



# PLANNING COMMISSION STAFF REPORT

FOR THE PLANNING COMMISSION  
MEETING OF NOVEMBER 3, 2008  
AGENDA ITEM D2

**APPLICATION:** Zoning Ordinance Amendment Related to the Gross Floor Area Definition

**APPLICANT:** City of Menlo Park

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## PROPOSAL

The City of Menlo Park is proposing a Zoning Ordinance amendment to clarify the definition of Gross Floor Area to more specifically identify features of a building that are either included or excluded from the calculation. Gross floor area is used in calculating the floor area ratio (FAR) and parking requirements for developments in all zoning districts except for single-family and R-2 (Low Density Apartment) zoning districts. Floor area ratio equals the gross floor area of a building divided by the lot area and effectively regulates the size of a building. In addition, gross floor area is used in determining the applicability of requirements for below market rate (BMR) housing and the preparation of traffic studies. The clarifications to the definition will focus on new buildings and attempt to minimize impacts to existing buildings. The Zoning Ordinance Amendment will be exempt from the California Environmental Quality Act (CEQA) in that the changes are intended to have no potential to impact the environment.

## BACKGROUND

On October 8, 2007, the Planning Commission reviewed a Draft Zoning Ordinance Amendment prepared by staff based on City Council direction on May 8, 2007. The Commission held a public hearing and received comments from six members of the public. The Commission made comments regarding recommended changes to the draft ordinance. The Commission voted 6-0 (with Commissioner O'Malley absent at the time of the vote) for staff to return with a modified Draft Zoning Ordinance Amendment per the Commission's direction.

On November 5, 2007, the Planning Commission reviewed a revised Draft Zoning Ordinance Amendment. The Commission held a public hearing and received comments from three members of the public. The Commission made comments regarding recommended changes to the draft ordinance. Through two separate

motions, the Commission voted unanimously for staff to return with two versions of a Draft Zoning Ordinance Amendment per the Commission's direction.

On August 11, 2008, the Planning Commission reviewed a written summary drafted by the Chair and Vice Chair of the Commission's November 5, 2007 recommendation. The Commission received comments from one member of the public. The Commission voted unanimously that the summary accurately reflected the deliberations.

## **ANALYSIS**

The goal of this study session is to make sure that staff has accurately captured the Planning Commission's direction to date prior to holding a subsequent public hearing for the Commission to make a final recommendation to the City Council. The public hearing is tentatively scheduled for December 8, 2008. Once the Commission makes a final recommendation, the topic would be scheduled for a City Council study session sometime after the first of the year. After the study session, the Council would conduct a public hearing to introduce the ordinance and a second meeting to adopt the ordinance.

As directed by the Commission, staff has prepared two versions of the Draft Zoning Ordinance Amendment – Option A (Attachment A) and Option B (Attachment B). A side-by-side comparison of the two ordinances is included as Attachment C. Option A reflects the Planning Commission's November 5, 2007 deliberations regarding additional exclusions and a simplified approach to potential nonconformities. These changes to the draft ordinance after the November 5, 2007 meeting are summarized below. Option B generally reflects the original draft Zoning Ordinance Amendment that staff presented to the Commission on October 8, 2007, while incorporating refinements to terminology. In Option A the reader will see the use of *italics and shading*, and it is meant to draw attention to the modifications to the November 5, 2007 draft. In Option B the reader will see the use of underline and shading, and it is meant to highlight some of the key differences with Option A.

### Gross Floor Area Definition

- 16.04.325(C)(1): Established a maximum exclusion of 5% of the FAR. (The change is not applicable to Option B).
- 16.04.325(C)(4): Inserted the word "building" in front of "mechanical", changed terminology from "backup generator" to "emergency generator", and established a maximum exclusion of 1% of the FAR. (The change is not applicable to Option B).
- 16.04.325(C)(6): Inserted the word "building" in front of "mechanical" to indicate the exclusion only pertained to the systems tied to the shell of the building and not production activities associated with the use of the building. (The change is applicable to Option A and B).

- 16.04.325(C)(7): Changed wording from “trash and recycling enclosures” to “enclosures solely for trash and recycling” to clarify that the space cannot be excessive in size beyond the intended use. (The change is applicable to Option A and B).

As part of the study session, staff would especially like to take the opportunity to clarify whether the changes to 16.04.325(C)(1) and 16.04.325(C)(4) in Option A accurately reflect the Commission’s intent in terms of the percentage of the maximum exclusion and how the exclusion would be calculated. Staff believes this clarification would best be achieved through an example such as the following. If the maximum FAR for a 25,000 square foot property is 40%, then the maximum building size would be 10,000 square feet. Subsection 16.04.325(C)(1) would allow a maximum exclusion of 5% for non-useable/non-occupiable space (500 square feet) and Subsection 16.04.325(C)(4) would allow a 1% exclusion for space dedicated to noise generating equipment (100 square feet) for a total possible exclusion of 600 square feet. Staff would like to confirm that these percentages and calculations reflect how the Commission intended the limitation to work.

#### Nonconforming Provisions

After reviewing the Commission’s deliberation to date in more detail, staff believes that the Commission’s intent could be achieved by eliminating this section completely and inserting the following language into the definition of gross floor area as section 16.04.325(D).

Determination of the Gross Floor Area for existing buildings shall be based on historical practices in use at the time of approval of the construction or alteration of a building based on the records on file with the City of Menlo Park, and therefore are considered conforming and are not subject to Chapter 16.80 Nonconforming Uses and Structures as it relates to Floor Area Ratio regulations. Furthermore, through the use permit process, the Planning Commission may consider historical practices for determining gross floor area of an existing building when determining the remaining gross floor area on a lot that could be used for proposals to enlarge an existing building or to construct an additional building on the same lot as an existing building.

This approach would be much simpler than the original one and would eliminate the need for a certification process. The proposed language is also intended to address buildings that have been approved, but not yet constructed, because those buildings would be following through on approvals that are on file with the City and would eventually become existing buildings.

## **CEQA – ENVIRONMENTAL REVIEW**

The Planning Commission indicated that it believes that either ordinance amendment to clarify the definition of gross floor area would be exempt from the provisions of the California Environmental Quality Act (CEQA) pursuant to Section 15061(b)(3) of the CEQA Guidelines because it can be seen with certainty that there is no possibility of significant environmental effects occurring as a result of the adoption of the ordinance amendment.

## **RECOMMENDED MEETING REVIEW PROCESS**

1. Updates from staff.
2. Planning Commission questions of staff for general clarifications to the benefit of the public.
3. Public comment.
4. Planning Commission follow up questions of staff.
5. Planning Commission discussion.

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Justin Murphy  
Development Services Manager  
Report Author

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Arlinda Heineck  
Community Development Director

## **PUBLIC NOTIFICATION**

Public notification for this item consisted of publishing a legal notice in the local newspaper. In addition, the City has prepared a project page for the proposal, which is available at the following address: [http://www.menlopark.org/projects/comdev\\_gfa.htm](http://www.menlopark.org/projects/comdev_gfa.htm). This page provides up-to-date information about the project, allowing interested parties to stay informed of its progress. The page allows users to sign up for automatic email bulletins, notifying them when content is updated.

The Commission's action will be in the form of a recommendation to the City Council.

## **ATTACHMENTS**

- A. Draft Zoning Ordinance Amendment – Option A, dated November 3, 2008
- B. Draft Zoning Ordinance Amendment – Option B, dated November 3, 2008
- C. Comparison of Draft Zoning Ordinance Amendments, dated November 3, 2008

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## ATTACHMENT A

The use of *italics and shading* is meant to draw attention to the modifications to the November 5, 2007 draft.

### **DRAFT – OPTION A ORDINANCE NO. \_\_\_\_**

#### **An Ordinance of the City of Menlo Park, Amending Title 16 of the Menlo Park Municipal Code Amending Chapter 16.04, Definitions; and Chapter 16.80, Nonconforming Uses and Structures.**

The City Council of the City of Menlo Park does ordain as follows:

**SECTION 1.** The following sections of Title 16, *Zoning*, Chapter 16.04, *Definitions*, of the Menlo Park Municipal Code are hereby amended to read as follows:

#### **16.04.325 Gross floor area.**

- A) "Gross floor area" applies to all zoning districts except the single-family residential and R-2 zoning districts and means the sum of the horizontal areas of all floors within the surrounding solid walls of a building covered by a roof measured to the outside surfaces of exterior walls or portions thereof subject to the clarifications in Subsections (B) and (C).
- B) Gross floor area includes the following features of a building that meet the criteria of Subsection (A):
- (1) Basements;
  - (2) Mezzanines;
  - (3) Attics;
  - (4) Equipment and utility areas, such as, electrical panels, meters, controllers, switch boxes;
  - (5) Storage areas; and
  - (6) Bay windows and similar projections or cantilevered areas.
- C) Gross floor area excludes the following features of a building that meet the criteria of Subsection (A):
- (1) *Areas of a building that are not designed as useable or occupiable space as determined by the Building Official not to exceed 5% of the Floor Area Ratio. Such spaces typically have two or more of the following characteristics: a floor to ceiling height that is less than six feet, six inches; unfinished walls, floors and ceilings; limited access; unconditioned air (i.e., the air is neither heated or cooled); no windows or skylights; and no electricity.*
  - (2) All areas devoted to covered parking and related circulation for automobiles and bicycles, including garages, carports, below grade parking structures, and above grade parking structures;
  - (3) Covered porches and covered balconies provided that at least one end is open and unobstructed to the exterior except for columns or posts not more than 12 inches in width and walls or railings not more than 44 inches in height;
  - (4) *Areas of a building dedicated to the enclosure of noise generating equipment, such as building mechanical equipment and emergency power*

*generators, provided that the area is not designed for occupancy other than to allow for the operation and service of said equipment as determined by the Building Official not to exceed 1% of the Floor Area Ratio.*

(5) Elevator shafts and stairwells on all floors except for one floor (i.e., elevator shafts and stairwells count once)

(6) Vent shafts, such as building mechanical air ducts and chimneys; and

(7) Enclosures solely for trash and recycling.

*D) Determination of the Gross Floor Area for existing buildings shall be based on historical practices in use at the time of approval of the construction or alteration of a building based on the records on file with the City of Menlo Park, and therefore are considered conforming and are not subject to Chapter 16.80 Nonconforming Uses and Structures as it relates to Floor Area Ratio regulations. Furthermore, through the use permit process, the Planning Commission may consider historical practices for determining gross floor area of an existing building when determining the remaining gross floor area on a lot that could be used for proposals to enlarge an existing building or to construct an additional building on the same lot as an existing building.*

**16.04.315 Floor area ratio.** "Floor area ratio" applies to all zoning districts except the single-family residential and R-2 zoning districts and means the maximum permitted ratio of the total square footage of the gross floor area of all buildings on a lot to the square footage of the lot.

**SECTION 2.** Title 16, *Zoning*, Chapter 16.04, *Definitions*, of the Menlo Park Municipal Code is hereby amended to add the following section:

**16.04.469 Mezzanine.** "Mezzanine" means an intermediate floor of a building placed within a room. All portions of the mezzanine shall be open and unobstructed to the room in which they are located, except for columns or posts not more than 12 inches in width and protective walls or railings not more than 44 inches in height.

**SECTION 3.** Title 16, *Zoning*, Chapter 16.80, *Nonconforming Uses and Structures*, of the Menlo Park Municipal Code is hereby amended to add the following section:

*Placeholder only – no modifications to Zoning Ordinance proposed*

**SECTION 4.** If any part of this Ordinance is held to be invalid or inapplicable to any situation by a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance or the applicability of this Ordinance to other situations.

**SECTION 5.** This ordinance shall become effective thirty (30) days after the date of its adoption. Within fifteen (15) days of its adoption, the ordinance shall be posted in three (3) public places within the City of Menlo Park, and the ordinance, or a summary of the ordinance prepared by the City Attorney, shall be published in a local newspaper used to publish official notices for the City of Menlo Park prior to the effective date.

INTRODUCED on the \_\_ day of \_\_\_\_, 2009.

PASSED AND ADOPTED as an ordinance of the City of Menlo Park at a regular meeting of said Council on the \_\_ day of \_\_\_\_, 2009, by the following vote:

AYES:	Council Members:
NOES:	Council Members:
ABSENT:	Council Members:
ABSTAIN:	Council Members:

ATTEST:

APPROVED:

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Margaret S. Roberts  
City Clerk

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Mayor, City of Menlo Park

## ATTACHMENT B

The use of underline and shading is meant to highlight some of the key differences with Option A.

### **DRAFT – OPTION B ORDINANCE NO. \_\_\_\_**

#### **An Ordinance of the City of Menlo Park, Amending Title 16 of the Menlo Park Municipal Code Amending Chapter 16.04, Definitions; and Chapter 16.80, Nonconforming Uses and Structures.**

The City Council of the City of Menlo Park does ordain as follows:

**SECTION 1.** The following sections of Title 16, *Zoning*, Chapter 16.04, *Definitions*, of the Menlo Park Municipal Code are hereby amended to read as follows:

##### **16.04.325 Gross floor area.**

- A) "Gross floor area" applies to all zoning districts except the single-family residential and R-2 zoning districts and means the sum of the horizontal areas of all floors within the surrounding solid walls of a building covered by a roof measured to the outside surfaces of exterior walls or portions thereof subject to the clarifications in Subsections (B) and (C).
- B) Gross floor area includes the following features of a building that meet the criteria of Subsection (A):
- (1) Basements;
  - (2) Mezzanines;
  - (3) Attics;
  - (4) Equipment and utility areas, such as, mechanical equipment, electrical panels, meters, controllers, switch boxes;
  - (5) Storage areas;
  - (6) Elevator shafts and stairwells, and
  - (7) Bay windows and similar projections or cantilevered areas.
- C) Gross floor area excludes the following features of a building that meet the criteria of Subsection (A):
- (1) Areas of a building with a floor to ceiling height that is less than six feet, six inches.
  - (2) All areas devoted to covered parking and related circulation for automobiles and bicycles, including garages, carports, below grade parking structures, and above grade parking structures;
  - (3) Covered porches and covered balconies provided that at least one end is open and unobstructed to the exterior except for columns or posts not more than 12 inches in width and walls or railings not more than 44 inches in height;
  - (4) Vent shafts, such as building mechanical air ducts and chimneys; and
  - (5) Enclosures solely for trash and recycling.

**16.04.315 Floor area ratio.** "Floor area ratio" applies to all zoning districts except the single-family residential and R-2 zoning districts and means the

maximum permitted ratio of the total square footage of the gross floor area of all buildings on a lot to the square footage of the lot.

**SECTION 2.** Title 16, *Zoning*, Chapter 16.04, *Definitions*, of the Menlo Park Municipal Code is hereby amended to add the following section:

**16.04.469 Mezzanine.** “Mezzanine” means an intermediate floor of a building placed within a room. All portions of the mezzanine shall be open and unobstructed to the room in which they are located, except for columns or posts not more than 12 inches in width and protective walls or railings not more than 44 inches in height.

**SECTION 3.** Title 16, *Zoning*, Chapter 16.80, *Nonconforming Uses and Structures*, of the Menlo Park Municipal Code is hereby amended to add the following section:

**16.80.110 Exemption from gross floor area definition clarification.**

- (a) The following buildings shall be exempt from the Gross Floor Area definition clarification in Ordinance No. \_\_\_\_\_, provided that this exemption shall not apply to an increase in the gross floor area of a building by an addition or expansion of the building unless such addition or expansion was constructed or approved prior to said date:
  - (1) All buildings in existence as of the date of adoption of the Zoning Ordinance Amendment (Ordinance No. \_\_) on \_\_\_\_\_;
  - (2) Buildings that did not require discretionary planning review approval for which a building permit application was submitted prior to May 8, 2007; and
  - (3) Buildings for which an application for a discretionary planning review approval was submitted prior to January 1, 2007, provided the project receives all necessary discretionary approvals and the approval(s) does not expire prior to submittal of a building permit application.
- (b) No building exempt under subsection (a) of this section shall be subject to amortization by reason of a building which is nonconforming due to the Gross Floor Area definition clarification specified in subsection (a) of this section.
- (c) Any building exempt under subsection (a) of this section may be restored to its condition at the time of destruction if the building is destroyed by fire, explosion, or other catastrophe, but such restoration shall comply with:
  - (1) The building codes in effect at the time of restoration; and
  - (2) The requirements of Section 16.80.040 with respect to nonconformities other than a nonconformity created as a result of the Gross Floor Area definition clarification specified in subsection (a) of this section.
- (d) Except as provided in this subsection, any building exempt under subsection (a) of this section may undergo interior and/or exterior improvements to the building if there is no increase in the gross floor area unless the increase in gross floor area is mandated to comply with required disabled access

improvements and then only to the extent reasonably required to comply with such access requirements.

- (e) Notwithstanding the foregoing, the square footage of a building exempt under subsection (a) of this section shall be considered in determining whether a nonexempt building or expansion of any building shall be permitted on the site occupied by the exempt building, except as provided in this subsection (e). If a building was built prior to the effective date of this Zoning Ordinance Amendment (Ordinance No. \_\_\_\_ ) or received the necessary approvals to be exempt under subsection (a)(2) or (a)(3) of this section and the building's gross floor area is greater when measured pursuant to the Gross Floor Area definition clarification (Ordinance No. \_\_\_\_ ), the property owner may apply for a Gross Floor Area Exemption Certification to identify the gross floor area on a property that may be excluded from future calculations subject to the certification process outlined below. Upon receipt of a Gross Floor Area Exemption Certification, the gross floor area identified in the Certification shall be excluded from future calculations of gross floor area for purposes of considering construction of new buildings or expansion of existing buildings on the property covered by the Certification, except as otherwise provided in this subsection (e).
- (1) Within 30 days of the effective date of the Ordinance, the City shall inform property owners by mailing of notice, using for this purpose the last known name and address of such owners as shown upon the current assessment roll maintained by the City.
  - (2) The property owner shall have five years from the effective date of the Ordinance to submit a request in writing to the Community Development Director. The request shall include site plans, floor plans, cross sections and elevations of all buildings in question.
  - (3) The Community Development Director shall have 30 days to review an application to determine its completeness. Upon determining the submittal complete, the Community Development Director shall have 30 days to issue a Certification of what existing gross floor area shall be exempt from gross floor area calculations for the property. The Director's determination should be based on whether or not the building as it exists as of the effective date of this ordinance is consistent with plans previously approved by the City.
  - (4) The decision of the Community Development Director may be appealed to the Planning Commission pursuant to section 16.82.450.
  - (5) The Certification and associated exemptions become null and void upon demolition of the existing building. For purposes of this section, demolition means the removal of more than 50% of the existing gross floor area.

**SECTION 4.** If any part of this Ordinance is held to be invalid or inapplicable to any situation by a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance or the applicability of this Ordinance to other situations.

**SECTION 5.** This ordinance shall become effective thirty (30) days after the date of its adoption. Within fifteen (15) days of its adoption, the ordinance shall be posted in three (3) public places within the City of Menlo Park, and the ordinance, or a summary of the ordinance prepared by the City Attorney, shall be published in a local newspaper used to publish official notices for the City of Menlo Park prior to the effective date.

INTRODUCED on the \_\_ day of \_\_\_\_, 2009.

PASSED AND ADOPTED as an ordinance of the City of Menlo Park at a regular meeting of said Council on the \_\_ day of \_\_\_\_, 2009, by the following vote:

AYES:	Council Members:
NOES:	Council Members:
ABSENT:	Council Members:
ABSTAIN:	Council Members:

ATTEST:

APPROVED:

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Margaret S. Roberts  
City Clerk

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Mayor, City of Menlo Park

**ATTACHMENT C**  
**Comparison of Two Options for Gross Floor Area Definition Zoning Ordinance Amendment**  
**11/03/08**

Item	Draft ZOA Option A	Draft ZOA Option B
<b>Gross Floor Area Definition Subsection A</b>	"Gross floor area" applies to all zoning districts except the single-family residential and R-2 zoning districts and means the sum of the horizontal areas of all floors within the surrounding solid walls of a building covered by a roof measured to the outside surfaces of exterior walls or portions thereof subject to the clarifications in Subsections (B) and (C).	Same as Option A
<b>Gross Floor Area Definition Subsection B</b>	Gross floor area includes the following features of a building that meet the criteria of Subsection (A): (1) Basements; (2) Mezzanines; (3) Attics; (4) Equipment and utility areas, such as, electrical panels, meters, controllers, switch boxes; (5) Storage areas; and (6) Bay windows and similar projections or cantilevered areas.	Gross floor area includes the following features of a building that meet the criteria of Subsection (A): (1) Basements; (2) Mezzanines; (3) Attics; (4) Equipment and utility areas, such as, <b>mechanical equipment</b> , electrical panels, meters, controllers, switch boxes; (5) Storage areas; (6) <b>Elevator shafts and stairwells</b> , and (7) Bay windows and similar projections or cantilevered areas.
<b>Gross Floor Area Definition Subsection C</b>	Gross floor area excludes the following features of a building that meet the criteria of Subsection (A): <i>(1) Areas of a building that are not designed as useable or occupiable space as determined by the Building Official not to exceed 5% of the Floor Area Ratio. Such spaces typically have two or more of the following characteristics: a floor to ceiling height that is less than six feet, six inches; unfinished walls, floors and ceilings; limited access; unconditioned air (i.e., the air is neither heated or cooled); no windows or skylights; and no electricity.</i>	Gross floor area excludes the following features of a building that meet the criteria of Subsection (A): <i>(1) Areas of a building with a floor to ceiling height that is less than six feet, six inches.</i> (2) All areas devoted to covered parking and related circulation for automobiles and bicycles, including garages, carports, below grade parking structures, and above grade parking structures; (3) Covered porches and covered balconies provided that at least one end is open and unobstructed to the exterior except for columns or posts not more than 12 inches in width and walls or railings not

Item	Draft ZOA Option A	Draft ZOA Option B
	<p>(2) All areas devoted to covered parking and related circulation for automobiles and bicycles, including garages, carports, below grade parking structures, and above grade parking structures;</p> <p>(3) Covered porches and covered balconies provided that at least one end is open and unobstructed to the exterior except for columns or posts not more than 12 inches in width and walls or railings not more than 44 inches in height;</p> <p><i>(4) Areas of a building dedicated to the enclosure of noise generating equipment, such as building mechanical equipment and emergency power generators, provided that the area is not designed for occupancy other than to allow for the operation and service of said equipment as determined by the Building Official not to exceed 1% of the Floor Area Ratio.</i></p> <p>(5) Elevator shafts and stairwells on all floors except for one floor (i.e., elevator shafts and stairwells count once)</p> <p><i>(6) Vent shafts, such as building mechanical air ducts and chimneys; and</i></p> <p><i>(7) Enclosures solely for trash and recycling.</i></p>	<p>more than 44 inches in height;</p> <p>(4) Vent shafts, such as building mechanical air ducts and chimneys; and</p> <p>(5) Enclosures solely for trash and recycling.</p>
<p><b>Floor Area Ratio Definition</b></p>	<p>"Floor area ratio" applies to all zoning districts except the single-family residential and R-2 zoning districts and means the maximum permitted ratio of the total square footage of the gross floor area of all buildings on a lot to the square footage of the lot.</p>	<p>Same as Option A</p>
<p><b>Mezzanine Definition</b></p>	<p>"Mezzanine" means an intermediate floor of a building placed within a room. All portions of the mezzanine shall be open and unobstructed to the room in which they are located, except for columns or posts not more than 12 inches in width and protective walls or railings not more than 44 inches in height.</p>	<p>Same as Option A</p>

Item	Draft ZOA Option A	Draft ZOA Option B
<b>Historical Practices/ Nonconforming/ Gross Floor Area Definition Subsection D</b>	<p><i>Determination of the Gross Floor Area for existing buildings shall be based on historical practices in use at the time of approval of the construction or alteration of a building based on the records on file with the City of Menlo Park, and therefore are considered conforming and are not subject to Chapter 16.80 Nonconforming Uses and Structures as it relates to Floor Area Ratio regulations. Furthermore, through the use permit process, the Planning Commission may consider historical practices for determining gross floor area of an existing building when determining the remaining gross floor area on a lot that could be used for proposals to enlarge an existing building or to construct an additional building on the same lot as an existing building.</i></p>	<p><b>16.80.110 Exemption from gross floor area definition clarification.</b></p> <p>(a) The following buildings shall be exempt from the Gross Floor Area definition clarification in Ordinance No. _____, provided that this exemption shall not apply to an increase in the gross floor area of a building by an addition or expansion of the building unless such addition or expansion was constructed or approved prior to said date:</p> <ol style="list-style-type: none"> <li>(1) All buildings in existence as of the date of adoption of the Zoning Ordinance Amendment (Ordinance No. __) on _____;</li> <li>(2) Buildings that did not require discretionary planning review approval for which a building permit application was submitted prior to May 8, 2007; and</li> <li>(3) Buildings for which an application for a discretionary planning review approval was submitted prior to January 1, 2007, provided the project receives all necessary discretionary approvals and the approval(s) does not expire prior to submittal of a building permit application.</li> </ol> <p>(b) No building exempt under subsection (a) of this section shall be subject to amortization by reason of a building which is nonconforming due to the Gross Floor Area definition clarification specified in subsection (a) of this section.</p> <p>(c) Any building exempt under subsection (a) of this section may be restored to its condition at the time of destruction if the building is destroyed by fire, explosion, or other catastrophe, but such restoration shall comply with:</p> <ol style="list-style-type: none"> <li>(1) The building codes in effect at the time of</li> </ol>

Item	Draft ZOA Option A	Draft ZOA Option B
		<p>restoration; and</p> <p>(2) The requirements of Section 16.80.040 with respect to nonconformities other than a nonconformity created as a result of the Gross Floor Area definition clarification specified in subsection (a) of this section.</p> <p>(d) Except as provided in this subsection, any building exempt under subsection (a) of this section may undergo interior and/or exterior improvements to the building if there is no increase in the gross floor area unless the increase in gross floor area is mandated to comply with required disabled access improvements and then only to the extent reasonably required to comply with such access requirements.</p> <p>(e) Notwithstanding the foregoing, the square footage of a building exempt under subsection (a) of this section shall be considered in determining whether a nonexempt building or expansion of any building shall be permitted on the site occupied by the exempt building, except as provided in this subsection (e). If a building was built prior to the effective date of this Zoning Ordinance Amendment (Ordinance No. ___ ) or received the necessary approvals to be exempt under subsection (a)(2) or (a)(3) of this section and the building's gross floor area is greater when measured pursuant to the Gross Floor Area definition clarification (Ordinance No. ___ ), the property owner may apply for a Gross Floor Area Exemption Certification to identify the gross floor area on a property that may be excluded from future calculations subject to the certification process outlined below. Upon receipt of a Gross Floor Area Exemption Certification, the gross floor</p>

Item	Draft ZOA Option A	Draft ZOA Option B
		<p>area identified in the Certification shall be excluded from future calculations of gross floor area for purposes of considering construction of new buildings or expansion of existing buildings on the property covered by the Certification, except as otherwise provided in this subsection (e).</p> <ol style="list-style-type: none"><li data-bbox="1339 394 1997 609">(1) Within 30 days of the effective date of the Ordinance, the City shall inform property owners by mailing of notice, using for this purpose the last known name and address of such owners as shown upon the current assessment roll maintained by the City.</li><li data-bbox="1339 613 1997 862">(2) The property owner shall have five years from the effective date of the Ordinance to submit a request in writing to the Community Development Director. The request shall include site plans, floor plans, cross sections and elevations of all buildings in question.</li><li data-bbox="1339 867 1997 1377">(3) The Community Development Director shall have 30 days to review an application to determine its completeness. Upon determining the submittal complete, the Community Development Director shall have 30 days to issue a Certification of what existing gross floor area shall be exempt from gross floor area calculations for the property. The Director's determination should be based on whether or not the building as it exists as of the effective date of this ordinance is consistent with plans previously approved by the City.</li><li data-bbox="1339 1382 1997 1516">(4) The decision of the Community Development Director may be appealed to the Planning Commission pursuant to section 16.82.450.</li></ol>

Item	Draft ZOA Option A	Draft ZOA Option B
		(5) The Certification and associated exemptions become null and void upon demolition of the existing building. For purposes of this section, demolition means the removal of more than 50% of the existing gross floor area.

**Legend:** The use of *italics and shading* is meant to draw attention to the modifications to the November 5, 2007 draft.

The use of underline and shading is meant to highlight some of the key differences with Option A.