and attached hereto, were adopted pursuant to the policies referenced in the Western Hills Area Plan and the San Juan Hills Area Plan. Staff has included these sections of the Municipal Code in the proposition.

The fourth issue is whether a proponent of any amendments subject to a vote of the people under the proposed ordinance could be required to pay the costs associated with placing those amendments on the ballot. Staff has not found any prohibition on requiring a proponent to pay for the cost of an election, and has included such a provision in the revised ordinance. In fact, proponents are routinely required to pay for the costs of staff evaluation of their development proposals. The cost of an election under this proposed ordinance could therefore also be added to the City’s resolution setting forth the schedule of developer fees.

Fiscal Impact

There is no updated information regarding the election costs beyond that which was provided in the July 12, 2005 Staff Report. The modified ordinance now includes a provision requiring a proponent of any amendments covered by the ordinance to pay for the costs of placing that matter on the ballot.

Public Contact

Posting of City Council agenda. This matter does not require a noticed public hearing.

Recommendation

Staff has prepared a modified Resolution with a new title reflecting the changes recommended by staff. Staff has also prepared a modified ordinance which makes minor wording changes and

adds the material discussed in this report.

If the City Council wishes to adopt a Resolution placing this Ordinance on the ballot, it can do so by voting on the modified resolution attached to this Staff Report.

Alternatives

1. Do not adopt the attached Resolution.
2. Refer the matter to staff for further analysis.
3. Continue the matter to a subsequent agenda.

Attachments

- A. Staff report, including Resolution, Proposed Ordinance, and current Belmont Zoning Ordinance Section 4.7 et seq. contained in Staff Report dated July 12, 2005.
- B. Modified Resolution, Revised Ordinance to be submitted to the voters, and Belmont Municipal Code sections 7-11, 7-12, and 7-13.

Respectfully submitted,

Marc L. Zafferano
City Attorney

Craig Ewing
Planning Director

ATTACHMENT A

Staff report, including Resolution, Proposed Ordinance, and current Belmont Zoning Ordinance Section 4.7 et seq. contained in Staff Report dated July 12, 2005.



Staff Report

RESOLUTION PLACING A PROPOSITION ON THE BALLOT FOR THE NOVEMBER 8, 2005 MUNICIPAL ELECTION REQUIRING VOTER APPROVAL OF 1) CERTAIN AMENDMENTS TO THE EXISTING HILLSIDE RESIDENTIAL AND OPEN SPACE ZONING DISTRICTS (HRO-1, HRO-2, AND HRO-3); AND 2) ANY AMENDMENTS TO THE GENERAL PLAN LAND USE DESIGNATION FOR LANDS CURRENTLY IDENTIFIED AS HILLSIDE RESIDENTIAL AND OPEN SPACE (HROP); AND DIRECTING CITY ATTORNEY TO PREPARE AN IMPARTIAL ANALYSIS OF SAID PROPOSITION

Honorable Mayor and Council Members:

Summary

The City Council has requested that a resolution be prepared placing a proposition on the ballot for the upcoming municipal election. The proposition would provide that any changes to the existing Hillside Residential and Open Space Zoning Districts (HRO-1, HRO-2, and HRO-3), except changes which would decrease the maximum allowed density of any property presently in such Districts, would have to be submitted for a vote of the people prior to becoming effective. In addition, any amendments to the General Plan Land Use designation for lands currently identified as Hillside Residential and Open Space (HROP) would have to be submitted to a vote of the people prior to becoming effective. The proposition would require a simple majority vote for passage.

Background

At a recent City Council meeting, Council Member Feierbach placed an Item 9 on the Council agenda requesting that this matter be considered at an upcoming meeting. Attached is a resolution which, if passed, would authorize the matter to be placed on the ballot.

Discussion

Elections Code section 9222 provides as follows:

Submission of proposition without petition

The legislative body of the city may submit to the voters, without a petition therefor, a proposition for the repeal, amendment, or enactment of any ordinance, to be voted upon at any succeeding regular or special city election, and if the

proposition submitted receives a majority of the votes cast on it at the election, the ordinance shall be repealed, amended, or enacted accordingly. A proposition may be submitted, or a special election may be called for the purpose of voting on a proposition, by ordinance or resolution. The election shall be held not less than 88 days after the date of the order of election.

The target dates are as follows:

August 12 - final day to place ballot measure (10-day examination period begins for anyone who wants to seek a writ or injunction re the measure).

August 17 -- last day to amend or withdraw ballot measure.

August 19 -- primary arguments in favor and against ballot measure due

August 19-29 -- 10-day calendar review for primary arguments

August 22 -- 10-day review ends for all public documents filed on or before August 12

August 29 -- last day to file rebuttal arguments

August 29 -- impartial analysis due by City Attorney

August 29-Sept 8 -- 10-day review for rebuttal to arguments and impartial analysis

Presently, the Hillside Residential and Open Space zoning districts (HRO-1, HRO-2 and HRO-3) are used to designate sensitive hillside lands in the western and southern sections of the City. The policies and standards of the HRO zones have been crafted over the last seventeen years through the development of the San Juan Hills Area Plan (1988) and Western Hills Area Plan (1990) and the creation of the Hillside Residential and Open Space zoning districts (1989, with subsequent amendments).

These policy plans and zoning rules work to assure that any development of lands respects the area's steep terrain, difficult geologic conditions (including active landslides) and lack of urban services, such as paved roads, sewers and drainage systems. These provisions include minimum allowed densities and lot sizes, both of which are determined by the slope of each property. In combination with policies which deter inappropriate grading and construction on unstable or steep slopes, the City can avoid unsuitable or potentially hazardous development, reduce the chance of property loss and avoid the unnecessary expenditure of public funds to support extreme hillside development.

In order to further assure that these hillside protection measures are preserved into the future, the Council may desire that future amendments to the HRO zoning standards be limited. In addition, the Council may wish to prohibit any up-zoning of properties currently designated as HROP in the San Juan Hills Area Plan and the Western Hills Area Plan. The purpose of this proposition, as currently worded, is to require that if a future Council desires to reverse the long-standing policies of the City and allow increased densities or up-zoning in these areas, such proposals would be subject to a vote of the citizens of Belmont.

Staff has also considered two alternatives for your review. An option that would be less

restrictive would be to limit the applicability of the proposition to only specific portions of Section 4.7 of the Zoning Ordinance. For example, if the proposition were limited only to Sections 4.7.9 (and included Table), 4.7.10(a), 4.7.11(a), and 4.7.12A, this would capture the slope density standards for all HRO Districts, but would allow a future Council to amend other parts of the ordinance, such as use limitations and other development standards. An option that would be more restrictive would be to add the San Juan Hills Area Policies and Western Hills Area Policies to the proposition, thus requiring voter approval for any changes to those policies. If the Council is interested in further exploration of these alternatives, staff can return with a revised staff report.

Per recent case law, council-sponsored initiative measures are defined as "projects" subject to CEQA. However, staff believes that several CEQA exemptions apply. Guidelines Section 16061(b)(3) provides, in relevant part, that "CEQA applies only to projects which have the potential for causing a significant effect on the environment." As the measure does not change any existing land use regulations related to development within the designated zoning districts, or change the designation of any lands subject to those regulations, the measure does not have the potential for causing a significant effect on the environment. In addition, Guidelines Sections 15307 and 15308 exempt from CEQA actions taken by regulatory agencies that involve procedures for the protection of natural resources and of the environment. The addition of a requirement for voter approval prior to any modifications to the HRO zoning standards except those which would decrease the intensity of development in those districts provides additional protections for natural resources and the environment in those areas. The purposes of the HRO district are described in Zoning Ordinance 4.7.1, which provides:

PURPOSE – The City Council finds and declares that certain areas of the City provide unique terrain features and add substantially to the character of the area, that the location and visibility of development therein will affect the visual quality of the environment, and that hillside development should preserve the natural terrain while providing a density of residential development compatible with the limitations of slope on the development site. The Council further finds that there are geologic and soils hazards in the area, steep slopes, and inadequate roadways making it necessary to reduce density in portions of the San Juan Hills Area to protect the public safety and to reduce significant and cumulative traffic impacts to the Ralston Avenue corridor. The objectives of the chapter's regulations are to encourage minimal grading and to reduce citizens' exposure to hazardous slopes by decreasing residential density as slope increases, to encourage clustering of homes and density transfer to reduce roadway and driveway grading, to regulate home size, and to encourage the voluntary merger of lots.

Thus, the Ordinance itself identifies the environmentally sensitive nature of these areas which would continue to be protected if the measure passes. If the Council adopts the proposed resolution, staff would file a Notice of Exemption for CEQA compliance with the State.

Fiscal Impact

The City Clerk's office has been in contact with County elections officials, which has estimated a cost of approximately \$10,000 to add this measure to the ballot. It should be noted that this amount is in addition to the estimated cost of \$24,000 for the regular municipal election.

Public Contact

Posting of City Council agenda. This matter does not require a noticed public hearing.

Recommendation

Staff recommends that if the Council wishes to submit this measure to the voters, it adopt the attached resolution.

Alternatives

1. Do not adopt the attached resolution.
2. Refer the matter to staff for further analysis.
3. Continue the matter to a subsequent agenda.

Attachments

1. Resolution and proposed ordinance for submittal to voters
2. Current Belmont Zoning Ordinance section 4.7 et seq.: Hillside Residential and Open Space (HRO) Zoning Districts

Respectfully submitted,

Marc L. Zafferano,
Interim City Attorney

Craig Ewing,
Planning Director

RESOLUTION NO. _____

**RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BELMONT
TO PLACE BEFORE THE VOTERS OF THE CITY OF BELMONT AN ORDINANCE
REQUIRING THAT CERTAIN AMENDMENTS TO THE EXISTING HILLSIDE
RESIDENTIAL AND OPEN SPACE DISTRICTS (HRO-1, HRO-2, AND HRO-3), AND
ANY AMENDMENTS TO THE GENERAL PLAN LAND USE DESIGNATION FOR
LANDS CURRENTLY IDENTIFIED AS HILLSIDE RESIDENTIAL AND OPEN SPACE
(HROP), BE APPROVED BY THE VOTERS OF THE CITY OF BELMONT**

WHEREAS, the City Council desires to submit to the voters at the municipal election on November 8, 2005 an ordinance that would require that certain amendments to the HRO-1, HRO-2, and HRO-3 Zoning Districts, and any amendments to the General Plan Land Use designation for land currently identified as Hillside Residential and Open Space (HROP), be approved by the voters.

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Belmont does hereby resolve as follows:

Section 1. That the City Council orders submitted to the voters at the General Municipal Election to be held and consolidated with the Statewide General Election on Tuesday, November 8, 2005, the following question:

"Shall an ordinance be adopted that requires that certain amendments to the Hillside Residential and Open Space zoning district (HRO-1, HRO-2, and HRO-3), and any amendments to the General Plan Land Use designation for lands currently identified as Hillside Residential and Open Space (HROP), be approved by the voters before becoming effective?"	YES
	NO

Section 2. The ordinance to be enacted by a majority of the voters pursuant to Section 1 above shall be in the form set forth in Exhibit A, attached hereto.

Section 3. This measure is submitted to the voters pursuant to Elections Code Section 9222.

Section 4. The ballots used at the election shall be in the form and content as is required by law.

Section 5. The City Attorney is hereby directed to prepare and submit an impartial analysis.

Section 6. The City Council authorizes _____ to prepare a written argument in favor of the ballot proposition, on behalf of the City Council, not to exceed 300 words. The City Council also authorizes submission of rebuttal arguments not to

exceed 250 words. The City Council authorizes _____ to prepare and submit a written rebuttal argument in the event a written argument opposing the initiative measure is submitted.

Section 7. The City Clerk is hereby directed to deliver forthwith certified copies of this Resolution to the Clerk of the Board of Supervisors of San Mateo County and the Registrar of Voters of San Mateo County promptly upon its adoption.

I hereby certify that the foregoing Resolution was duly and regularly passed and adopted by the City Council of the City of Belmont at a regular meeting thereof held on June 28, 2005 by the following vote:

AYES, COUNCILMEMBERS: _____

NOES, COUNCILMEMBERS: _____

ABSTAIN, COUNCILMEMBERS: _____

ABSENT, COUNCILMEMBERS: _____

CLERK of the City of Belmont

APPROVED:

MAYOR of the City of Belmont

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF BELMONT REQUIRING THAT CERTAIN AMENDMENTS TO THE EXISTING HILLSIDE RESIDENTIAL AND OPEN SPACE DISTRICTS (HRO-1, HRO-2, AND HRO-3), AND ANY AMENDMENTS TO THE GENERAL PLAN LAND USE DESIGNATION FOR LANDS CURRENTLY IDENTIFIED AS HILLSIDE RESIDENTIAL AND OPEN SPACE (HROP), BE APPROVED BY THE VOTERS OF THE CITY OF BELMONT

WHEREAS, on April 11, 1989 and then on August 8, 1991, the City Council after extensive public input adopted Ordinance Nos. 808 and 848, respectively, which are generally known as the Hillside Residential and Open Space (HRO) District;

WHEREAS, the purpose of said Ordinances is to promote and encourage the orderly development of the hillside area of the City by the application of regulations and requirements established to meet the particular problems associated with development of hillside areas, including, but not limited to, geologic problems, slope, safe access, and visibility; and

WHEREAS, the primary regulations of said Ordinances are set forth at Section 4.7 et seq. of the Belmont Zoning Ordinance; and

WHEREAS, the City's General Plan, through the San Juan Hills Area Plan and the Western Hills Area Plan, designates certain property within the hillside area of the City as Hillside Residential and Open Space (HROP); and

WHEREAS, the City now desires that certain amendments to the existing HRO-1, HRO-2, and HRO-3 districts, and any amendments to the General Plan Land Use designations for lands currently identified as Hillside Residential and Open Space (HROP), be approved by the voters before becoming effective.

The People of the City of Belmont do ordain as follows:

Section 1. Certain Amendments to the HRO Ordinance Must Be Approved by the Voters.

Amendments to the existing Hillside Residential and Open Space Districts, Section 4.7 et seq. of the Belmont Zoning Ordinance, except amendments which would decrease the maximum allowed density of any property presently in such Districts, shall be approved by the Belmont voters before taking effect.

Section 2. Amendments to the General Plan Land Use designation for lands currently identified as Hillside Residential and Open Space (HROP) Must Be Approved by the Voters.

Lands currently classified on the City's General Plan Land Use Map, through the San Juan Area Hills Plan, and the Western Hills Area Plan as "HROP", as of November 8, 2005, shall not be amended to a land use classification other than a land use classification designated "HROP" unless the amended land use classification is approved by the Belmont voters.

Section 3. Publication and Effective Date.

This Ordinance shall take effect then (10) days after its adoption by the voters of Belmont, and prior to the expiration of 15 days from the passage thereof shall be published at least once in the San Mateo County Times, a newspaper of general circulation, published and circulated in the City of Belmont, County of San Mateo, thenceforth and thereafter the same shall be in full force and effect.

Section 5. Severability

In the event any section or portion of this ordinance shall be determined invalid or unconstitutional, such section or portion shall be deemed severable and all other sections or portions hereof shall remain in full force and effect.

REGULAR

ORDINANCE NO.

TITLE: AN ORDINANCE OF THE CITY OF BELMONT REQUIRING THAT CERTAIN AMENDMENTS TO THE EXISTING HILLSIDE RESIDENTIAL AND OPEN SPACE DISTRICTS (HRO-1, HRO-2, AND HRO-3), AND ANY AMENDMENTS TO THE GENERAL PLAN LAND USE DESIGNATION FOR LANDS CURRENTLY IDENTIFIED AS HILLSIDE RESIDENTIAL AND OPEN SPACE (HROP) BE APPROVED BY THE VOTERS OF THE CITY OF BELMONT PRIOR TO BECOMING EFFECTIVE

HISTORY: This Ordinance was approved by the voters at the general election On November 8, 2005.

AYES:

NOES:

APPROVED:

Dave Warden
Mayor of the City of Belmont

ATTEST:

Terri Cook
Clerk of the City of Belmont

APPROVED AS TO FORM:

Marc L. Zafferano
City Attorney of the City of Belmont

ORDAINING CLAUSE:

THE CITIZENS OF THE CITY OF BELMONT DO ORDAIN AS FOLLOWS:

ATTACHMENT B

Modified Resolution
Revised Ordinance to be submitted to the voters
Belmont Municipal Code sections 7-11, 7-12, and 7-13

RESOLUTION NO. _____

**RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BELMONT
TO PLACE BEFORE THE VOTERS OF THE CITY OF BELMONT AN
ORDINANCE REQUIRING THAT CERTAIN AMENDMENTS TO THE
EXISTING HILLSIDE RESIDENTIAL AND OPEN SPACE DISTRICTS (HRO-1,
HRO-2, AND HRO-3); ANY AMENDMENTS TO MUNICIPAL CODE
SECTIONS 7-11, 7-12, AND 7-13; AND ANY AMENDMENTS TO THE
GENERAL PLAN LAND USE DESIGNATION FOR LANDS CURRENTLY
IDENTIFIED AS HILLSIDE RESIDENTIAL AND OPEN SPACE (HROP), BE
APPROVED BY THE VOTERS OF THE CITY OF BELMONT**

WHEREAS, the City Council desires to submit to the voters at the municipal election on November 8, 2005 an ordinance that would require that certain amendments to the HRO-1, HRO-2, and HRO-3 Zoning Districts, any amendments to Belmont Municipal Code sections 7-11, 7-12, and 7-13, and any amendments to the General Plan Land Use designation for land currently identified as Hillside Residential and Open Space (HROP), be approved by the voters.

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Belmont does hereby resolve as follows:

Section 1. That the City Council orders submitted to the voters at the General Municipal Election to be held and consolidated with the Statewide General Election on Tuesday, November 8, 2005, the following question:

"Shall the City of Belmont adopt an ordinance requiring a vote of the people for certain amendments to the Hillside Residential and Open Space zoning district (HRO-1, HRO-2, and HRO-3), any amendments to Belmont Municipal Code sections 7-11, 7-12, and 7-13, and any amendments to the General Plan Land Use designation for lands currently identified as Hillside Residential and Open Space (HROP)?"	YES
	NO

Section 2. The ordinance to be enacted by a majority of the voters pursuant to Section 1 above shall be in the form set forth in Exhibit A, attached hereto.

Section 3. This measure is submitted to the voters pursuant to Elections Code Section 9222.

Section 4. The ballots used at the election shall be in the form and content as is required by law.

Section 5. The City Attorney is hereby directed to prepare and submit and impartial analysis.

Section 6. The City Council authorizes _____ to prepare a written argument in favor of the ballot proposition, on behalf of the City Council, not to exceed 300 words. The City Council also authorizes submission of rebuttal arguments not to exceed 250 words. The City Council authorizes _____ to prepare and submit a written rebuttal argument in the event a written argument opposing the initiative measure is submitted.

Section 7. The City Clerk is hereby directed to deliver forthwith certified copies of this Resolution to the Clerk of the Board of Supervisors of San Mateo County and the Registrar of Voters of San Mateo County promptly upon its adoption.

I hereby certify that the foregoing Resolution was duly and regularly passed and adopted by the City Council of the City of Belmont at a regular meeting thereof held on June 28, 2005 by the following vote:

AYES, COUNCILMEMBERS: _____

NOES, COUNCILMEMBERS: _____

ABSTAIN, COUNCILMEMBERS: _____

ABSENT, COUNCILMEMBERS: _____

CLERK of the City of Belmont

APPROVED:

MAYOR of the City of Belmont

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF BELMONT REQUIRING THAT CERTAIN AMENDMENTS TO THE EXISTING HILLSIDE RESIDENTIAL AND OPEN SPACE DISTRICTS (HRO-1, HRO-2, AND HRO-3), ANY AMENDMENTS TO BELMONT MUNICIPAL CODE SECTION 7-11, 7-12, AND 7-13, AND ANY AMENDMENTS TO THE GENERAL PLAN LAND USE DESIGNATION FOR LANDS CURRENTLY IDENTIFIED AS HILLSIDE RESIDENTIAL AND OPEN SPACE (HROP), BE APPROVED BY THE VOTERS OF THE CITY OF BELMONT

WHEREAS, on April 11, 1989 and then on August 8, 1991, the City Council after extensive public input adopted Ordinance Nos. 808 and 848, respectively, which are generally known as the Hillside Residential and Open Space (HRO) District;

WHEREAS, the purpose of said Ordinances is to promote and encourage the orderly development of the hillside areas of the City by the application of regulations and requirements established to meet the particular problems associated with development of hillside areas, including, but not limited to, geologic problems, slope, safe access, and visibility; and

WHEREAS, the primary regulations of said Ordinances are set forth at Section 4.7 et seq. of the Belmont Zoning Ordinance and in Sections 7-11, 7-12, and 7-13 of the Belmont Municipal Code; and

WHEREAS, the City's General Plan, through the San Juan Hills Area Plan and the Western Hills Area Plan, designates certain property within the hillside areas of the City as Hillside Residential and Open Space (HROP); and

WHEREAS, the City now desires that certain amendments to the existing HRO-1, HRO-2, and HRO-3 districts, any amendments to Belmont Municipal Code sections 7-11, 7-12, and 7-13, and any amendments to the General Plan Land Use designations for lands currently identified as Hillside Residential and Open Space (HROP), be approved by the voters before becoming effective.

The People of the City of Belmont do ordain as follows:

Section 1. Certain Amendments to the HRO Ordinance Must Be Approved by the Voters.

Amendments to the existing Hillside Residential and Open Space Districts, Section 4.7 et seq. of the Belmont Zoning Ordinance, except amendments which would decrease the maximum allowed density of any property presently in such Districts, shall be approved by the Belmont voters before taking effect.

Section 2. Amendments to the General Plan Land Use designation for lands currently identified as Hillside Residential and Open Space (HROP) Must Be

Approved by the Voters.

Lands currently designated on the City's General Plan Land Use Map, through the San Juan Area Hills Plan, and the Western Hills Area Plan as "HROP", and lands currently classified as HRO-1, HRO-2, and HRO-3 on the City's Zoning Map, as of November 8, 2005, shall not be amended to a land use classification other than a land use classification designated "HRO" or "HROP" unless the amended land use classification is approved by the Belmont voters.

Section 3. Municipal Code Road Development Standards.

Amendments to existing Municipal Code Sections 7-11, 7-12, and 7-13 shall be approved by a vote of the people before becoming effective.

Section 4. Costs of Election.

The proponent of any amendments subject to a vote of the people under this ordinance shall pay all costs associated with placing said amendments on the ballot.

Section 5. Publication and Effective Date.

This Ordinance shall take effect then (10) days after its adoption by the voters of Belmont, and prior to the expiration of 15 days from the passage thereof shall be published at least once in the San Mateo County Times, a newspaper of general circulation, published and circulated in the City of Belmont, County of San Mateo, thenceforth and thereafter the same shall be in full force and effect.

Section 6. Severability

In the event any section or portion of this ordinance shall be determined invalid or unconstitutional, such section or portion shall be deemed severable and all other sections or portions hereof shall remain in full force and effect.

REGULAR

ORDINANCE NO.

TITLE: AN ORDINANCE OF THE CITY OF BELMONT REQUIRING THAT CERTAIN AMENDMENTS TO THE EXISTING HILLSIDE RESIDENTIAL AND OPEN SPACE DISTRICTS (HRO-1, HRO-2, AND HRO-3), ANY AMENDMENTS TO BELMONT MUNICIPAL CODE SECTIONS 7-11, 7-12, AND 7-13, AND ANY AMENDMENTS TO THE GENERAL PLAN LAND USE DESIGNATION FOR LANDS CURRENTLY IDENTIFIED AS HILLSIDE RESIDENTIAL AND OPEN SPACE (HROP) BE APPROVED BY THE VOTERS OF THE CITY OF BELMONT PRIOR TO BECOMING EFFECTIVE

HISTORY: This Ordinance was approved by the voters at the general election On November 8, 2005.

AYES:

NOES:

APPROVED:

Dave Warden
Mayor of the City of Belmont

ATTEST:

Terri Cook
Clerk of the City of Belmont

APPROVED AS TO FORM:

Marc L. Zafferano
City Attorney of the City of Belmont

ORDAINING CLAUSE:

THE CITIZENS OF THE CITY OF BELMONT DO ORDAIN AS FOLLOWS:

Sec. 7-11. All-weather access to premises prerequisite to issuance of building permit.

(a) No building permit shall be issued to construct any building or improvement unless the site of the proposed building or improvement has access to a street or road which provides all-weather ingress and egress to public safety vehicles, including but not limited to fire protection, police and ambulance services.

(b) This section shall not apply to applications for building permits to make alterations or improvements to an existing building.

(Ord. No. 630, § 3, 6-26-78)

Sec. 7-12. Determination of geotechnical hazards; geotechnical reports; procedure for review; geologic hazards in San Juan Hills area.

(a) Prior to the issuance of a building or grading permit, the building official shall ascertain whether the proposed site, or portion thereof, is located in an area of potential geotechnical hazard as defined in the text and maps of the adopted seismic safety element of the Belmont general plan. If a site meets any one of the following criteria, it shall be considered to have potential geotechnical hazards which warrant further, more specific recommendations:

(1) The site is located on a mapped active, potentially active or inactive fault;

(2) The site is located in an area where the following are generally known to exist:

a. Expansive soils;

b. Moderate to low stability of cuts;

c. Fair to poor earthquake stability;

d. Fair to poor foundation conditions;

e. High susceptibility to landsliding.

(3) The site is located in an area where, in the opinion of the building official based upon his knowledge of the conditions in the area, potential geological hazards may exist which could adversely affect the proposed development or surrounding public and private improvements. In making the decision as to whether a site may have potential geotechnical hazards, the building official shall refer to the adopted seismic safety element of the Belmont general plan and may refer to such other published and unpublished documents, including but not limited to the maps and reports of the U.S. Geological Survey, "San Francisco Bay Region Environment and Resources Planning Study."

(b) Should the site, or area to be affected by the development, fall within the above categories, the applicant shall submit a preliminary opinion from a registered soils engineer as to the degree of hazard associated with the proposed development and recommendations where further studies are needed. Should said soils engineer recommend further investigations or studies, they shall be prepared prior to the issuance of a building permit. Any geologic reports submitted to the building official in compliance with this section shall be transmitted to the city geologist, who shall review and provide comments and recommendations upon the adequacy of said report. When the city geologist has determined that the report and recommendations are adequate, said recommendation shall be incorporated into the development plan and specifications, and adherence to those recommendations shall be a condition of the building permit. Such decision shall be subject to review and approval by the city planning commission.

(c) Nothing contained in this section shall require the submittal of a geologic report where an adequate geologic report has been previously prepared, submitted and accepted by the City of Belmont. Determination of report adequacy shall be made by the building official, who may seek the advice of the city officials in making said determination.

(d) *Geologic Hazards in San Juan Hills Area.* The city council recognizes that geologic hazards threaten life and property in certain locations in the city. It is the intent of the city council that land subject to hazardous geologic conditions be used and developed in a manner that protects public health, safety and welfare. The city council has obtained geologic maps based on study of aerial photographs, field investigations and other available geologic studies which portray the geologic conditions of the San Juan Canyon Study Area with considerable accuracy. Given this level of information, the city council finds it appropriate to adopt these maps and related land use policies to guide all decisions to which they are relevant.

(1) *Purpose.* The purposes of this subsection are:

- a. To prevent increases in the potential for loss of life, injury and property damage caused by geologic hazards in the San Juan Hills Area.
- b. To specify geologic maps which will serve as a consistent basis for evaluating development applications in the San Juan Hills Area.
- c. To control land development in the San Juan Hills Area in a manner consistent with known geologic conditions.
- d. To protect the city from liability from failure to consider available geologic information in making development decisions.

(2) *Applicability.* This subsection shall apply to all properties shown on the Engineering Geology Map and Ground Movement Potential Map as the San Juan Canyon Study Area. Actions under the zoning, subdivision and grading ordinances shall be consistent with the provisions of this subsection.

(3) *Adoption of geologic maps.* The city hereby adopts the Engineering Geologic Map (April 1985) and Ground Movement Potential Map (April 1985) prepared at a scale of 1" = 200' by William Cotton and Associates as official geologic maps for the San Juan Hills Area.

(4) *Modification of geologic maps.* Further study may indicate the need to modify the geologic maps by adjusting the boundaries between map units. Modifications can be made as follows:

- a. An applicant, property owner, or authorized representative of a property owner may initiate proceedings to modify the geologic maps.
- b. Documentation of the reasons for modification consisting of map at a scale of 1" = 200' or larger and a report prepared by a certified engineering geologist shall be submitted with all applications for geologic map modification.
- c. The city geologist shall review all such applications and prepare a written report to the planning and community development department containing his or her findings and recommendations. The modification may be approved by the planning and community development director if the city geologist finds: 1) that new information has been provided which demonstrates that the existing boundary is inaccurate; and 2) that the proposed change will correct and update the map.
- d. Decisions by the planning and community development director may be appealed by the applicant to the city council.

e. Modifications to the maps may be initiated by the city council upon recommendation of the city geologist. In such cases, the city council will hold a noticed public hearing on the proposed modification. Following the public hearing, the city council may modify the maps, if the city geologist finds: 1) that new information has been provided which demonstrates that the existing boundary is inaccurate; and 2) that the proposed change will correct and update the map.

f. Changes to the maps will be posted within thirty (30) days of approval of a map modification. Each change will be identified on the map by date, file number or other means of identification determined appropriate by the planning and community development director.

(5) *Maintenance of maps and records.* The planning and community development department shall be responsible for maintaining the geologic maps and records of actions modifying the maps. Up-to-date maps and copies of geologic and geotechnical reports will be kept at city hall in the planning and community development department.

(6) *Geologic criteria for development.* Table 1 establishes the land use restrictions based on geologic hazards which will apply in considering applications for building and grading permits, rezoning, formation of assessment districts, and divisions of land within the San Juan Hills Area where:

a. *Residential uses* include all single-family and multiple-family residential structures and accessory structures, including garages and driveways, which are permitted or conditional uses in residential districts.

b. *Roads* include both public and private rights-of-way.

c. *Intensive and critical uses* include schools, churches and uses with comparable occupancy characteristics; and structures and facilities critical to the city's ability to respond to a disaster or maintain an acceptable level of public safety, such as fire stations and water tanks.

Table 1. Geologic Criteria for Development

TABLE INSET:

Symbol	Geotechnical Parameters	Land Use		
		Residential Uses	Roads	Intensive/Critical Uses
Sbr	Bedrock with thin soil	Y	Y	Y
Sun	Unconsolidated sediment	Y	Y	Y*
Sex	Highly expansive soil	Y*	Y	Y*
Sff	Fill on nearly flat ground	Y*	Y*	Y*

Pfs	Potential settlement or failure of fill on a moderate slope	Y*	Y*	N*
Ps	Potential shallow (-10') landslide failure	Y*	Y*	N*
Pd	Potential deep (+10') landslide failure	N*	N*	N*
Ms	Actively moving shallow (-10') landslide failure	N*	N*	N*
Pdf	Potential debris flow movement	N	N*	N
Md	Actively moving deep landslide (+10')	N	N	N

Y Yes (permitted)

Y* The land use would be permitted, provided geologic data indicates geologic conditions and/or engineering solutions are favorable.

N* The land use would not be permitted unless geologic data indicates geologic conditions are more favorable than mapped or engineering solutions will reduce the risk to acceptable levels.

N No, the use is not permitted. The map must be changed to show that this hazard does not exist before development will be allowed. The map change must be based on geologic data showing that the map was in error or that improvements have been undertaken which remove the hazard.

(7) *Exceptions to the geologic criteria.* Exemptions to the geologic criteria may be authorized by the city under the following circumstances:

a. *Alterations to existing structures.* The building official shall issue a building permit for alteration to an existing structure rated Y*, N*, or N in table 1 without requiring additional geologic or geotechnical investigation, if the alteration will not modify the structure's foundation. If the alteration will modify the structure's foundation, the application shall be referred to the city geologist, who shall specify any geologic or geotechnical investigations needed before a building permit can be processed.

b. *Construction of accessory structures and appurtenances.* The building official shall issue a building permit for the construction of accessory structures and appurtenances, including garages, decks, swimming pools, gazebos and other such structures, which are not intended for living space, on lots with an existing primary use and rated as Y*, N* or N on table 1, if the city engineer finds, based on available information, that the construction will not endanger the stability of the site or any adjacent property. If information is not available to permit such a finding, the city engineer shall refer the application to the city geologist, who shall specify any geologic or geotechnical investigations needed before a building permit can be processed.

c. *Repair or reconstruction of a damaged building.* The building official shall issue a building permit for the repair or reconstruction of any building which is rated Y*, N*, or N in table 1 and is more than fifty (50) percent destroyed by causes other than ground movement, if the city engineer finds, based on available information, that the repair or reconstruction will not significantly endanger the stability of the site or any adjacent property. If information is not available to permit such finding, the city engineer shall

refer the application to the city geologist, who shall specify any geologic or geotechnical investigations needed before a building permit can be processed.

d. *Other exceptions/planning commission consideration and action.* An application for any project (building, rezoning, land division, formation of an assessment district, road construction, or grading) which deviates from the criteria in table 1, other than those specified in a, b and c above, must be submitted to the department of planning and community development and accompanied by a geotechnical report or engineering geologic report prepared according to a scope of work approved by the city geologist. The city geologist shall review the report and submit findings and recommendations to the department of zoning and planning and community development. The application shall be considered by the planning commission, which may approve the application upon recommendation of the city geologist.

(8) *Preparation and review of geologic and geotechnical reports.* All geologic and geotechnical reports will be prepared in conformance with guidelines available from the city. Reports submitted in support of site improvements will contain a statement of a California certified engineering geologist that proposed projects, as designed, will be reasonably safe for geologic hazards. The city geologist will review all reports. For a project to be approved, the city geologist must find that the proposed project would not significantly endanger the stability of the site or any other property. Recommendations of the city geologist will become conditions for any development which is approved. The applicant's geologist will inspect work in progress to ascertain adherence to the conditions and certify the completed project as conforming to the approved plans. (Ord. No. 630, § 3, 6-26-78; Ord. No. 794, § 2, 5-24-88)

Sec. 7-13. Streets required.

(a) Prior to the issuance of a building permit for the construction of any building, the building official shall ascertain that the proposed site is adjacent to and served by streets that are improved to current city standards adopted by resolution of the city council and adequate for the use proposed for the structure for which the permit is sought. When the building official needs assistance in determining the improvement and adequacy of a street, he shall consult with the city engineer. In the event that such streets do not meet such current city standards, the permit may be issued upon the dedication of a right-of-way where necessary and the execution of an agreement to install such improvements as are determined by the city engineer to be necessary in a manner satisfactory to the city engineer prior to occupancy. Such agreement shall be secured by a bond in an amount sufficient to cover the estimated costs of such improvements. The city engineer may recommend that the bond be waived when, in his opinion, circumstances make such waiver desirable, and that the agreement be recorded with the county recorder to secure the future construction of the improvements.

(b) As used herein, "construction of any building" shall mean the construction of a new residence in an R-1 zone; in any other zone it shall mean the construction of a new building or an addition of twenty-five (25) percent or more of the square footage on an existing building, provided that in no case shall improvements be requested in excess of the estimated cost of the addition or when an addition to a single-family residence will not alter its use as a single-family residence.

(c) In cases where there are extraordinary conditions affecting the property, the planning commission shall have the right to modify the strict application of this section. In such cases, the applicant shall request an informal hearing before the planning commission, and if after such hearing the commission finds that by following the strict letter of this section, unreasonable restrictions, unnecessary and extraordinary hardship or damage will be imposed upon the applicant, then the provisions hereof may be modified, in harmony with the general purpose and objectives hereof and in a manner that will protect the public health, safety and welfare of the people of the city.

(d) The decision of the planning commission may be appealed to the city council by any person adversely affected by such decision by filing a notice of the appeal with the city clerk within ten (10) days after the action by the commission is taken. The city council shall proceed to hear and determine the matter, considering the action of the planning commission.

(e) *Hillside Road Standards - San Juan Hills.*

(1) *Purposes.* The purposes of this chapter [subsection] are to:

- a. Provide for safe movement of vehicles and pedestrians in the San Juan Hills.
- b. Minimize grading and vegetation removal in constructing roads in the San Juan Hills by controlling the grade, widths of rights-of-way and paving, and other design and construction features.
- c. Allow flexibility in setting standards to prevent erosion, flooding and slope failure, and to minimize the environmental impacts of road construction.

(2) *Applicability.* The standards in this chapter [subsection] shall apply to:

- a. Design and construction of all new public and private roads and road extensions in the area covered by the San Juan Hills Area Plan.
- b. Improvement of all or part of any road designated as "unimproved" in the San Juan Hills Area Plan.
- c. Roads designed and constructed as part of a new subdivision or resubdivision in the San Juan Hills.
- d. Rebuilding or upgrading of existing improved roads in the San Juan Hills.
- e. These standards shall not apply to routine maintenance and repair of public or private roads in the San Juan Hills.
- f. In case of conflict with other city regulations, these standards shall prevail.

(3) *Definitions.* The following definitions pertain to terms used in this chapter [subsection]:

- a. *Cross slope* is the inclination of the ground surface across a road alignment expressed as a percent obtained by dividing vertical distance by horizontal distance. Cross slope is measured along a hundred-foot section drawn perpendicular to the contours and extending fifty (50) feet from each side of the center of the road alignment.
- b. *Cul-de-sac* is a street open at only one end with a turnaround at the other.
- c. *Emergency road* is a one-lane, all-weather road passable by emergency equipment. An emergency road is not considered adequate access for purposes of section 7-11.
- d. *Improved road* is any paved, two-lane road in the San Juan Hills which is not shown on figure 2 of the San Juan Hills Area Plan as "unimproved."
- e. *Paper road* is an unbuilt right-of-way as shown on figure 2 of the San Juan Hills Area Plan.

- f. *Paved width* is the total width of road, improvements, including traffic lanes, parking lanes, gutters, curbs and sidewalks.
- g. *Private road* is any right-of-way which has not been accepted by or on behalf of the city as a public road.
- h. *Public road* is any right-of-way which has been dedicated to the City of Belmont and accepted by or on behalf of the city as a public road.
- i. *Road improvement plan* is a plan prepared pursuant to paragraph (10)a) or (10)b) of this subsection for the improvement to the standards contained herein of an unimproved road or road segment in the San Juan Hills Area.
- j. *Traffic lanes* are the portion of a public or private road consisting of paved lanes for vehicular travel.
- k. *Turnaround* is a space in a public right-of-way or a private road large enough to permit the turning around of a large vehicle, particularly a firetruck. It may take various configurations, including, for example, a circle, bulb, or hammer-head.
- l. *Unimproved roads* are paper roads and unpaved substandard roads as shown on figure 2 of the San Juan Hills Area Plan. There are fourteen (14) unimproved roads in the San Juan Hills: Upper Lock, Lower Lock, Marburger, Bartlett, Marsten (between Bishop and San Juan), Marsten (between Christian and Green Court), Naughton, Alhambra, Monte Cresta, San Ardo, Green Court, East Laurel (between Marsten and San Juan), East Laurel (between Marsten and Adelaide), and Ralston frontage road.
- m. *Unimproved road segment* is the part of an unimproved road between an existing paved road and an area through which the road cannot be reasonably extended because of severe physical constraints such as geologic instability or excessive slope. The length of an unimproved road segment is limited by the cul-de-sac standards set forth in paragraph (7) of this subsection.

(4) *Standards for hillside roads generally.*

- a. All roads shall be designed to adequately handle the traffic of proposed development and constructed to engineering standards acceptable to the director of public services.
- b. All roads shall be designed and constructed to provide adequate ingress and egress for emergency services vehicles.
- c. Sight distance, curve radii, access to abutting properties, and intersections of all hillside roads shall be designed to accepted engineering standards as determined by the director of public services.
- d. All new hillside roads shall be located and designed to minimize grading.
- e. Curbs and gutters will be designed to meet drainage requirements as determined by the director of public services.
- f. Where sidewalks and on-street parking are provided on only one (1) side of a road, they shall be on the same side unless the director of public services determines that traffic safety requires separation.
- g. The maximum grade of a hillside road will be fifteen (15) percent. When supported by detailed engineering studies, the director of public services may approve a grade of up to eighteen (18) percent for a distance not to exceed one hundred (100) feet.
- h. Utilities shall be underground, according to utility company specifications and standards, prior to paving new roads.
- i. Cul-de-sacs shall be no longer than eight hundred (800) feet with a turnaround radius of thirty-two (32) feet. Longer cul-de-sacs and smaller turnarounds may be permitted by

the authority approving a road improvement upon the recommendation of the director of public services based on consultation with the fire chief and specific evaluation of the following:

1. Availability of a through connection via an emergency road.
 2. Number of lots/houses/occupants to be served by the cul-de-sac.
 3. Type of construction of buildings (e.g. fire-retardant roofs and siding, interior sprinklers).
 4. Water pressure and availability of a secondary water main.
 5. Proximity to fire station and hydrant.
 6. Street width.
- (5) *Width standards for hillside roads.*
- a. The right-of-way shall be wide enough to accommodate all required improvements, including earth retention systems.
 - b. Public utility easements shall be provided on both sides of the road. The easements generally shall be five (5) feet wide with variations as appropriate to meet the specific utility requirements.
 - c. The basic hillside road shall have two (2) traffic lanes, and gutters, curbs, parking lanes and sidewalks on both sides of the road for a paved width of forty-one (41.0) feet as shown in table 1.

Table 1: Paved Width of Hillside Roads
TABLE INSET:

<i>Paved Element</i>	<i>Minimum Width</i>
Traffic lanes.....	20.0' (two 10-foot lanes)
Gutters.....	3.0' (1.5' each side)
Curbs.....	1.0' (0.5' each side)
Parking lanes.....	11.0' (5.5' each side)*
Sidewalks.....	6.0' (3.0' each side)**
Total width =.	41.0'

* Effective width is 7.0' per side including 1.5' gutter.

** Effective width is 3.5' per side including 0.5' curb.

(6) *Elimination of sidewalks and/or parking lanes.* When necessary to meet the purposes of this ordinance [subsection], the width of a proposed hillside road or road segment may be reduced by eliminating sidewalks and/or parking lanes in the following order:

- a. Sidewalk on one side.

- b. Sidewalk and parking lane on one side.
- c. Sidewalks on both sides and parking lane on one side.

Changes in total width shall be at least one hundred (100) feet apart within a single road improvement project. The administrative or legislative body with authority to approve the road improvement shall be guided by table 2 in determining when to permit elimination of sidewalks and/or parking lanes.

Table 2: Hillside Road Width Related to Cross Slopes
TABLE INSET:

Cross Slope*	Traffic Lanes	Curbs and Gutters	Parking Lanes	Sidewalks	Total Width
20% or less	20'	2' both sides	5.5' both sides	3' both sides	41.0'
21%--30%	20'	2' both sides	5.5' both sides	3' one side	38.0'
31%--40%	20'	2' both sides	5.5' one side	3' one side	32.5'
41%--50%**	20'	2' both sides	5.5' one side	none	29.5'

* Cross slopes should be calculated from a detailed engineering topographic map prepared by a registered civil engineer or licensed land surveyor according to specifications required for a grading plan (section 9-25). The calculations should be made in the following manner:

1. If the proposed road improvement is 100 feet long or less, cross slopes shall be calculated at the beginning, midpoint and end, and averaged.
2. If the proposed road improvement is over 100 feet long, cross slopes shall be calculated at least every 50 feet and averaged for each 100 foot segment.

** Road construction is not normally permitted where the cross slope exceeds 50% unless detailed engineering evaluation demonstrates that safe, stable construction is possible.

(7) *Exceptions.* Exceptions to any of the hillside road standards may be granted by the administrative or legislative body approving the road improvement project upon recommendation of the director of public services based on consultation with the fire chief and appropriate engineering evaluations. To grant an exception, the approving body must make all of the following findings:

- a. Granting the exception will not unduly impair vehicular or pedestrian safety, or emergency access.
- b. Granting the exception will result in road improvement which is consistent with the San Juan Hills Area Plan and other city ordinances.
- c. Reducing the standard is necessary to avoid excessive grading or vegetation removal or to reduce the risk of erosion, flooding or slope failure.

(8) *Authorization of right-of-way width of less than forty feet.* This section [paragraph], when adopted by a four-fifths vote of the city council, authorizes the director of public

services to approve plans for hillside roads with rights-of-way narrower than forty (40) feet as required by section 1805 of the California Streets and Highways Code, when those roads will be constructed in accord with the standards set forth in this ordinance [subsection].

(9) *Improvement plans for unimproved roads.* To ensure adequate emergency access, public safety, and drainage improvements, the city requires an approved road improvement plan prior to granting a building permit for a new structure or enlargement of an existing structure on property accessible only from an unimproved road. The road improvement plan specifies the design and financing of road improvements for an entire unimproved road or unimproved segment on which the property is located. The plan must be submitted by property owner(s) to the director of public services along with a fee set by resolution of the city council. Two (2) types of plans are permitted.

a. A plan for an entire unimproved road which shall include:

1. A plan for grading prepared by a registered civil engineer meeting specifications set by the director of public services. The plan must provide sufficient detail to show clearly the extent and impact of proposed grading, including the limits of the area to be graded; locations, dimensions and slopes of cuts and fills; existing and proposed finished grade; location and heights of proposed retention systems; proposals for drainage and erosion control.
2. Design for road improvements meeting the standards of this ordinance [subsection].
3. Report signed by a licensed geotechnical engineer, based on geologic and geotechnical investigation of the alignment and review of the preliminary design, concluding that the proposed road will be geologically stable as per section 7-12(d).
4. Details of proposed method of financing road improvements, such as assessment district, reimbursement agreement or other mechanism.
5. Timetable for undertaking the road improvements.
6. Method of financing and plan for maintenance of the road, if it is to be maintained as a private road.
7. Estimation of need for on-street parking and mean of providing it (such as parking bays and additional off-street parking), if the proposed road design does not include parking lanes on both sides.
8. Topographic map showing how access can be provided to abutting properties.
9. Evidence of support for the project from owners of property abutting the road proposed for improvement.
10. Environmental checklist and other required environmental data.
11. If the proposal is for a cul-de-sac, a conclusion, supported by the fire chief, that the proposed cul de sac length and turnaround design are adequate for emergency services.

or:

b. A plan for an unimproved road segment between an existing paved road and an area where physical constraints, such as very steep slopes or geologic instability, effectively preclude construction of a through connection. The plan shall include all items required in a plan for an entire unimproved road, plus:

1. A report signed by a licensed geotechnical engineer concluding that the physical constraints are such that a stable road cannot be reasonably constructed through to a paved road. The report must describe the specific constraints precluding a through road

and evaluate the impacts and costs of methods of overcoming the constraints through removal or engineering solutions.

2. A plan with recommendations regarding access to properties abutting the part of the road which will not be improved under the proposed project, including evidence of support for the recommendations from affected property owners.

(10) *Adoption of a road improvement plan.* A plan for improvement of an unimproved road or road segment must be considered at a public hearing held by the planning commission. Written notice of the hearing shall be mailed to owners of record of all parcels abutting the proposed road or road segment. The planning commission shall make a recommendation to the city council regarding each finding listed below. Final action on a road improvement plan shall be taken by the city council. In adopting a road improvement plan, the city council must make all of the following findings:

- a. The road improvement plan is consistent with the purposes and policies of the San Juan Hills Area Plan; and
- b. The proposed project provides for safe vehicular and pedestrian movement; and
- c. The road has been designed to minimize grading and vegetation removal to the extent feasible; and
- d. Drainage, erosion control and slope stability have been fully addressed in the design of the road improvements; and
- e. The applicants have demonstrated that adequate financing is available to construct and maintain the road as proposed; and
- f. Access to abutting properties has been adequately considered in the design of the road improvements; and
- g. If the project is for a cul-de-sac, the length and turnaround design are appropriate and consistent with emergency access requirements.
- h. If the plans is for an unimproved road segment, the city council must have all of the above findings, plus:
 1. A stable, safe, through road cannot be reasonably constructed because of physical constraints; and
 2. Recommendations for access to properties abutting the part of the road which would be improved under the plan are reasonable and consistent with the purposes and policies of the San Juan Hills Area Plan.

(11) *Authorization for construction.* Prior to any grading, vegetation removal or other construction activity pursuant to an approved road improvement plan, the applicant must submit a final grading plan and engineering drawings and specifications to the department of public services. The director of public services shall issue an authorization to proceed after reviewing the final plans and making the following determinations:

- a. The applicant has entered into an agreement with the city to complete the improvements at the applicant's expense and adequate security to ensure performance has been posted with the city as specified in Government Code, chapter 5, section 66499 through 66499.10 (Subdivision Map Act); and
- b. Recommendations made by a licensed geotechnical engineer are fully incorporated into the road design; and
- c. Proposed grading is consistent with the purposes and standards of chapter 9, "Grading"; and

d. Satisfactory provision has been made for storm drainage and extension and undergrounding of utilities.

(12) *Reimbursement agreements.*

a. *Purpose.* The city council may establish within the areas to which the hillside road regulations are applicable to provide for reimbursement agreements for the purpose of achieving the equitable sharing of new roadway and public utility extension cost among benefitting properties pursuant to an approved hillside road improvement plan.

b. *Application for reimbursement agreement.* An application for a reimbursement agreement may be made simultaneously with the application for the approval of a hillside road improvement plan or after approval of the plan but prior to the construction of the approved hillside roadway and/or public utility extensions. Provided, however, that an application for a reimbursement agreement may be made for any road construction project and extension of public utilities commenced prior to August 20, 1990. The application shall be accompanied by the following:

1. A completed application on a form prepared by the director of community development and the processing fee established by resolution of the city council.
2. A proposed or approved hillside road improvement plan.
3. A list of benefitting properties together with the names and addresses of the owners of the properties as shown on the last equalized assessment roll.
4. A description of the benefits to be conferred on each of the benefitting properties.
5. Development cost estimates for each component of the proposed improvements.
6. A description of the method used to apportion the cost of the improvements and a statement explaining why the proposed method is the most equitable, what alternate methods were considered, and why the alternate methods were not used.
7. The proposed portion of the cost of improvements to be assigned to each benefitting property.
8. Stamped envelopes addressed to each benefitting property owner.
9. An independent estimate of construction costs prepared by a consultant selected by the city and paid for by the applicant.
10. Such other information as may be required by the city.

c. *Reimbursement agreement upon approval.* When a subdivider, land developer, person or persons is required to provide a hillside road improvement plan and/or the construction of said hillside road together with other improvements which will benefit other properties to be developed under the provisions of this chapter, the city shall, upon recommendation of the city engineer and approval of the city council, enter into an agreement with the subdivider, land developer, person or persons for the recovery of that portion of the cost of said hillside road improvement plan and improvements which benefit properties not owned or controlled by the subdivider, land developer, person or persons. The agreement may, but shall not necessarily, provide for payment to the subdivider, land developer, person or persons an amount attributable to interest as the council may direct. The reimbursement agreement shall contain at least the following provisions:

1. The city shall be obligated to make reimbursements to subdivider or land developer only when and as the city obtains funds from benefitting property owners as such benefitting property owners eventually improve their property.

2. Any funds paid by benefiting property owners to the city need not be paid over to the subdivider or land developer until the limitations period for instituting court action to seek a refund of such funds paid under protests has passed, and no court action has been instituted; in the event court action is instituted, the city shall not pay over such funds to the subdivider or land developer until the court action has been finalized and the authority of the city to collect such charges has been sustained.

3. The city shall have the right to turn over the defense of any action seeking refund of amounts paid under protest to the subdivider or land developer; if the subdivider or land developer fails to undertake the defense of the action at the subdivider's own expense, the city may stipulate to return of the funds so paid under protest by or on behalf of the owner or owners of any such benefiting property, and the city shall not be further obligated to subdivider or land developer as to any such funds so refunded. In the event a court action is maintained to prevent the city from collecting such funds from benefiting property owners, the city shall have the right to turn over the defense of that action to the subdivider or land developer, who shall agree to hold the city harmless from any and all liability thereunder; in the event the subdivider fails to undertake defense of the action at subdivider or land developer's sole expense, the city may stipulate to cease collecting such funds, or enter into any other settlement of the litigation acceptable to the city, and subdivider or land developer shall lose any right to reimbursement under the reimbursement agreement.

4. The reimbursement agreement shall provide for reimbursement of all funds less cost incurred by the city, when and as collected, without interest, unless the council otherwise determines. Under no circumstances shall the city be deemed liable for any funds not so collected from benefiting property owners.

5. It shall be the responsibility of the person(s) to be reimbursed to keep the city apprised of said person(s) address during the term of this agreement. In the event the city is unable to locate the developer at the time that any fees are actually collected, the city shall hold such fees for the benefit of the developer or its successor or assignee for a period of three (3) years. Upon the expiration of the three year period, any fees not reimbursed to said person(s) shall escheat to the city and the city shall be free and clear of any obligation to said person(s).

6. No building permit shall be issued for property that has been assigned a pro rata share of the cost of preparing a hillside road plan and the cost of constructing the road and other improvements until the cost allocated to the property as its share of said cost has been paid. Said cost may be paid at any time prior to issuance of the building permit.

7. The city shall deduct from the reimbursement cost when collected any and all cost and expense incurred by the city for the administration and enforcement of the reimbursement agreement. Said cost and expenses are deemed to be the cost and expense of the applicant.

8. A description of each of the properties benefited by the hillside improvement plan and/or the construction of said hillside road together with other improvements.

9. The length of time the agreement is to remain in effect as determined by the city council.

d. *Report from city engineer.* Prior to entering into a reimbursement agreement pursuant to this chapter [subsection], the city council shall receive a report from the city engineer describing in detail the entire area which is benefited by the improvements and

recommending the apportionment of the costs of such improvements based upon the benefit to such property. The apportionment of benefit shall be on the basis of frontage upon such improvements, acreage served by such improvements, or any other formula rationally related to actual benefit. The city council may approve the report as submitted, or modify the report, and the action of the city council thereon shall determine the benefit to each piece or parcel of property outside the subdivision or single parcel to be developed benefited by such improvements, establish the amount or amounts to be charged such properties, and direct the method of collection of the costs of such improvements. The action of the city council shall be final.

e. *Determination of benefit.* In determining the benefit to each piece or parcel of property, the city council shall, unless consent of all affected property owners is filed with the city, hold a public hearing thereon and give notice by mail to property owners of record who would be affected by such determination, and provide to all such property owners an opportunity to appear and be heard upon the proposed determination of benefit and method of apportioning of costs thereof. Notices shall be sent to affected property owners of record as shown on the last equalized assessment roll at least thirty (30) days prior to the hearing. Any action by the city council under this chapter shall be taken only at a regular or special meeting of the city council for which public notice has been given as required by the Ralph M. Brown Act, as amended.

f. *Audit of project costs.* Upon completion of the construction of the hillside road and other improvements which are the subject of the reimbursement agreement, an audit of the plan preparation and construction costs shall be performed by a consultant selected by the city and paid for by the subdivider, land developer, person or persons who are parties to the reimbursement agreement, to verify the total cost of plan preparation and construction. If the costs are less than originally determined for the purpose of determining benefit and allocation of the cost, the city manager may administratively reduce the pro rata allocation of costs to be collected to reflect the audited cost.

g. *Recordation of agreement.* The reimbursement agreement approved by the city council shall be recorded in the official records of the County Recorder of the County of San Mateo.

(Ord. No. 630, § 3, 6-26-78; Ord. No. 800, § 2, 7-12-88; Ord. No. 833, § 1, 9-25-90)