

**ORDINANCE NO. 1224**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SAUSALITO  
AMENDING TITLE 10 TO AMEND SECTION 10.44.190 IN ITS ENTIRETY  
TO ENCOURAGE AND INCENTIVIZE THE DEVELOPMENT OF  
RESIDENTIAL USES ABOVE COMMERCIAL USES AND TABLE 10.24-1 TO  
CHANGE THE CONDITIONAL USE PERMIT (CUP) THRESHOLD FOR UPPER  
LEVEL RESIDENTIAL USE WITHIN THE  
CC, CR AND CN-1 ZONING DISTRICTS  
ZOA 14-007**

---

**WHEREAS**, California Government Code Section 65588 requires a city to amend its General Plan to revise its housing element to accommodate its share of the regional housing need for each income level during a specified planning period; and

**WHEREAS**, on October 9, 2012 the Housing Element was adopted by the City Council; and

**WHEREAS**, On November 7, 2012 the California Department of Housing and Community Development certified the adopted Housing Element to be in conditional compliance with Housing Element Law; and

**WHEREAS**, the adopted Housing Element contains Program 8a regarding Zoning Ordinance Amendments related to Mixed Use Requirements in Commercial Districts to encourage and incentivize the development of residential uses above commercial uses within the CC, CR and CN-1 zoning districts; and

**WHEREAS**, Section 10.80.070 allows for amendments of the Zoning Ordinance (Title 10 of the Sausalito Municipal Code) whenever the City Council determines that public necessity, convenience, or welfare would be served; and

**WHEREAS**, from January 2014-June 2014 a subcommittee of the City Council and Planning Commission held seven public meetings regarding the 2009-2014 Housing Element Implementation Amendments; and

**WHEREAS**, on March 15, 2014 a publicly-noticed Community Workshop was held to discuss the 2009-2014 Housing Element Implementation Amendments; and

**WHEREAS**, on July 9, 2014 the Planning Commission adopted Planning Commission Resolution No. 2014-23, which recommended City Council adoption of an Ordinance regarding the Vertical Mixed Use Amendments; and

**WHEREAS**, on July 15, 2014 and July 22, 2014 City Council conducted a duly-noticed public hearings at which time all interested persons were given an opportunity to be heard; and

**WHEREAS**, the project is categorically exempt from California Environmental Quality Act (CEQA) pursuant to Section 15305 of the CEQA Guidelines which exempts minor alterations in land use limitations in areas with an average slope of less than 20%, which do not result in any changes in land use or density and Section 15061.b.3 of the CEQA Guidelines because adoption of the zoning ordinance amendment is covered by the general rule that CEQA applies only to projects which have the potential for causing a significant effect on the environment, and this project does not have the potential for causing a significant effect on the environment; and

**WHEREAS**, adoption of the Vertical Mixed Use Amendments is consistent with the General Plan Program 8a of the Housing Element regarding vertical mixed use housing and Housing Element Policy HE-2.1 regarding variety of housing choices, Policy HE-2.3 regarding adaptive reuse, Policy HE-4.2 regarding flexible development standards, Policy 5.3 regarding family housing, Policy HE-6.5 regarding jobs/housing balance and Land Use Policy LU-2.5 regarding commercial/residential conflict, Policy LU-2.8 regarding upper floor residential uses, and Policy LU-2.12 regarding neighborhood commercial uses.

THE CITY COUNCIL OF THE CITY OF SAUSALITO DOES HEREBY ORDAIN AS FOLLOWS:

**Section 1.** Section 10.44.190 of the Sausalito Municipal Code is hereby amended to read as follows:

10.44.190 Residential Use in Commercial Districts

**A. Purpose and Applicability.** Residential uses located in CC, CR and CN zoning districts are subject to the requirements of this section, as provided by Section 10.24.030 (Allowable Land Uses, Commercial Zoning Districts). In addition to the general purposes of this Chapter, the specific purposes of regulating residential uses in commercial zones are as follows:

1. To further the objectives of the 1985 Traffic Initiative by prohibiting conversion of existing residential uses to commercial uses; and
2. To provide valuable opportunities for affordable housing while locating residential land uses adjacent to active commercial areas, to implement the goals and policies of the General Plan and specific programs in the Housing Element.
3. To encourage the retention of existing residential uses in the Central Commercial (CC), Mixed Commercial and Residential (CR), and Neighborhood Commercial (CN-1) Zoning Districts, by prohibiting the conversion of existing upper story residential units to commercial uses.
4. To encourage a mix of residential and commercial uses in the Central Commercial (CC), Mixed Commercial and Residential (CR) and

Neighborhood Commercial (CN-1) Zoning Districts, by retaining commercial use on the first (ground or street) levels and requiring that residential use is the only allowed use on all levels above the ground level in the mixed use commercial districts, as specified in this section.

**B. Location.**

1. Residential uses in the Central Commercial (CC), Mixed Commercial and Residential (CR), and Neighborhood Commercial (CN-1 and CN-2) Zoning Districts are allowed as follows:

- a. Central Commercial (CC) Zoning District. All uses located above the first (street or ground) level of all existing and new structures shall be residential. Existing residential uses located in the CC Zoning District may be converted to commercial uses with the issuance of a Minor Use Permit pursuant to Chapter 10.58 (Minor Use Permits). Deed restricted affordable units may not, however, convert to commercial use until expiration of the deed restriction.
- b. Mixed Commercial and Residential (CR) Zoning District. All uses located above the first (street or ground) level of all existing and new structures shall be residential. Existing residential uses located in the CR Zoning District are to be preserved. Any commercial use on levels above the street, up to a maximum of 1,000 square feet, permitted pursuant to 10.44.190.C.5.a shall also require a Conditional Use Permit.
- c. Neighborhood Commercial (CN-1) Zoning District. All uses located above the first (street or ground) level of all existing and new structures shall be residential in the CN-1 Zoning Districts located in the Second and Main Street area and the Bridgeway and Spring Street area.
- d. Neighborhood Commercial (CN-2) Zoning District: Residential uses are not permitted in the CN-2 Zoning District located along Bridgeway between Coloma Street and Ebbtide Avenue.

2. Existing residential uses located on the first (street or ground) level of a structure are permitted to remain in their current location.

3. Commercial uses are an allowed use on the first (street or ground) level pursuant to Section 10.24.030.

**C. Permit Applications for Residential Units.**

1. Development Standards. Development standards shall be those of the base zoning district for residential projects per Table 10.24-2 (Site Development Standards – Commercial Zoning Districts). For Residential Density Bonus and Incentives see Section 10.40.130.

2. Requirements. Each of the following requirements shall be met as a part of any residential project, including new construction and/or conversion of existing building space:
  - a. Developments of 1 (one) to 5 (five) units must provide a minimum of one (1) Affordable Unit. Developments with six (6) or more units shall require at least twenty (20) percent of the units as affordable. When the number of Affordable Units is calculated to a fractional number, any fraction of less than 0.5 shall rounded down to the next whole number; any fraction of 0.5 or greater shall be rounded up to the next whole number. In the event that the Affordable Unit(s) are rental unit(s) the applicant shall enter into an agreement with the City regarding such unit(s). The agreement shall meet the requirements of California Civil Code Section 1954.52(b).
  - b. Affordable Units made available as rentals shall be provided to low income (80% AMI) households at an affordable rent.
  - c. Affordable Units made available as ownership units shall be sold to moderate income (120% AMI) households at an Affordable Ownership Housing Cost. Purchasers of Affordable Units must remain as owner-occupants, and may not rent or lease the unit, unless written approval is first obtained from the Director. The Director may approve the renting or leasing only if all of the following conditions are met: (1) the term is not greater than twelve (12) months and cannot be extended without the Director's written approval; (2) the owner demonstrates to the Director's reasonable satisfaction that the owner will incur substantial hardship if he or she is not permitted to rent or lease the Property or any part thereof to a third party; and (3) the rent does not exceed the lesser of: (i) thirty percent (30%) of the income of the tenant household that is renting the Property, or (ii) the owner's monthly cost of principal and interest on the First Mortgage Loan and any Second Mortgage Loan, and property insurance and property taxes associated with Property. Affordable Units shall be constructed to include a minimum of two (2) bedrooms in order to accommodate families. Affordable Units shall be constructed to include a minimum of two (2) bedrooms in order to accommodate families.
  - d. Affordable Units must be deed-restricted for a period of not less than forty (40) years.
3. Incentives. The following incentives and conditions shall be granted to developers of residential projects under this Section 10.44.190:

- a. Development may permit commercial and residential tenants to share parking, and for tandem and off-site parking leases with a Minor Use Permit. In order to approve a Minor Use Permit for joint use, the Applicant shall demonstrate the following:
    - i. There is no substantial conflict in the principal operating hours of the building or uses for which the joint use of off-street parking facilities is proposed; and
    - ii. The proposed joint use parking area is conveniently located to the uses to be served.
    - iii. If the area to be used for parking and the parcel on which the subject land use is located are not the same, then the Zoning Administrator shall consider whether a deed restriction is warranted as a condition of approval. Said deed restriction would stipulate that the shared parking agreement shall remain in effect for the life of the subject land use.
  - b. Affordable Units may be permitted to be smaller in aggregate size and have different interior finishes and features within reason from market-rate units. The interior amenities in Affordable Units should generally be the same as those of the market rate units in the project. Appliances need not be the same make, model, or type of such item as long as they are of good and new quality and are consistent with current standards for housing. Deviations between market rate and Affordable Units shall be described in writing by the applicant and shall require written approval by the Director.
  - c. Development and application fees, including plan check and building permit fees, shall be reduced to a rate of 50 percent of the adopted development fees for the affordable portions of the project. The fee reduction shall be calculated on pro-rata basis by the Director.
4. Access and Facilities. Both market rate and Affordable Units shall maintain separate entrances from commercial and/or office uses. A Minor Use Permit shall be required to deviate from the separate entrance requirement. In order to approve a Minor Use Permit for joint entrance, the Applicant shall demonstrate that the addition of a separate entrance is infeasible due to physical constraints. All residential units shall contain a separate kitchen and bathroom facility.

5. Exceptions to Requirements. Waiver of specific use requirements in this Section 10.44.190 pursuant to Section 10.44.010.E shall only be considered in the following two instances:
- To allow for an exception to Section 10.44.190.B.1, which requires that all uses located above the first (street or ground) level of all existing and new structures shall be residential, to allow for upper level commercial uses. The expansion of an existing business within the same or adjacent site, or the allowance of small commercial uses (up to a maximum 1,000 square feet per parcel) may be special situations considered by the Planning Commission when evaluating an exception to Section 10.44.190.B.1.
  - To allow for an exception to Section 10.44.010.E, which requires that Affordable Units provide a minimum of two (2) bedrooms. To receive an exception from Section 10.44.010.E, it must be demonstrated that there are physical site constraints which make infeasible units with two or more bedrooms whether affordable or market rate.

Section 10.44.010.E shall not be used to grant any other exceptions from this Chapter 10.44.190 except for the two instances listed above.

**Section 2.** Table 10.24-1 (Land Uses Allowed in Commercial Districts) is hereby amended as follows<sup>a,b</sup>:

**Table 10.24-1 LAND USES ALLOWED IN COMMERCIAL DISTRICTS\*1\***

Land Use	CC	CR	CN	SC	CW	W	W-M	See SMC
<b>Residential Uses</b>								
Upper floor residential								
One to <del>three</del> <u>six</u> ( <del>1-3</del> <u>6</u> ) dwelling units	P	P or CUP	P *4*					Residential Use in Com. Dist.)
<del>Four</del> <u>Seven</u> ( <del>4</del> <u>7</u> ) or more dwelling units	CUP	CUP	CUP *4*					
P Permitted use MUP Minor use permit required CUP Conditional use permit required							Chapter 10.58 Chapter 10.60	
*1* Zoning Permit required for all uses. (See Chapter 10.52.)								
*2* Tax-exempt yacht clubs only, subject to restrictions in the Marinship Specific Plan.								

<sup>a</sup> Only the pertinent sections of Table 10.24-1 have been shown. The remainder of Table 10.24-1 remains unchanged.

<sup>b</sup> The text to be added is printed double-underlined; text to be removed is printed in ~~double-strikethrough~~

**Table 10.24-1 LAND USES ALLOWED IN COMMERCIAL DISTRICTS\*1\***

Land Use	CC	CR	CN	SC	CW	W	W-M	See SMC
<p>*3* No new houseboats are allowed. Existing houseboats may be legalized with a Conditional Use Permit.</p> <p>*4* Residential Uses are permitted above the ground floor in the CN zoning districts located in the Second and Main Street area and the Bridgeway and Spring Street area. Residential uses are not permitted in the CN zoning district located along Bridgeway between Coloma Street and Ebbtide Avenue.</p> <p>*5* Other than beer and wine for on-site consumption as an accessory use.</p> <p>*6* Not to exceed twenty (20) seats.</p> <p>*7* Marine service harbors only.</p>								

**Section 3.** The adoption of this ordinance is exempt from the application of the California Environmental Quality Act (CEQA), Public Resources Code section 21000, *et seq.*, in accordance with Sections 15305 and 15061.b.3 of the CEQA Guidelines.

**Section 4.** If any section or portion of this ordinance is for any reason held to be invalid and/or unconstitutional by a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this ordinance.

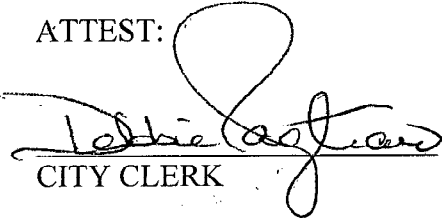
**Section 5.** This Ordinance shall be in full force and effect thirty (30) days after the date of its adoption.

**THE FOREGOING ORDINANCE** was read at a regular meeting of the Sausalito City Council on the 15<sup>th</sup> day of July, 2014, and was adopted at a regular meeting of the City Council on the 22<sup>nd</sup> day of July, 2014 by the following vote:

AYES:	COUNCILMEMBER:	Leone, Theodores, Weiner, Mayor Withy
NOES:	COUNCILMEMBER:	Pfeifer
ABSTAIN:	COUNCILMEMBER:	None
ABSENT:	COUNCILMEMBER:	None

  
 \_\_\_\_\_  
 MAYOR OF THE CITY OF SAUSALITO

ATTEST:

  
 CITY CLERK