Title 17

ZONING

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Chapter 17.04

GENERAL PROVISIONS*

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* Prior history: Prior Code §§ 101.2.04, 101.2.60 and 101.2.64 and Ord. 529.

17.04.010 Purposes.

This zoning ordinance is adopted to protect and promote the public health, safety, comfort, convenience, prosperity, and general welfare of residents in the town. Additional purposes of this zoning ordinance are to:

A. Implement the goals, objectives, policies, and programs of the general plan and to manage future growth and development in accordance with that plan;

B. Conserve and protect the natural resources, natural beauty, and significant environmental amenities of the town;

C. Ensure adequate light, air, privacy, and open space for each dwelling;

D. Retain the scale and character of existing residential neighborhoods. (Ord. 639 § 8 (part), 2003)

17.04.020 Short title.

This title shall be known as the "Hillsborough Zoning Ordinance." (Ord. 639 § 8 (part), 2003)

17.04.030 Zoning map.

The town shall adopt a map, known as the zoning map, delineating the boundaries of the residence district with the town. A copy of the zoning map shall be kept on file with the city clerk. (Ord. 639 § 8 (part), 2003)

17.04.040 Amendments to zoning.

A. Zoning Ordinance. Amendments to the Hillsborough Zoning Ordinance shall be initiated by motion of the city council or by application of any person.

B. Zoning Map and Prezoning. Prezoning and amendments to the zoning map shall be initiated by motion of the city council or by application of the owner or authorized agent of the property for which the change is sought. If property that is the subject of an application is in more than one ownership, all the owners or their authorized agents shall join in filing the application.

C. Procedure. An application shall be submitted to the planning office on the prescribed form, with the prescribed attachments, including, but not limited to, an environmental information form in accordance with the California Environmental Quality Act (CEQA), together with the fee as set from time to time by resolution of the city council. Public notice and public hearing shall be given and conducted as required by government code Section 65090 and, if applicable, Section 65091 (or successor provisions) for all amendments and prezoning under this section. (Ord. 639 § 8 (part), 2003)

17.04.050 Violations constitute a nuisance.

Any violation of Title 17 is declared to be a nuisance and therefore subject to the provisions of Chapter 8.16. (Ord. 639 § 8 (part), 2003)

17.04.060 Penalty.

Violation of any provision of this title or of any permit issued under this title shall be a misdemeanor punishable as set forth in Chapter 1.08; provided, however, that the failure to comply with the terms of a validly issued permit to operate a private school which thus causes such permit to be revoked or suspended shall not constitute a misdemeanor. (Ord. 639 § 8 (part), 2003)

17.04.070 Americans with Disabilities Act of 1990.

The provisions of Title 17 shall be construed and applied in a manner consistent with the Americans with Disabilities Act of 1990 (Pub. L. 101-336, 104 Stat. 327, 42 U.S.C. 12101-12213 and 47 U.S.C. 225 and 611) and all other applicable state and federal law and regulations. (Ord. 648 § 5, 2003)

Chapter 17.08

DEFINITIONS*

Sections:

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17.08.225 Second unit.
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17.08.250 Street.
17.08.260 Street line.
17.08.270 Structure.
17.08.280 Total covered floor area.
17.08.290 Trellis.

* Prior history: Prior Code § 101.1.08 and Ords. 304, 339, 393, 441, 462, 529 and 534.
Note: Words or phrases used in this chapter and not defined herein shall be interpreted so as to give them the meaning that they have in common usage and to give this chapter its most reasonable application.

17.08.010 Accessory structure.

"Accessory structure" means any detached structure incidental to the principal dwelling. A structure shall be considered detached when it is not connected to the principal dwelling by structural members of any kind. (Ord. 639 § 9 (part), 2003)

17.08.030 Building.

"Building" means any structure having a roof supported by columns or walls and designed for the shelter or enclosure of persons or property. (Ord. 639 § 9 (part), 2003)

17.08.040 Country club.

"Country club" means a club, whose facilities include a regulation eighteen hole golf course. (Ord. 639 § 9 (part), 2003)

17.08.070 Dwelling.

"Dwelling" includes the words "residence," "single-family residence", and "single-family dwelling," and means any building (including all attached structures) containing but one kitchen (and possibly an additional kitchen for the exclusive use of household help) designed and used to house not more than one family, including all necessary household help for the family. (Ord. 639 § 9 (part), 2003)

17.08.080 FAR.

"FAR" is defined in Section 17.32.030(B). (Ord. 639 § 9 (part), 2003)

17.08.090 Frontage.

"Frontage" is defined in Section 1.04.010. (Ord. 639 § 9 (part), 2003)

17.08.100 Garage.

"Garage" means a fully enclosed building, or part thereof, used or designed to be used for the parking and storage of vehicles. (Ord. 639 § 9 (part), 2003)

17.08.110 Gazebo.

"Gazebo" means a freestanding, roofed structure usually open on the sides. (Ord. 639 § 9 (part), 2003)

17.08.120 Lot.

"Lot" means a single parcel of land, public or private, that is described by metes and bounds or by reference to a recorded plat or map. (Ord. 639 § 9 (part), 2003)

17.08.130 Lot coverage.

"Lot coverage" means structural coverage, hardscape coverage, and softscape coverage as set forth in Section 17.32.060. (Ord. 639 § 9 (part), 2003)

17.08.140 Lot line.

"Lot line" means the established division line between lots. (Ord. 639 § 9 (part), 2003)

17.08.150 Net lot area.

"Net lot area" means the gross lot area less the area occupied by any public right-of-way or private easement for driveway purposes. (Ord. 639 § 9 (part), 2003)

17.08.160 Non-school event.

"Non-school event" is defined in Section 17.16.030(N). (Ord. 639 § 9 (part), 2003)

17.08.170 Pergola.

"Pergola" means a structure usually consisting of parallel colonnades supporting an open roof of girders and cross rafters. (Ord. 639 § 9 (part), 2003)

17.08.180 Premises.

"Premises" means land and any improvements thereon. (Ord. 639 § 9 (part), 2003)

17.08.190 Private school.

"Private school" means any building or group of buildings the use of which meets state requirements for elementary, secondary, or higher education and which is not operated by a public school district or other public agency. When the context so indicates, "private school" also means the business entity that operates the private school institution. (Ord. 639 § 9 (part), 2003)

17.08.200 Residence.

"Residence" is defined under "dwelling." (Ord. 639 § 9 (part), 2003)

17.08.210 Retaining wall.

"Retaining wall" means a freestanding wall that holds back a bank of earth; provided, however, that a foundation or footing supporting a building shall not be deemed a retaining wall. (Ord. 639 § 9 (part), 2003)

17.08.220 Right-of-way.

"Right-of-way" means a strip of land acquired by reservation, dedication, prescription, condemnation, or easement that allows for the passage of people and goods. Right-of-way includes, but is not necessarily limited to, streets, curbs, gutters, and parking strips. (Ord. 639 § 9 (part), 2003)

17.08.225 Second unit.

"Second unit" is defined in Section 17.52.010. (Ord. 648 § 6 (part), 2003)

17.08.230 Setback area.

"Setback area" means that area described in Section 17.24.020. (Ord. 639 § 9 (part), 2003)

17.08.240 Setback line.

"Setback line" means the parallel line described in Section 17.24.020 (i.e., the setback area boundary line that is opposite the street line or the lot line boundary of the setback area). (Ord. 639 § 9 (part), 2003)

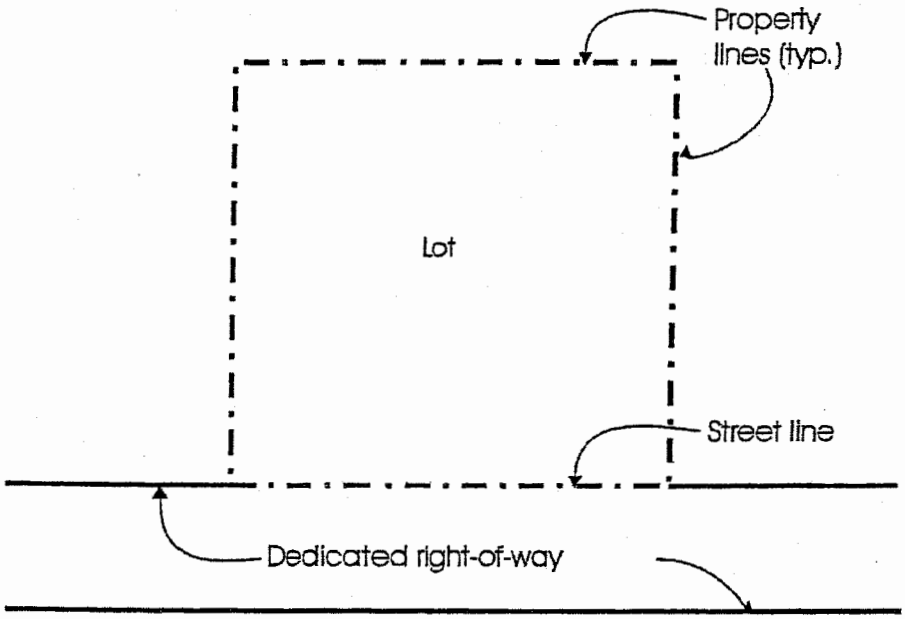
17.08.250 Street.

"Street" is defined in Section 1.04.010(K). (Ord. 639 § 9 (part), 2003)

17.08.260 Street line.

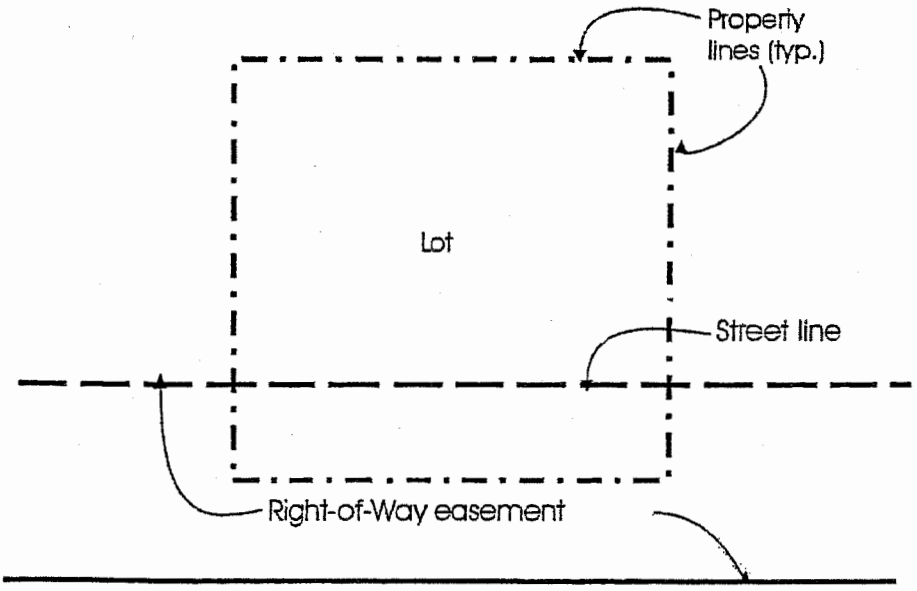
"Street line" means either (i) the property line abutting a dedicated right-of-way, where the right-of-way has been dedicated in fee to the town, or (ii) the line between an easement for a dedicated right-of-way and the remainder of the private property unencumbered by the easement, where the town has only an easement for right-of-way purposes and not a fee interest in the right-of-way. These concepts are illustrated in the following diagrams (which are for illustrative purposes only and shall not be deemed part of the Hillsborough Municipal Code:

17.08.260 Street line (i):



Example where the "street" is a dedicated right-of-way.

Street line (ii):



Example where the "street" is an easement for right-of-way purposes, rather than a dedicated right-of-way.

(Ord. 639 § 9 (part), 2003)

17.08.270 Structure.

"Structure" means anything constructed or erected that requires location on the ground or attached to something having location on the ground, but not including outdoor fixtures, as defined in Chapter 12.12, and not including hardscape, as defined in Section 17.32.060. Examples of a structure include, but are not necessarily limited to, any dwelling, building, second unit, garage, carport, tool house, guest house, green house, pool house, satellite dish antenna, solar collector panel, tree house or other play structure, swimming pool, tennis court, play court, and deck. (Ord. 648 § 6 (part), 2003; Ord. 639 § 9 (part), 2003)

17.08.280 Total covered floor area.

"Total covered floor area" is defined in Section 17.32.020(A). (Ord. 639 § 9 (part), 2003)

17.08.290 Trellis.

"Trellis" means a frame of latticework used as a screen or support for climbing plants; a construction (as a summerhouse) chiefly of latticework. (Ord. 639 § 9 (part), 2003)

Chapter 17.12

RESIDENCE DISTRICT*

Sections:

17.12.010 Creation of residence district.

* Prior history: Prior Code § 101.2.12 and Ords. 529 and 564.

17.12.010 Creation of residence district.

There is one zone within the town, namely, the residence district ("RD"), which consists of all of the land within the boundaries of the town. (Ord. 639 § 10, 2003)

Chapter 17.16

USES PERMITTED

Sections:

17.16.010	**Designated.**
17.16.012	**Film production.**
17.16.015	**Home businesses.**
17.16.020	**Use for the purpose of single-family dwelling—Defined.**
17.16.030	**Private schools.**
17.16.040	**Family day care homes.**

17.16.010 Designated.

Subject to all other applicable provisions of this code and other law, the following uses are all of the uses that are permitted within the residence district:

A. Permitted uses.

1. Single-family dwelling and accessory structures (including outdoor fixtures pursuant to Chapter 12.12); provided, however, that no lighting of tennis courts or play courts is permitted. Renting a room in a single-family dwelling for compensation (money or services) shall be deemed part of the permitted use as a single-family dwelling.

2. Country club (which includes all social and commercial activities normally conducted within a country club). Multi-family rental housing on the country club site for use and occupancy by employees of the country club is permitted.

3. Public buildings, parks, playgrounds, or other facilities owned by the town.

4. Duly franchised or municipal public utility with all accessories incident thereto, subject to all applicable rules, regulations, and licenses now or hereafter imposed.

5. Telecommunications structures and equipment entitled to be located in town pursuant to federal law.

6. Public schools and all structures and playgrounds incident thereto.

7. Open space owned by the town and intended to be kept unimproved. (The presence of public utilities shall not be deemed an improvement.)

B. Uses permitted with a special permit.

1. Home businesses for which a current and valid permit has been issued under Section 17.16.015.

2. Private schools and all structures and playgrounds incident thereto for which a current and valid permit has been issued under Section 17.16.030.

3. Commercial film production for which a current and valid film production permit has been issued under Section 17.16.012.

4. A fund raising event for which a permit has been issued under Chapter 5.16 of this code.

C. Uses permitted with a use permit.

1. None. (The town of Hillsborough does not have a use permit system.)

D. Uses permitted as required by overriding state or federal law.

1. Family day care home for children in a single-family residence, to the extent mandated by California Health & Safety Code Section 1597.40 or successor provision. Any family day care home for children shall comply with Section 17.16.040.

2. Residential care facility for the elderly in a single-family dwelling, to the extent mandated by California Health & Safety Code Section 1569.85 or successor provision.

3. Any other use not otherwise provided for in this section and which, by state or federal law, may not be prohibited in the residence district.

E. Legal nonconforming uses.

1. Hillsborough Racquet Club (a membership social club incorporated on September 14, 1937, and since then continuously located at its present site at 252 El Cerrito Avenue, all prior to the adoption of the original Residence District zoning ordinance (Ord. 143) on December 13, 1937) including all social and commercial activities traditionally conducted within the Racquet Club.

2. Structures meeting the definition of detached domestic units and in existence as of January 10, 1983. (Ord. 648 § 7 (part), 2003; Ord. 639 § 11, 2003: Ord. 614 § 5, 2000; Ord. 613 §§ 1, 2, 2000; Ord. 603 § 2, 1999; Ord. 591 § 1, 1999; Ord. 392 § 1, 1984; Ord. 390 § 1, 1984; Ord. 381 §§ 1, 2, 1983; Ord. 350 § 1, 1978; Ord. 334 § 1, 1976; Ord. 323 § 1, 1973; prior code § 101.2.16)

17.16.012 Film production.

A. Commercial film production shall be permitted, subject to securing a commercial filming permit pursuant to this section.

B. An application for a commercial filming permit shall be submitted to the planning office at least three full business days in advance of the proposed activity; provided, however, that the town shall not be obligated to issue the permit at the end of such three day period, even if the requirements for a permit are met, if the city planner deems the provisions of paragraph E below are applicable.

C. The application shall be submitted on the prescribed form, with the prescribed attachments, including, but not limited to, a certificate of general liability insurance in the minimum coverage amounts of one million dollars per occurrence and two million dollars aggregate (or such greater amounts as deemed necessary by the planning office), together with the application fee as set from time to time by resolution of the city council.

D. If the proposed activity is consistent with the public health, safety, and welfare in the judgment of the city planner (in consultation with the police, fire, and/or public works departments where necessary) and if the applicant demonstrates that the proposed activity will comply with the following requirements, the commercial filming permit shall be issued, subject, however, to the provisions of subsection (E) where applicable:

1. There shall be little or no indication, off of the site, that commercial filming is occurring.

2. There shall be no indication in the credits or elsewhere in the film (or other related photography) of the location of the filming, including, but not limited to, references to Hillsborough or shots of the street address.

3. All vehicles associated with the production shall be parked off the public right-of-way, either on private property or in parking lots approved by the planning office and located outside of town. Unless specifically authorized by the permit, no vehicle having more than two axles shall be used in delivering equipment to the site.

4. Any chase scenes, stunts, pyrotechnics, or special effects shall not be discernible (by sight, sound, smell, vibration, or otherwise) from off of the site.

5. All commercial filming activity shall comply with the town's noise ordinance and all other applicable law.

6. The owner of the property on which the commercial filming will be done shall notify the adjacent neighbors of the pending filming in advance and in writing.

E. The planning office may in its discretion (if the expected duration of the filming or the extent of the filming taking place outdoors or the celebrity status of the individuals involved or any other similar circumstance makes it advisable that the council and residents be aware of the proposed activity, or if the applicant seeks an exception to any of the requirements in subsections D(1)—(6) of this section) require public notice and/or consideration by the city council prior to issuance of the permit. (Ord. 639 § 12, 2003)

17.16.015 Home businesses.

A. A home business is one that is conducted from a resident's dwelling in the town and provides goods or services for compensation, including, but not limited to, the services performed by sales representatives; provided, however, that a home business does not include activities conducted in the resident's dwelling that are merely incidental to a business that is conducted outside of the town.

B. Home businesses shall be allowed upon issuance of a home business permit by the town when that use conforms to all of the following standards:

1. The use is clearly incidental and secondary to the use of the dwelling for dwelling purposes;

2. The use is conducted entirely within the dwelling, and there is no ongoing external evidence of business activity;

3. The use does not change the character of the dwelling or adversely affect the basic character of the residence district as described in Section 17.16.020 or adversely affect the other uses permitted in the residence district;

4. There are no signs or structures anywhere on the premises (as defined below) or otherwise in town which advertise, identify, or otherwise relate to the home business;

5. The home business does not cause pedestrian or vehicular traffic or the parking of vehicles either on the real property on which the dwelling is located (the "premises") or on public or private streets or sidewalks adjacent to the premises in numbers or volumes which exceed that which is usual in the town at comparable dwellings where there is no home business;

6. The entrance to the space devoted to the home business use is from within the dwelling and no internal or external alterations or construction features not customary in dwellings are installed or used because of, in connection with, or to facilitate the home business use of the dwelling;

7. Any vehicle having any commercial marking related to the home business shall comply with the requirements of Chapter 10.56 for vehicles on private property and furthermore shall not be parked on any street, highway, parking strip, or other right-of-way in the town;

8. The home business does not result in the emission from the dwelling of (1) radiation which results in interference with the reception or transmission of radio, television, or telephone signals or signals of any other similar device used by residents in their dwellings, (2) noise, (3) dust, (4) smoke, (5) odor, (6) fumes, or (7) any other substance that poses a risk to the health or well-being of any resident of the town;

9. The home business complies with all applicable federal, state, and local law and regulation.

C. It shall be the responsibility of any resident conducting a home business to file an application for a home business permit with the finance department on the application form provided, together with the annual permit fee in such amount as shall be set from time to time by resolution of the city council. (The annual permit fee shall not be refundable nor shall it be prorated.) Such permit shall be valid for up to twelve months and shall be renewed annually by June 30 of each year.

D. The following shall be deemed prima facie evidence of the conducting of a home business in the town:

1. Use of a Hillsborough street address on printed material in connection with the home business and similar uses of the address;

2. The issuance of a license or permit by a governmental agency other than the town indicating that a business is located in the town;

3. Storage of commercial quantities of merchandise or material on the premises or storage on the premises of items that are commercial in nature and not related to the use of the dwelling as a single-family residence.

E. The violation of any provision of this section shall be an infraction, punishable as set forth in Chapter 1.08 of this code, which sets forth the schedule of fines for infractions.

F. In addition to any other consequence(s), including, but not necessarily limited to, that set forth in subsection E of this section, the violation of any provision of this section shall be grounds for immediate revocation of the home business permit. (Ord. 639 § 13, 2003: Ord 613 §§ 3, 4, 2000; Ord 591 § 2, 1999)

17.16.020 Use for the purpose of single-family dwelling—Defined.

A. Intent. It is the intent of this section to insure the preservation of the basic character of the residence district for residential purposes. Residential purposes include the use of the home for food and shelter and as a social institution for the private, religious, educational, cultural, and recreational advantages of the family. Commercial activity, even merely incidental to the use of residential property, or any semblance of such commercial activity, adversely affects the residential character of the residence district and is therefore inconsistent with the preservation of such character.

B. Rule. Use of real property and improvements thereon for single-family dwellings, as set forth in subsection A of Section 17.16.010, shall be limited to use for residential purposes exclusively and not for commercial purposes, incidental or otherwise, of any

kind, including any semblance of commercial activity; provided, however, that nothing in this section shall be deemed to limit the otherwise lawful use of the telephone or the U.S. or private mail. This rule shall not affect the qualification of uses under subsections B through J of Section 17.16.010.

C. Business Address. Use of the Hillsborough street address of a single-family dwelling in the town in conjunction with the name of any commercial or business entity, organization or operation ("enterprise") is allowed only when a valid home business permit under Section 17.16.015 is in effect for such enterprise and one or more of the following circumstances exist:

1. The street address of the enterprise is required on a governmental form. (Examples: fictitious business name statements, state or federal license applications, state or federal registrations, state or federal banking forms)

2. The address will appear on items (stationery, business cards, checks, invoices, labels and similar documents) which remain under the physical control of the enterprise and the individual use of which is initiated each time by the enterprise (as distinguished from listings in telephone books, advertising, websites, etc., each single use of which is not initiated by and is not under the physical control of the enterprise).

Any other use of the Hillsborough street address of a single-family dwelling in the town in conjunction with the name of any commercial or business entity, organization or operation is prohibited.

D. Uses for Commercial Purposes.

1. For purposes of the rule set forth in subsection B of this section, "uses for commercial purposes" are all those uses which are deleterious to the purposes underlying the establishment of an exclusively residential zone.

2. The following are examples of activities that are "uses for commercial purposes":

a. Parties for commercial purposes pursuant to subsection E of this section;

b. Use of the street address of a residence in town except as permitted under subsection C of this section;

c. Home businesses, as described in Section 17.16.015, for which a valid home business permit is not in effect;

d. Activities (which are profit-making or are intended to be profit-making) conducted by a resident in his or her own home that include causing or arranging for (in return for compensation) pickup or delivery of merchandise, products, or services within the town and for which activities a valid home business permit is not in effect;

e. Activities (which are profit-making or are intended to be profit-making) conducted by a resident in his or her own home that include the presence in the home of any person (employee or otherwise) whose sole or primary purpose is to participate in or assist with the activities and for which activities a valid home business permit is not in effect;

f. Activities (which are profit-making or are intended to be profit-making) conducted by a resident in his or her own home that cause customers, prospective customers, or other business visitors to come to the resident's home and for which activities a valid home business permit is not in effect;

g. Activities (which are profit-making or are intended to be profit-making) conducted by a resident in his or her own home that involve the use of the resident's home address in connection with a business or commercial name or use of the resident's home address on any website and for which activities a valid home business permit is not in effect; and

h. Activities (which are profit-making or are intended to be profit-making) conducted by a resident in his or her own home which activities are covered by a valid and current resale license issued by the state of California and for which activities a valid home business permit is not in effect.

3. The following are examples of activities that do not constitute "uses for commercial purposes":

a. Activities for which a current and valid home business permit has been issued under Section 17.16.015;

b. Household services provided to residents of the town by live-in household help;

c. Activities (which are profit-making or are intended to be profit-making) conducted by a resident

in his or her own home using only the telephone and/or U.S. or private mail service and which do not include any of the underlined activities, listed in subsections (D)(2)(d) through (D)(2)(h) of this section.

E. Parties for Commercial Purposes. For purposes of this section, parties or gatherings of individuals at a private residence within the town, invitations to which or announcements of which are advertised or publicized by paid advertisements of any kind in the print, broadcast, or other media or by paid promotion through the U.S. or private mail, or parties or such gatherings for which the host or another individual or entity designated by the host will receive some form of compensation from any individual or entity shall be deemed to be a use for commercial purposes. (Uses described in subsection I of Section 17.16.010 are governed by that subsection and not by subsection E of this section.) (Ord. 613 §§ 5—7, 2000; Ord. 390 § 2, 1984)

17.16.030 Private schools.

A. It is the intent of the town to provide adequate and reasonable standards for the establishment and maintenance of private schools in the town, taking into account the effect of the school's presence upon homes and residents in the neighborhood surrounding the school. The town seeks to achieve a reasonable balance between the needs and interests of the school and the needs and interests of the school's neighbors.

B. 1. Any private school wishing to operate in the town shall first obtain and maintain a permit to operate issued by the town in accordance with the provisions of this section. Private schools currently operating in the town and having done so continuously from the date of their establishment to December 9, 2002, (the date of introduction of the ordinance amending this section) and having a history of receiving the annual fire and building inspections described in subsection (K) of this section, shall be presumed to have received a permit in accordance with the private school provisions of this code in effect at the time such private school began operating in the town. By June 1, 2003, the planning office shall issue a permit to each such private school. If, after the effective date of this chapter February 13, 2003, any such school wishes to amend its permit to operate, the city council shall first establish the requirements for such school as set forth in subsection (B)(6) of this section.

2. Any private school having a valid permit to operate and seeking to:

a. Enlarge the school site (i.e., the legal parcel(s) on which the school facility is located and any other contiguous legal parcel owned by the school),

b. Increase the school's enrollment beyond the maximum number allowed under the school's existing permit,

c. Purchase, lease, or rent any real property in town for school purposes (which shall not be deemed to include the purchase, lease, or rent of a residential property to be used solely for residential purposes so long as such use does not include or consist of a group housing arrangement for school students),

d. Change the grades of instruction offered at the school; provided, however, that if town staff determines that the elimination of a grade will have no adverse effect on the neighborhood surrounding the school, the elimination of a grade may be approved administratively by town staff and the school's permit to operate so annotated,

e. Modify any previous condition of approval,

f. Increase the size of any structure, play area, or athletic area; provided, however, that an increase in size of a play area or athletic area that,

(i) is not a field or court constructed for soccer, softball, baseball, lacrosse, rugby, or other team sport,

(ii) does not reduce the distance between the existing play area or athletic area and the property line between the school and any neighboring property, and

(iii) does not reduce any landscaping or structure providing or intended to provide screening between the school and any neighboring property shall not require an amendment to the school's permit to operate,

g. Add any new structure, play area, or athletic area; provided, however, that the replacement of play or sport apparatus in a play area or athletic area with like or substantially similar play or sport apparatus in

the same or virtually the same location as was occupied by the replaced apparatus shall not be deemed to add a new play area or athletic area,

h. Demolish any existing structure, play area, or athletic area; provided, however, that for purposes of this item h, "structure" shall not include swing sets, slides, climbers, sandboxes, and similar play or sport apparatus,

i. Modify (which shall not be deemed to include routine maintenance and normal pruning) landscaping that is located between a structure, play area, or athletic field and the perimeter of the school site in such a way as to diminish or potentially diminish the screening theretofore provided or intended to be provided by such landscaping, or

j. Modify its parking facilities or arrangements shall apply for an amendment to its permit to operate. Amendments regarding subsection (B)(2)(a) through (e) shall be referred to the city council and processed as set forth in this chapter. Notwithstanding any other provisions of this chapter to the contrary, amendments regarding items f through j shall be referred for design review under the provisions of Chapter 2.12 and only thereafter referred to the city council for processing as items a through e are processed if either the architecture and design review board so recommends or any appeal is filed pursuant to Section 2.12.080. In considering an application for amendment, the city council or the architecture and design review board may consider the related consequences of granting the amendment and impose appropriate conditions, as necessary, to address those consequences.

3. Application for a permit to operate a private school, or for an amendment to an existing permit to operate, shall be made to the city council on the prescribed form, which shall be filed with the planning office together with an application fee in the amount set from time to time by resolution of the city council. Following submission of an application for a permit to operate a private school and before the public hearing on such application, the applicant shall arrange for an initial inspection of the type described in subsection (K) of this section. The results of such inspection shall be part of the application.

4. All applications for a permit to operate, or an amendment to an existing permit to operate, shall be heard at a public hearing before the city council, scheduled and noticed as specified in Chapter 1.20 for a Type A notice. Such notice shall include the following wording: "If you challenge in court the issuance or nonissuance of a permit to operate a private school or the approval or disapproval of an amendment to an existing permit to operate a private school, you may be limited to raising only those issues you or someone else raised at the public hearing described in this notice, or that you or someone else raised in written correspondence delivered to the Hillsborough city council at, or prior to, the public hearing." For purposes of Chapter 1.20, the person requesting the hearing shall be deemed to be the private school. The public hearing shall include review of the application, including, but not limited to, the location, design, and configuration of the school, any proposed amendments or improvements thereto, the impact on the surrounding neighborhood, and all other matters relevant to the requirements set forth in this section.

5. If the city council finds that the application

a. Meets all the requirements of this section to the satisfaction of the city council,

b. Achieves a reasonable balance between the needs and interests of the school and the preservation of the public health, safety, and welfare, including, in particular, that of the surrounding neighborhood,

c. Is consistent with the general plan,

d. Meets all applicable requirements of the California Environmental Quality Act (CEQA), and

e. Complies with all other applicable standards and requirements of law, the city council shall grant the permit to operate or the amendment to the permit to operate, as the case may be, with such conditions and such reasonable guarantees and evidence of compliance with conditions as the council deems necessary to fulfill the purposes of this title. In accepting the permit to operate or amendment to the permit to operate, the private school consents to the entrance onto the school site and into all school buildings at reasonable hours by representatives of the town's police, fire, building, public works, and

other departments in order to enforce public safety laws and ordinances and the conditions of approval of the permit or amended permit to operate. Each permit to operate or amendment to permit to operate shall specify the maximum enrollment permitted (in exact numbers rather than merely by reference to the formula in the table set forth in subsection (D)(2) of this section) and shall caution that the maximum enrollment shall not automatically increase if the private school acquires additional acreage, but may be increased only pursuant to subsection (B)(2)(b) of this section. The maximum enrollment permitted shall be no greater than the maximum number set forth in such formula and may be less than that maximum number. If the city council does not grant the permit to operate or the amendment to the permit to operate, as the case may be, the city council shall deny the application. Any person objecting to the decision of the city council shall have ninety days as set forth in California Government Code Section 65009(c)(1)(E) (or such other time period as may be set by amendment to such law) after such decision to bring an action in a court of competent jurisdiction; otherwise all objections to the city council's decision shall be deemed waived.

6. a. In conjunction with granting a permit to operate a private school, the city council shall specify, based on the particular characteristics of the site (or lot) on which the private school is located or proposed to be located, the

i. Minimum lot frontage required on a public street,

ii. Maximum permitted floor area ratio,

iii. Maximum permitted lot coverage,

iv. Maximum permitted size of the buildings (exterior building dimensions, including, without limitation, height),

v. Increased required setback area, if any, beyond the minimums set forth in Chapter 17.24,

vi. Hours of operation, and

vii. Accessory uses, if any that shall be applicable to the private school so that the private school buildings will not appear to dominate the surrounding neighborhood and will not represent too intense a development of the site, and so that the private school shall not produce undue traffic or parking problems for the surrounding neighborhood or allow the daily congregations of people at the private school to be particularly visible or audible from the surrounding single-family dwellings. The purpose of these requirements is to allow the private school to function while also preserving the residential character of the surrounding neighborhood.

b. Because it is impossible, given the varied terrain and sizes of lots in town, to formulate extremely specific, universally applicable standards for items (i) through (vii) above, an opportunity for representatives of an existing private school or a proposed private school to meet with the city council early in the planning process may be useful. Accordingly, an applicant for an amendment to an existing permit to operate an existing private school or an applicant for a new permit to operate a new private school may request a preliminary review of the school's plans prior to submitting the application. In that case, the city council shall discuss the plans with the applicant at a public meeting and shall provide input to the applicant on the matters set forth in items (i) through (vii). The preliminary review shall not require public notice apart from the notice that normally occurs for public meetings of the city council. The preliminary review shall not be a public hearing; however, the city council may take public comment if the council so chooses. The purpose of the preliminary review shall be to provide concrete, site-specific guidelines to the applicant regarding items (i) through (vii). Such guidelines may, however, be subject to modification or reconsideration as the result of the public hearing subsequently held to consider the application.

7. Upon the city council's approval of the application (with or without conditions), the director of building and planning shall issue a non-transferable, revocable (as set forth in subsection (O)) permit to operate a private school upon the premises described in the application, or an amendment to an existing permit to operate, as the case may be, subject to any conditions imposed by the city council.

C. No building permit shall be issued except in accordance with the terms and conditions of the permit to operate and any amendment thereto.

D. The minimum acreage and maximum enrollment of any private school operating in town are as follows:

1. The minimum acreage for a private school shall be seven acres (except as otherwise set forth in the table below for certain private schools described in Section 17.16.030(M)).

2. The maximum number of students enrolled at a private school at any one time shall be as follows:

Minimum Acreage*	Maximum Number of Students Enrolled**
Under 7.0 acres	***
7.0 acres	200 students
8.0 acres	250 students
9.0 acres	300 students
10.0 acres	350 students
11.0 or more acres	400 students

* Actual acreage, not subject to rounding up or down. Acreage shall consist of the net lot area of one legal parcel. If the school site encompasses more than one legal parcel, only the largest legal parcel may be counted for purposes of determining maximum enrollment.

** A private school is not automatically entitled to the maximum enrollment permitted by the above table; the specific maximum enrollment allowed will be stated in the school's permit to operate or amendment to permit to operate according to the enrollment number determined by the council at the time the permit to operate or amendment to permit to operate is issued.

*** Private schools described in Section 17.16.030(M) and leasing or occupying fewer than seven acres where the public school is also still operating on site shall be subject to all the same rules as any other private school except that the permit to operate shall describe the maximum number of students, which number shall be based on the impact on the neighborhood with respect to traffic, parking, noise, and safety.

3. Regardless of the acreage of the private school, the total number of students enrolled shall not exceed four hundred.

E. Multi-family rental housing on the school site for use and occupancy by faculty or other employees of the school is permitted. If the private school proposes to provide such housing, the application for the permit to operate or for an amendment to the permit to operate shall include such housing proposal.

F. Every private school shall be subject to and follow the requirements of the parking rules set forth in Chapter 17.36; provided, however, that in all cases adequate off-street parking facilities shall be maintained to park on the school site all the motor vehicles normally brought to the school by its employees, students, and visitors, so as to keep the vehicles from being parked on the public streets.

G. Every private school shall be accessible from a public street having a paved width of at least twenty-four feet.

H. Every structure, play area, and athletic area on the private school site shall be set back at least twenty-five feet from any property line adjacent to a public street and at least twenty feet from any other property line. The distances shall be measured as set forth in Section 17.24.030.

I. A planted area of trees and shrubs shall be provided between any play area or athletic field and adjacent non-school property so that a barrier will exist.

J. All structures shall be subject to Chapter 17.28 (height limitations).

K. The structures to be used for school purposes shall be inspected annually by the city building official and the fire chief, or their designees, for safety and soundness and shall comply with the directions from such staff resulting from such inspections.

L. Prior to October 1st each year, the private school shall certify on a form prescribed by the planning office that the school continues to comply with the provisions of this section and with any conditions imposed by the city council in connection with the approval of the permit to operate. Such annual certification shall include a copy of the current annual review and approval by the fire department and the building department and shall be accompanied by payment of the annual certification fee in the amount