

**PLANNING COMMISSION STAFF REPORT**

**To:** Chairman & Planning Commission  
**From:** Shane Stueckle, Deputy Town Manager  
Alex Qishta, Project Engineer  
**Date:** June 20, 2014  
**For Commission Meeting:** July 8, 2014

**Subject:** Resolution No. 14-  
Street Vacation SV-01-14, Sage Avenue  
Approximately seven feet (7') by one hundred fifty two feet (152') easement  
on the southwest corner of Sage Avenue and Hidden Gold Drive

**Prior Commission Review:** There has been no prior Commission review of this matter.

**Recommendation:** That the Planning Commission finds that the street vacation, SV-01-14, is consistent with the General Plan and General Plan Circulation Element, and recommends to the Town Council to vacate an approximate 7' x 152' easement on the southwest corner of Sage Avenue and Hidden Gold Drive, as identified on Exhibit A to this staff report, being a portion of APN 585-362-01, and forwards that recommendation to the Town Council.

**Executive Summary:** The Streets and Highway Code Section 8300 et. et. permits the Town to vacate a street easement only upon a finding supported by substantial evidence that the easement is no longer needed for vehicular traffic and that the street is unnecessary for present or prospective public use.

The Planning Commission review all request for street vacations for consistency with the General Plan, Circulation Element and all other Town circulation requirements and forwards a recommendation to the Town Council for their consideration.

**Order of Procedure:**

- Request Staff Report
- Request Public Comment
- Commission Discussion/Questions of Staff
- Motion/Second
- Discussion on Motion
- Call the Question (Voice Vote)

**Discussion:** A proposal has been submitted to the Town of Yucca Valley by Copper Hills Homes, LLC/Sage Estates to vacate a 7' x 152' easement located adjacent to the westerly property line of APN 585-362-01.

Department Report       Ordinance Action       Resolution Action       Public Hearing  
 Consent                       Minute Action                       Receive and File                       Study Session

New adopted General Plan called that segment of Sage Avenue as a Local road with 60 feet Right-of-Way, the old General Plan call that segment of Sage Avenue as a Collector Road with 80 feet Right-of-way.

Section 8300 et. al. Of the Streets and Highways Codes requires the Town Council to set by resolution or ordinance, a public hearing date for action on the request for vacation. Adoption of a Resolution will set the date, time and place for the public hearing, and identified the location of the proposed easement vacation. The vacation is not final until Council action at the Public Hearing.

**Alternatives:** Staff recommends no alternative actions.

**Attachments:** Resolution 14-  
Request to Vacate Easement  
Exhibit A, Proposed Easement Vacation  
Assessor's Parcel Map  
Streets and Highways Code Section 8330  
New General Plan Roadway Classification  
Old General Plan Roadway Classification

RESOLUTION NO. PC-14-

A RESOLUTION OF THE PLANNING COMMISSION OF THE TOWN OF YUCCA VALLEY, CALIFORNIA, RECOMMENDING THAT THE TOWN COUNCIL APPROVES STREET VACATION SV-01-14, VACATING THAT PORTION OF EASEMENT ON ASSESSOR'S PARCEL NO. 585-362-01 AS IDENTIFIED ON EXHIBIT A TO THIS RESOLUTION

WHEREAS, the Planning Commission is considering the vacation of approximately 7' x 152' of access right of way on the southwest corner of Sage Avenue on APN 585-362-01; and

WHEREAS, the Planning Commission of the Town of Yucca Valley, California, has determined the easement identified is neither necessary for future circulation purposed nor needed for existing access by properties in the surrounding area; and

WHEREAS, the Planning Commission has considered the General Plan and General Plan Circulation Element, and the Planning Commission finds that the easement is not necessary for circulation purposes or for implementation of any portion of General Plan Policy; and

NOW, THEREFORE, THE PLANNING COMMISSION OF THE TOWN OF YUCCA VALLEY, CALIFORNIA, RESOLVES AS FOLLOWS:

Section 1: Street Vacation, SV-01-14, an area measuring approximately 7' by 152' at the southwest corner of Sage Avenue on APN 585-362-01, and as identified in Exhibit A, are recommended to be vacated by the Town Council.

PASSED, APPROVED AND ADOPTED this 8<sup>TH</sup> day of July 2014.

\_\_\_\_\_  
Planning Commission Chairman

\_\_\_\_\_  
Planning Commission Secretary



# Street Vacation Application

Date Received	09/16/14
By	DOLSEN
Fee	\$ 1340
Case #	

Entire Street

Portion of Street

### General Information

**APPLICANT** Copper Hills Homes, LLC / Sage Estates Phone 760.365.0649 Fax \_\_\_\_\_

Mailing Address 8514 Barberry Ave. Email edward878@cs.com or vgreengott@aol.com

City Yucca Valley State CA Zip 92284

**REPRESENTATIVE** Nolte V5 / Bill Warner Phone 760.341.3101 Fax 760.341.5999

Mailing Address 42-829 Cook St., Suite 104 Email bill.warner@nv5.com

**PROPERTY OWNER** Shack WE Jr Family Trust Phone 760.365.0649 Fax \_\_\_\_\_

Mailing Address Same as applicant Email \_\_\_\_\_

City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_

### Project Information

Street Name: Sage Ave.

Assessor Parcel Number(s) of adjacent parcels:  
(Please provide a copy of the Assessor Parcel Map, with the portion to be vacated identified)  
0585-362-01

Nearest cross street(s): Hidden Gold Drive

Length of street to be vacated: ± 152 feet

Width of street to be vacated: ± 7.00 feet

Legal description of street, alley, or public easement to be vacated (attach additional pages if needed)  
See attached exhibits

Applicant Signature \_\_\_\_\_

Property Owner Signature \_\_\_\_\_

**Owner/Applicant Authorization**

**Applicant/Representative:** I/We have reviewed this completed application and the attached material. The information included with this application is true and correct to the best of my/our knowledge. I/We further understand that the Town may not approve the application as submitted, and may set conditions of approval. Further, I/We understand that all documents, maps, reports, etc., submitted with this application does not guarantee approval or constitute a building permit application.

Signed: \_\_\_\_\_  
Date: 4-16-14

**Property Owner:** I/We certify that I/We are presently the legal owner(s) of the above described property (if the undersigned is different from the legal property owner, a letter of authorization must accompany the form). Further, I/We acknowledge the filing of this application and certify that all of the above information is true and accurate. I/We understand that I/We are responsible for ensuring compliance with conditions of approval. I/We hereby authorize the Town of Yucca Valley and or/its designated agent(s) to enter onto the subject property to confirm the location of existing conditions and proposed improvements including compliance with applicable Town Code Requirements. Further, I/We understand that all documents, maps, reports, etc., submitted with this application are deemed to be public records. This application does not guarantee approval or constitute a building permit application. I am hereby authorizing

Nolte V5  
to act as my agent and is further authorized to sign any and all documents on my behalf.

Signed: \_\_\_\_\_  
Dated: 4-16-14

EXHIBIT 'A'

LEGAL DESCRIPTION

THAT PORTION OF THE EAST HALF OF SECTION 11, TOWNSHIP 1 SOUTH, RANGE 5 EAST, SAN BERNARDINO BASE AND MERIDIAN, IN THE COUNTY OF SAN BERNARDINO, TOWN OF YUCCA VALLEY, STATE OF CALIFORNIA, DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHEAST CORNER OF LOT 89 OF TRACT 5964, AS RECORDED IN MAP BOOK 76, PAGES 83 THROUGH 85, IN THE OFFICE OF THE RECORDER OF SAID COUNTY;

THENCE N 0° 26' 00" E ALONG THE EAST LINE OF SAID LOT 89 A DISTANCE OF 131.77 FEET TO THE BEGINNING OF A TANGENT CURVE, CONCAVE TO THE SOUTHWEST, HAVING A RADIUS OF 20.00 FEET;

THENCE ALONG SAID CURVE A DISTANCE OF 31.66 FEET;

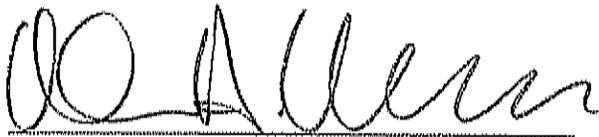
THENCE N 89° 44' 54" E A DISTANCE OF 7.00 FEET TO THE BEGINNING OF A TANGENT CURVE, CONCAVE TO THE SOUTHWEST, HAVING A RADIUS OF 20.00 FEET;

THENCE ALONG SAID CURVE A DISTANCE OF 31.66 FEET TO A LINE WHICH IS 7.00 FEET EASTERLY OF , AND PARALLEL TO SAID EAST LINE OF SAID LOT 89;

THENCE S 0° 26' 00" W, ALONG SAID PARALLEL LINE A DISTANCE OF 131.69 FEET;

THENCE N 89° 34' 00" W A DISTANCE OF 7.00 FEET TO THE POINT OF BEGINNING.

PREPARED BY:



WILLIAM H. WARNER, R.C.E. 23256  
NOLTE ASSOCIATES, INC.

4/16/14  
DATE



TIME:  
SERVER:  
XREFS:

DATE:  
PAGE SETUP:

PATH:  
DRAWING NAME:

HIDDEN GOLD  
DRIVE

30'

S 89°44'54" W  
7.00'

C1

C2

33'

7.00'

89

TRACT 5964  
MB 76/83-85

N 00°26'00" E 131.85'

S 00°26'00" W 131.95'

POINT OF BEGINNING

7.00'  
N 89°34'00" W

SAGE AVENUE

40'

106

IVANHOE  
DRIVE

30'

CURVE TABLE			
CURVE	LENGTH	RADIUS	DELTA
C1	31.66	20.00	90°41'06"
C2	31.66	20.00	90°41'06"

**NOLTE**

BEYOND ENGINEERING

79-800 199 HWY 101, SUITE A  
YUCCA VALLEY, CA 94589 TEL: 709.841.8900 FAX: 709.841.8900

PALM SPRING, CA 92506  
WWW.NOLTE.COM

PREPARED FOR: 0000

DATE SUBMITTED: 0000

SHEET NUMBER

1

OF 1 SHEETS

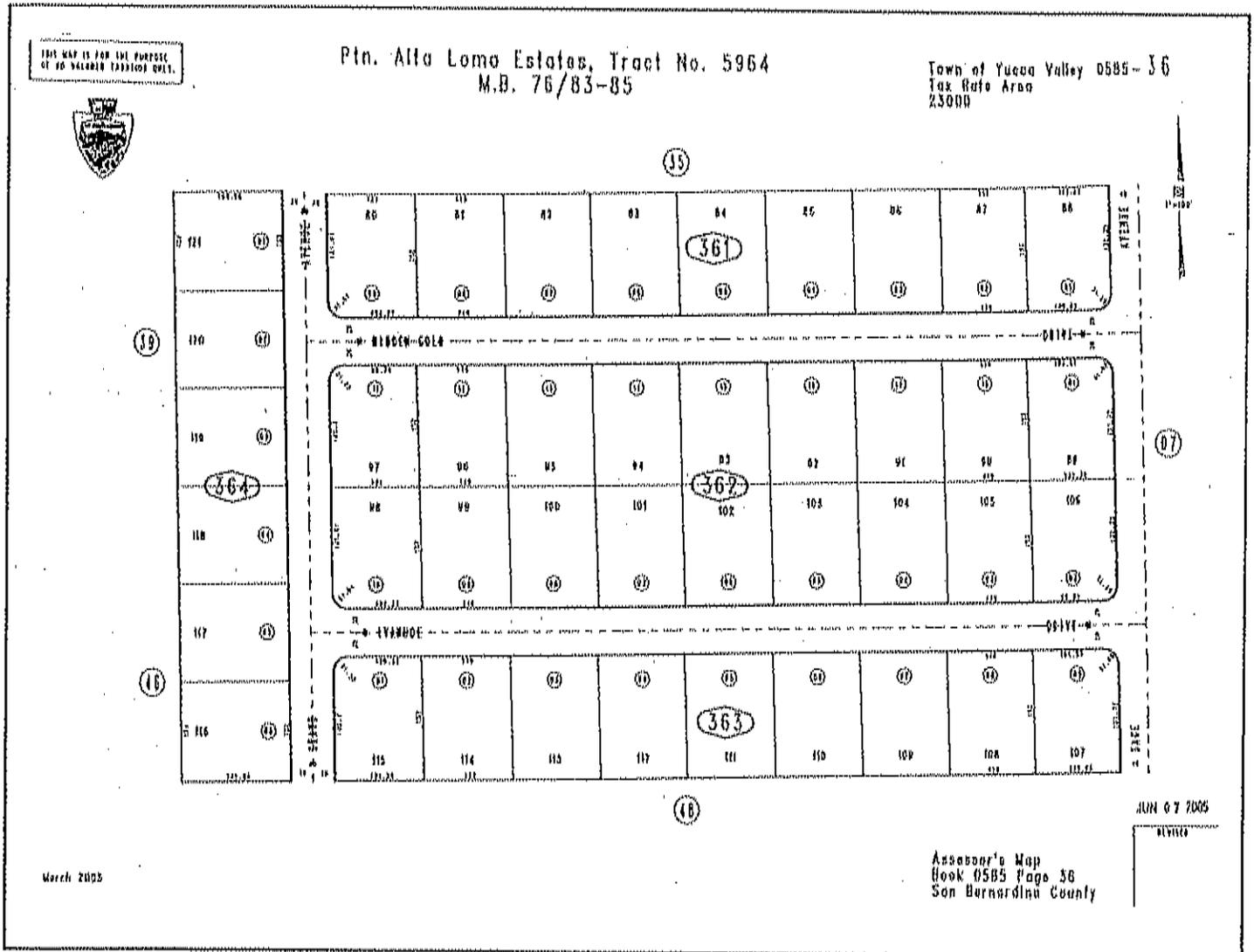
JOB NUMBER  
YV8021300



First American

myFirstAm™ Tax Map

, CA



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## **STREETS AND HIGHWAYS CODE**

### **SECTION 8330-8334.5**

8330. (a) The legislative body of a local agency may summarily vacate a street or highway that has been superseded by relocation.

(b) A street or highway shall not be summarily vacated pursuant to this section if vacation would do either of the following:

(1) Cut off all access to a person's property which, prior to relocation, adjoined the street or highway.

(2) Terminate a public service easement, unless the easement satisfies the requirements of Section 8333.

8330.5. (a) Subject to subdivisions (b) and (c), the commission may retain, relinquish to a local agency pursuant to Section 73, or summarily vacate a state highway that has been superseded by relocation.

(b) The commission shall not vacate a state highway unless the commission has first given a notice of relinquishment pursuant to Section 73 and the legislative body of the local agency has protested within the prescribed 90-day period that the highway is not needed for public use and should be vacated by the commission.

(c) If vacation of a state highway would cut off all access to the property of any person which, prior to relocation, adjoined the highway, the commission shall either retain the highway or relinquish it pursuant to Section 73.

8331. The legislative body of a local agency may summarily vacate a street or highway if both of the following conditions exist:

(a) For a period of five consecutive years, the street or highway has been impassable for vehicular travel.

(b) No public money was expended for maintenance on the street or highway during such period.

8332. The legislative body of a local agency may summarily vacate a street or highway pursuant to an agreement entered into with the department pursuant to Section 100.2 to close the street or highway at or near the point of its interception with a state freeway.

8333. The legislative body of a local agency may summarily vacate a public service easement in any of the following cases:

(a) The easement has not been used for the purpose for which it was dedicated or acquired for five consecutive years immediately preceding the proposed vacation.

(b) The date of dedication or acquisition is less than five years, and more than one year, immediately preceding the proposed vacation, and the easement was not used continuously since that date.

(c) The easement has been superseded by relocation, or determined to be excess by the easement holder, and there are no other public facilities located within the easement.

8334. The legislative body of a local agency may summarily vacate any of the following:

(a) An excess right-of-way of a street or highway not required for street or highway purposes.

(b) A portion of a street or highway that lies within property under one ownership and that does not continue through such ownership or end touching property of another.

8334.5. Notwithstanding any other provision of this article, a street, highway, or public service easement may not be summarily vacated if there are in-place public utility facilities that are in use and would be affected by the vacation.

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**Notice of Exemption**

Form D

To:  Office of Planning and Research  
PO Box 3044, 1400 Tenth Street, Room 222  
Sacramento, CA 95812-3044

From: (Public Agency) Town of Yucca Valley  
58928 Business Center Drive  
Yucca Valley, CA 92284

County Clerk  
County of San Bernardino  
385 N. Arrowhead, 2nd Flr.  
San Bernardino, CA. 92415

(Address)

Project Title: Street Vacation, SV-01-14 Sage Avenue

**Project Location - Specific:**

The project is at the southwest corner of Sage Avenue and Hidden Gold Drive and is identified as APN:585-362-01.

Project Location - City: Yucca Valley

Project Location - County: San Bernardino

**Description of Project:**

A proposal to vacate a 7' by 152' easement along Sage Ave, at the southwest corner of Sage Ave and Hidden Gold Dra.

Name of Public Agency Approving Project: Town of Yucca Valley

Name of Person or Agency Carrying Out Project: Copper Hills Homes, LLC

**Exempt Status: (check one)**

- Ministerial (Sec. 21080(b)(1); 15268);
- Declared Emergency (Sec. 21080(b)(3); 15269(a));
- Emergency Project (Sec. 21080(b)(4); 15269(b)(c));
- Categorical Exemption. State type and section number: Section 15301, Class 1 Existing Facilities
- Statutory Exemptions. State code number: \_\_\_\_\_

**Reasons why project is exempt:**

The project is an existing roadway and involves no expansion

**Lead Agency**

Contact Person: Shane Stueckle Area Code/Telephone/Extension: (760) 369-6575 X305

**If filed by applicant:**

- 1. Attach certified document of exemption finding.
- 2. Has a Notice of Exemption been filed by the public agency approving the project?  Yes  No

Signature: \_\_\_\_\_ Date: \_\_\_\_\_ Title: \_\_\_\_\_

- Signed by Lead Agency Date received for filing at OPR: \_\_\_\_\_
- Signed by Applicant

Revised May 1999

**Note:** Authority cited: Section 21083, Public Resources Code; Reference: Section 21084, Public Resources Code.

### 15301. EXISTING FACILITIES

Class 1 consists of the operation, repair, maintenance, permitting, leasing, licensing, or minor alteration of existing public or private structures, facilities, mechanical equipment, or topographical features, involving negligible or no expansion of use beyond that existing at the time of the lead agency's determination. The types of "existing facilities" itemized below are not intended to be all-inclusive of the types of projects which might fall within Class 1. The key consideration is whether the project involves negligible or no expansion of an existing use. Examples include but are not limited to:

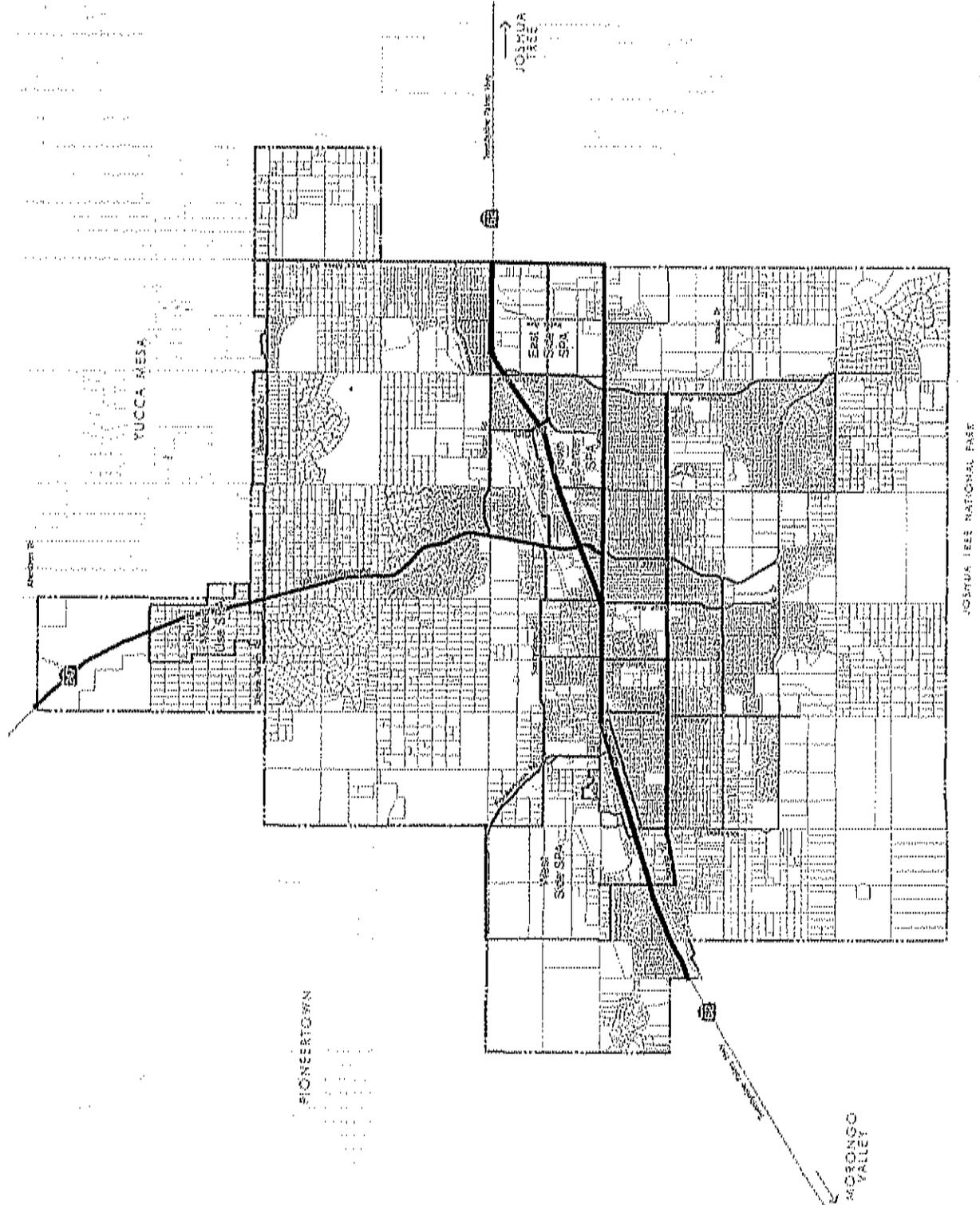
- (a) Interior or exterior alterations involving such things as interior partitions, plumbing, and electrical conveyances;
- (b) Existing facilities of both investor and publicly owned utilities used to provide electric power, natural gas, sewerage, or other public utility services;
- (c) Existing highways and streets, sidewalks, gutters, bicycle and pedestrian trails, and similar facilities (this includes road grading for the purpose of public safety).
- (d) Restoration or rehabilitation of deteriorated or damaged structures, facilities, or mechanical equipment to meet current standards of public health and safety, unless it is determined that the damage was substantial and resulted from an environmental hazard such as earthquake, landslide, or flood;
- (e) Additions to existing structures provided that the addition will not result in an increase of more than:
  - (1) 50 percent of the floor area of the structures before the addition, or 2,500 square feet, whichever is less; or
  - (2) 10,000 square feet if:
    - (A) The project is in an area where all public services and facilities are available to allow for maximum development permissible in the General Plan and
    - (B) The area in which the project is located is not environmentally sensitive.
- (f) Addition of safety or health protection devices for use during construction of or in conjunction with existing structures, facilities, or mechanical equipment, or topographical features including navigational devices;
- (g) New copy on existing on and off-premise signs;
- (h) Maintenance of existing landscaping, native growth, and water supply reservoirs (excluding the use of pesticides, as defined in Section 12753, Division 7, Chapter 2, Food and Agricultural Code);
- (i) Maintenance of fish screens, fish ladders, wildlife habitat areas, artificial wildlife waterway devices, streamflows, springs and waterholes, and stream channels (clearing of debris) to protect fish and wildlife resources;
- (j) Fish stocking by the California Department of Fish and Game;
- (k) Division of existing multiple family or single-family residences into common-interest ownership and subdivision of existing commercial or industrial buildings, where no physical changes occur which are not otherwise exempt;
- (l) Demolition and removal of individual small structures listed in this subdivision:
  - (1) One single-family residence. In urbanized areas, up to three single-family residences may be demolished under this exemption.

Figure C-1

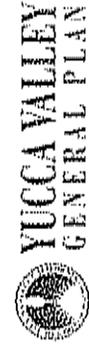
**ROADWAY CLASSIFICATIONS  
AT GENERAL PLAN BUILDOUT**

**ROADWAY CLASSIFICATIONS**

- Highway - 4 lanes divided - 134'
- Arterial - 4 lanes divided - 97'
- Arterial - 4 lanes divided - 130'
- Arterial - 2 lanes - 77'
- Collector - 2 lanes with Street Median - 77'
- Collector - 2 lanes - 64'
- SPB - Special Freeway
- SPB - Freeway



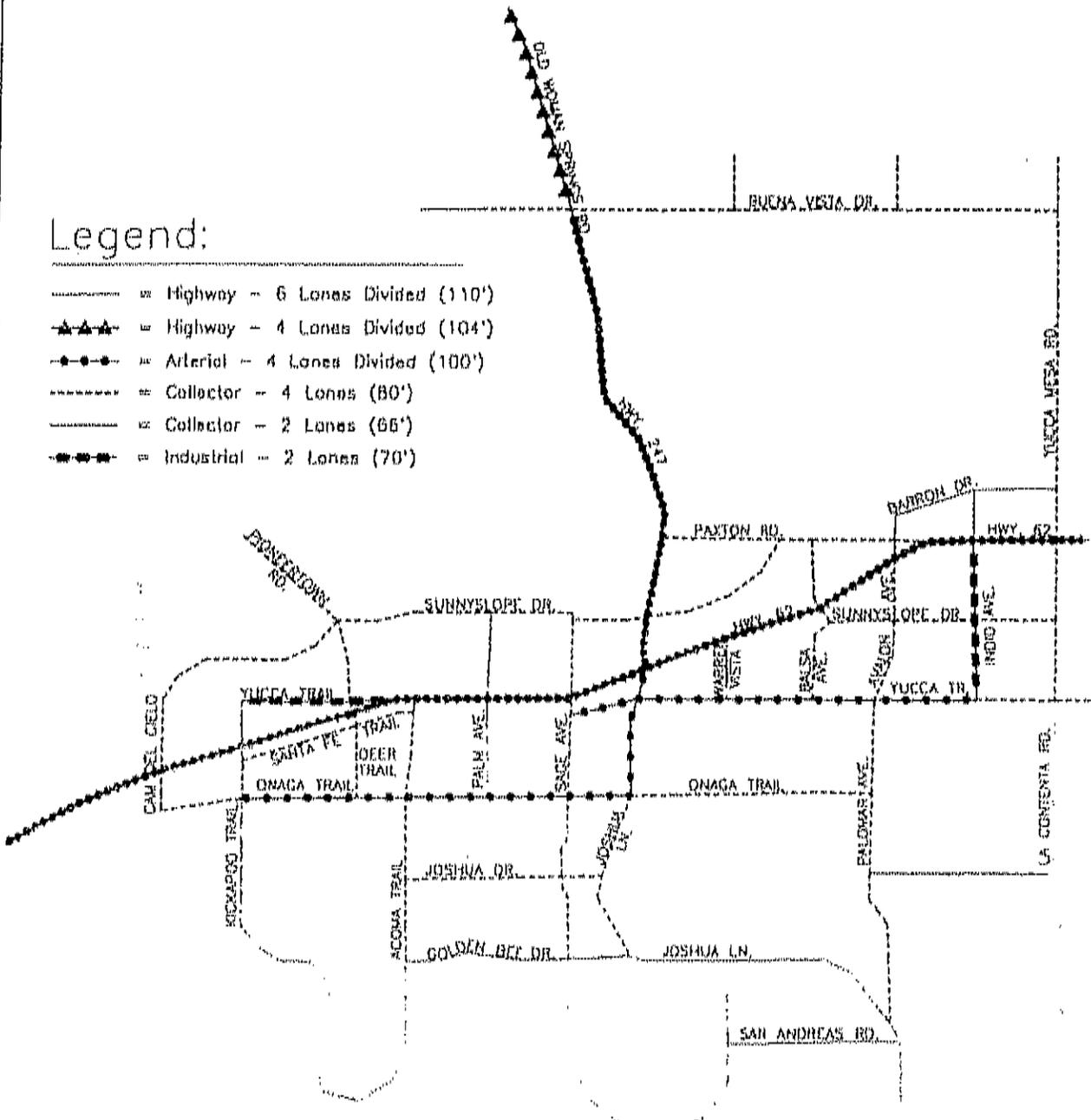
NOTE: All roadways shown on this map are subject to change. The information on this map is for informational purposes only and does not constitute a contract. The information on this map is for informational purposes only and does not constitute a contract.



# TOWN OF YUCCA VALLEY CIRCULATION PLAN

## Legend:

- Highway - 6 Lanes Divided (110')
- ▲▲▲▲ Highway - 4 Lanes Divided (104')
- Arterial - 4 Lanes Divided (100')
- Collector - 4 Lanes (80')
- Collector - 2 Lanes (66')
- Industrial - 2 Lanes (70')



S36-24-00125



## TOWN OF YUCCA VALLEY GENERAL PLAN CIRCULATION ELEMENT

EXHIBIT III-2

**Robert Kahn, John Kain  
& Associates, Inc.**

**PLANNING COMMISSION STAFF REPORT**

**To:** Chairman & Planning Commission  
**From:** Shane Stueckle, Deputy Town Manager  
**Date:** June 25, 2014  
**For Commission Meeting:** July 08, 2014

**Subject:** Development Code Amendment, DCA-04-14  
Draft Development Code Article 1, Authority and Applicability  
CEQA Exemption 15061(b)(3)

**Prior Commission Review:** There has been no prior Planning Commission review of this item.

**Recommendation:** That the Planning Commission:

- A. Finds that the project is exempt from CEQA in accordance with Section 15061(b)(3) of the California Environmental Quality Act. The proposed amendment to revise the Town's Development Code has no potential to impact the environment. The proposed amendment does not alter the existing requirements that specific development projects must comply with the provisions of the California Environmental Quality Act. Development Code Amendment, DCA 04-14 meets the exemption criteria which states "that if an activity 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 where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment, the activity is not subject to CEQA".
  
- B. Recommends that the Town Council adopts the Ordinance and repeals Development Code Sections 81.0101-81.0195, Section 81.0305 and Sections 84.0801-84.0830 of Title 8.

**Executive Summary:** Article 1, Authority and Applicability, identifies the purpose of the Development Code, the general standards of the Development Code and standards and procedures for non-conforming lots, structures and uses

..... Department Report       Ordinance Action      ..... Resolution Action       Public Hearing  
..... Consent                      ..... Minute Action                      ..... Receive and File                      ..... Study Session

**Order of Procedure:**

- Request Staff Report
- Open the Public Hearing
- Request Public Comment
- Close the Public Hearing
- Commission Discussion/Questions of Staff
- Motion/Second
- Discussion on Motion
- Call the Question (Roll Call Vote)

**Discussion:** Article 1, Authority and Applicability, identifies the purpose of the Development Code, the general provisions of the Development Code and standards and procedures for non-conforming lots, structures and uses.

Three Chapters are established within Article 1, and those Chapters are structured in the following manner:

- Chapter 9.01 Purpose and Applicability
- Chapter 9.02 General Provisions
- Chapter 9.03 Nonconforming Lots, Structures and Uses

**Chapter 9.01 Purpose and Applicability:**

This Chapter identifies the purpose and intent of the Development Code, the authority to enact the Development Code and the responsibility for the administration of the Development Code.

**Chapter 9.02 General Provisions:**

This Chapter identifies the authority to interpret division of the Development Code, identifies the relationship to the General Plan, and identifies the Legal Defense Fee Responsibility.

**Chapter 9.03 Nonconforming Lots, Structures and Uses:**

This Chapter establishes the standards and procedures for non-conforming lots, structures and uses.

**Alternatives:** The Planning Commission may elect to make recommended changes to the Article.

**Fiscal impact:** This Ordinance is included in the Town's contract for the Development Code Update project. No additional costs are incurred beyond existing contract services.

**Attachments:** Article 1, Authority and Applicability  
Notice of Hearing

# Article 1: Authority and Applicability

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## **Chapter 9.01 Purpose and Applicability**

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### **Sections:**

- 9.01.010 – Title
- 9.01.020 – Purpose and Intent of Development Code
- 9.01.030 – Authority
- 9.01.040 – Responsibility for Administration
- 9.01.050 – Applicability

### **9.01.010 – Title**

This title shall be known as the "Town of Yucca Valley Development Code" and referred to as the "Development Code."

### **9.01.020 – Purpose and Intent of Development Code**

The purpose of this Development Code is intended to carry out the policies of the Town of Yucca Valley General Plan by classifying and regulating the uses of land and structures within the Town. It is also the intent of this Development Code to promote the orderly and beneficial development of the Town; promote and protect the public health, safety, peace, comfort, and general welfare; and protect the character, social, and economic vitality of neighborhoods.

### **9.01.030 – Authority**

The Development Code is enacted based on the authority vested in the Town of Yucca Valley by the State of California, including but not limited to:

- A. Local Ordinances and Regulations (California Constitution, Article XI, Section 7)
- B. Planning and Zoning Law (Government Code Section 65000 et seq.)
- C. Airport Approaches Zoning Law (Government Code Section 50485 et seq.)
- D. Alquist-Priolo Earthquake Fault Zoning Act (Public Resources Code Section 2621 et seq.)
- E. California Environmental Quality Act (Public Resources Code Section 21000 et seq.)
- F. Desert Native Plants Act (Food and Agricultural Code Section 80001 et seq.)
- G. Land Conservation Act of 1965 (Williamson Act) (Government Code Section 51200 et seq.)
- H. Mobilehome Parks Act (Health and Safety Code Section 18200 et seq.)
- I. Subdivision Map Act (Government Code Sections 66410 et seq.)
- J. Surface Mining and Reclamation Act of 1975 (Public Resources Code Section 2710 et seq.)
- K. Z'berg-Nejedly Forest Practice Act of 1973 (Public Resources Code Section 4526 et seq.)

**9.01.040 – Responsibility for Administration**

This Development Code shall be administered by the Town Council, the Planning Commission, the Director of Community Development, the Community Development Department, and any other departments, groups, or individuals identified in this Development Code in compliance with Title 2 (Administration and Personnel) of the Town Municipal Code.

**9.01.050 – Applicability**

This Development Code applies to all construction, modifications of existing development, land uses, subdivisions on property, and development within the Town of Yucca Valley.

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## Chapter 9.02 General Provisions

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### Sections:

- 9.02.010 - Rules of Interpretation
- 9.02.020 - Relationship to General Plan
- 9.02.030 - Severability of Any Portion of the Development Code
- 9.02.040 - Legal Defense Fee Responsibility

### 9.02.010 - Rules of Interpretation

- A. Authority.** The Director has the authority to interpret provisions of this Development Code. Whenever the Director determines that the meaning or applicability of a Development Code requirement is subject to interpretation, the Director shall issue a written interpretation. The Director may also refer any issue of interpretation to the Commission for a determination. A decision of the Director may be appealed to the Commission and a decision of the Commission may be appealed to the Council in compliance with Chapter 9.81 (Appeals).
- B. Terminology.** When used in this title, the following rules apply to all provisions of this Development Code:
1. **Language.** When used in this Development Code, the words "shall," "must," "will," "is to," and "are to" are always mandatory. "Should" is not mandatory but is strongly recommended; and "may" is permissive.
  2. **Tense.** The present tense includes the past and future tense, and the future tense includes the present.
  3. **Number.** The singular number includes the plural number, and the plural the singular, unless the natural construction of the words indicates otherwise.
  4. **Calculations.**
    - a. **Number of lots.** The fractional/decimal results of calculations of the number of parcels allowed through subdivision based on a minimum lot area requirement shall be rounded down to the next lowest whole number.
    - b. **Residential Density.** When the number of dwelling units allowed on a site is calculated based on the minimum site area per dwelling unit, any fraction of a unit shall be rounded down to the next lowest whole number.

- c. **Other Calculations.** For calculations other than residential density, the fractional/decimal results of calculations shall be rounded to the next highest whole number unless otherwise specified.
  - 5. **Conjunctions.** "And" indicates that all connected items or provisions shall apply. "Or" indicates that the connected items or provisions may apply singly or in any combination. "Either...or" indicates that the connected items and provisions shall apply singly but not in combination. "Includes" and "including" shall mean "including but not limited to".
  - 6. **Local Reference.** "Town" as used herein means the Town of Yucca Valley and all public officials, bodies, and agencies referenced herein are those of the Town unless otherwise stated.
  - 7. **Definitions.** As defined in Article 7 (Definitions) and/or as determined/interpreted by the Director.
- C. Number of Days.** Whenever the number of days is specified in this Development Code, or in any permit, condition of approval or notice issued or given as provided in this Development Code, the number of days shall be construed as calendar days. When the last of the specified number of days falls on a weekend or Town-recognized holiday, time limits shall extend to the end of the next working day.
- D. Conflicting Requirements.** Any conflicts between different requirements of this Development Code, or between this Development Code and other regulations, shall be resolved as follows.
- 1. **Development Code Provisions.** In the event of any conflict between the provisions of this Development Code, the most restrictive requirement shall control, except in case of any conflict between the land use zoning district regulations of Article 2 (Zoning Districts and Development Standards) and the provisions of Article 3 (General Development Standards), the provisions of Article 3 shall control.
  - 2. **Development Agreements or Specific Plans.** In the event of any conflict between the requirements of this Development Code and standards adopted as part of any Development Agreement or Specific Plan, the requirements of the Development Agreement or Specific Plan shall control.
  - 3. **Town Code Provisions.** In the event of any conflict between requirements of this Development Code and other regulations of the Town, the most restrictive requirement shall control.
  - 4. **Mitigation Measures.** In the event of any conflict between the requirements of this Development Code and mitigation measures adopted as part of a certified environmental impact report or approved negative declaration, the most restrictive shall control.
- E. Minimum Requirements.** When interpreting and applying the regulations of this Development Code, all provisions shall be considered to be minimum requirements, unless specifically stated otherwise.

- F. Interpretation of Boundaries.** See Chapter 9.05 (Zoning Districts and Zoning Maps).
- G. Illustrations.** The figures, diagrams, and other graphics used throughout this Development Code are for illustration purposes only and to the extent any are in conflict with the written provisions, the written provisions shall govern.

#### 9.02.020 – Relationship to General Plan

This Development Code is the primary tool used by the Town to carry out the goals, objectives, and policies of the General Plan. It is intended that all provisions of this Development Code be consistent with the General Plan and that any development, land use, or subdivision approved in compliance with these regulations will also be consistent with these documents.

#### 9.02.030 – Severability of Any Portion of the Development Code

If any portion of this Development Code is held to be invalid, unconstitutional, or unenforceable by a court of competent jurisdiction, such determination shall not affect the validity of the remaining portions of this title. The Council hereby declares that this title and each article, section, subsection, paragraph, subparagraph, sentence, clause, phrase and portion thereof is adopted without regard to the fact that one or more portions of this title may be declared invalid, unconstitutional, or unenforceable.

#### 9.02.040 – Legal Defense Fee Responsibility

- A. Applicant's Agreement to Indemnify and Hold Harmless.**  
The applicant shall agree to defend, indemnify and hold harmless the Town of Yucca Valley, its agents, officers and employees, at his sole expense, against any action, claim or proceedings brought against the Town or its agents, officers or employees, to attack, set aside, void, or annul this approval or because of the issuance of such approval, or in the alternative, to relinquish such approval, in compliance with the Town of Yucca Valley Development Code. The applicant shall reimburse the Town, its agents, officers, or employees for any court costs, and attorney's fees which the Town, its agents, officers or employees may be required by a court to pay as a result of such action. The Town may, at its sole discretion, participate at its own expense in the defense of any such action but such participation shall not relieve applicant of his obligations under this condition. The Town shall promptly notify the applicant of any claim, action or proceedings arising from the Town's approval of this project, and the Town shall cooperate in the defense.

~~As a condition of approval of a land use application, the applicant shall agree to defend, indemnify and hold harmless the Town of Yucca Valley, its agents, officers and employees, at his sole expense, against any action, claim or proceedings brought against the Town or its agents, officers or employees, to attack, set aside, void, or annul this approval or because of the issuance of such approval, or in the alternative, to relinquish such approval, in compliance with the Development Code. The applicant shall reimburse the Town, its agents, officers, or employees for any court costs, and attorney's fees which the Town, its agents, officers or employees may be required by a court to pay as a result of such action. The Town may, at its sole discretion, participate at its own expense in the defense of any such action but such participation shall not relieve applicant of his obligations under this condition. The Town shall promptly notify the applicant of any claim,~~

~~action or proceedings arising from the Town's approval of this project, and the Town shall cooperate in the defense.~~

- B. Town's Duty to Notify Applicant and Cooperate in Defense.** Any condition of approval imposed in compliance with this Development Code shall include a requirement that the Town acts reasonably to promptly notify the applicant of any claim, action, or proceeding and that the Town cooperates fully in the defense.

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## Chapter 9.03 Nonconforming Lots, Structures, and Uses

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### Sections:

- 9.03.010 – Purpose and Intent
- 9.03.020 – Applicability
- 9.03.030 – Determination, Extension, and Abatement Procedures
- 9.03.040 – Nonconforming Lots
- 9.03.050 – Nonconforming Structures
- 9.03.060 – Nonconforming Uses

### 9.03.010 – Purpose and Intent

- A. **Regulation of legal conformities.** This Chapter establishes uniform provisions for the regulation of legal nonconforming land uses, structures, and parcels. Within the land use zoning districts established by this Development Code, there exist land uses, structures, and parcels that were lawfully in existence before the adoption, or amendment of this Development Code, but which would be prohibited, regulated, or restricted differently under the terms of this Development Code, as amended. This Chapter provides for their eventual elimination, but allows them to exist under the limited conditions identified in this Chapter.
- B. **Intent.** It is the intent of this Development Code to discourage the long-term continuance of these nonconformities in order to promote the public health, safety, and general welfare and to bring the uses and structures into conformity with the goals and policies of the General Plan and any applicable Specific Plan.

### 9.03.020 – Applicability

The provisions in this Chapter apply to existing legal nonconforming structures, uses, and parcels.

### 9.03.030 – Determination, Extension, and Abatement Procedures

- A. **Purpose.** This section sets forth provisions for the abatement of lots, structures, and uses deemed to be nonconforming and subject to abatement pursuant to the provisions of this Article.
- B. **Authority.** The Director shall be the designated Review Authority for determining that a lot, structure, or use is nonconforming, and the Commission shall be the designated Review Authority for action on the abatement procedures and extensions of the nonconforming lots, structures, or uses.
- C. **Notice and Hearing.** Once the Director has determined that a lot, structure, or use is nonconforming, the Director shall provide required notice for hearing and action by the Commission. The purpose of the hearing is to determine whether the nonconformity should be

abated, given a specific term prior to abatement, or granted a time extension. Notice and hearing shall be performed and conducted pursuant to Chapter 9.86 (Public Notices and Hearings).

- D. Decision and Findings.** The Commission shall base its decision as to the length of the permitted amortization period on any competent evidence presented, included but not limited to the depreciation schedule attached to the owner's latest federal income tax return. Findings shall be made as to whether or not the balancing of the public interest and the request by the owner for continuance, alteration, or expansion of the nonconformity of the subject property requires a deviation from the town's development standards. Findings shall be made in writing and provided to the property owner within 10 days after the decision is rendered.
- E. Appeal.** Actions taken by the Commission may be appealed to the Council in accordance with provisions of Chapter 9.81 (Appeals).
- F. Extension of Time.** The Review Authority, at its discretion, may grant an extension of time for the abatement of a nonconformity where it finds that an unreasonable hardship would otherwise be imposed on the property or business owner.
- G. Revocation of Nonconforming Use or Structure.** The Town may revoke the right to continue a nonconforming use or structure. Revocation procedures, including notice and hearing, shall be in accordance with provisions of Chapter 9.85 (Permit Modifications and Revocations).
- H. No Reversion to Nonconformance.** When any nonconformity is eliminated or brought into conformance with the current regulations of this Development Code, the nonconforming rights and privileges with respect to that nonconformity are terminated and shall not be restored.

#### 9.03.040 – Nonconforming Lots

- A. Continuation of Legal Nonconforming Lots.** Any lawfully created lot which becomes nonconforming with regard to lot area, street frontage, lot width, lot depth, or accessibility may continue indefinitely with such nonconformity and may be developed and used as if it were a conforming lot.
- B. Modification of Legal Nonconforming Lots.** Legal nonconforming lots may not be modified in any manner that increases the degree of nonconformity. Where feasible, parcel modifications (through lot merger or lot line adjustment) are encouraged to eliminate or minimize the degree of nonconformity.

#### 9.03.050 – Nonconforming Structures

- A. Continuation of Structure.** Any legally established nonconforming structure that does not conform to the provisions of this Development Code with regard to maximum permitted height, minimum required setback, lot coverage, and/or maximum permitted encroachment into required yard areas may be continued indefinitely.

**B. Exceptions.** The following are the exceptions to the indefinite continuation of a legal nonconforming structure:

1. Residential Structures. Any increase in the number of residential units for buildings designed and occupied for residential use shall be prohibited.
2. Nonresidential Structures. Any nonresidential building, structure, or facility designed or intended only for uses which are nonconforming shall be removed, or the design and use thereof shall be made conforming in all respects within 25 years from the date of construction or the effective date of creation of the nonconformity, whichever is later.
3. Utilities. Any new or replacement utility/mechanical facilities, equipment, or construction shall conform to the maximum extent feasible, as determined by the Director.
4. Encroachments in Commercial Zones. Within the commercial zones, any nonconforming encroachment into required yards may be required to be removed or reduced upon review by the Review Authority as follows:
  - a. When an expansion in floor area which is greater than 50 percent of the existing floor area is proposed for any structure maintaining a nonconforming encroachment, or
  - b. When an expansion in floor area is proposed anywhere within an integrated development which is greater than 50 percent of the total floor area of all structures within the integrated development.
5. Trash Facilities, Outdoor Storage, and Display. Trash areas or facilities, outdoor storage areas, and outdoor display areas shall be made fully conforming at the time of any expansion or intensification of use on the site.

**C. Modification or Expansion of Legal Nonconforming Structure**

1. A legal nonconforming structure shall not be modified in a manner that expands, extends, or enlarges the use in any manner beyond its existing scope upon the date the nonconformity was created, except as follows:
  - a. The modifications are, in and of themselves, in conformance with the provisions of this Development Code.
  - b. The modifications are limited to minor alterations, improvements, or repairs that do not increase the degree of nonconformity present and do not constitute or tend to produce an expansion or intensification of a nonconforming use.
  - c. The modifications are required by other laws.
  - d. The modifications are incidental to the public acquisition of a portion of a site, no greater degree of nonconformity will be created other than that caused as a result of

the public acquisition, and the changed development will conform to current regulations to the maximum extent feasible.

2. No change made to any development or use shall be construed as automatically permitting an extension of any time limit for the termination of a nonconformity.

**D. Destruction of Legal Nonconforming Structure**

1. A nonconforming structure(s) involuntarily damaged or partially destroyed by fire, act of nature, or act of the public enemy may be repaired or rebuilt and re-occupied only as follows:
  - a. If the cost of repairing or replacing the damaged portion of the structure(s) does not exceed 75 percent of its reasonable value, the structure may be restored, provided the following conditions are met:
    - (1) The reconstruction meets current Building Code requirements.
    - (2) Reconstruction begins within 12 months of the date of damage, unless otherwise allowed by the Director, and is diligently pursued to completion.

**E. Discontinuance of Legal Nonconforming Structure.** If any legal nonconforming structure is abandoned or the use thereof discontinued for a period of 180 consecutive days or more, all future development of the land shall be in conformity with the provisions of this Development Code. Maintenance of a valid business license shall of itself not be considered a continuation of the use.

**F. Off-site Relocation.** When a structure is relocated to another lot, it shall be made conforming in all respects with the provisions of this Development Code and all other applicable laws and regulations.

**9.03.060 – Nonconforming Uses**

Except as otherwise listed below, a legal nonconforming use may continue indefinitely.

- A. Nonconforming Commercial and Industrial Uses.** Nonconforming commercial and industrial uses shall be terminated or made conforming as to use within 10 years from the date on which the Town rendered the use nonconforming.
- B. Other Nonconforming Nonresidential Use.** Other nonconforming non-residential uses shall be terminated or made conforming as to use within 10 years from the date on which the Town rendered the use nonconforming.

- C. Nonconforming Mobile Home Park.** A mobile home park that is nonconforming as to use shall be terminated within 20 years from the date on which the Town rendered the use nonconforming.
- D. Nonconforming Animal Keeping.** Any nonconforming animal keeping, whether a primary use or an accessory use, shall be terminated or made conforming within three years from the date on which the Town rendered the use nonconforming.
- E. Nonconforming Use Eligible for Conditional Use Permit or Other Approval.** Any nonconforming use that is eligible to be considered for a Conditional Use Permit, Land Use Compliance Review, or other discretionary approval under this Development Code shall be considered to be a nonconforming use unless and until such permit or other such approval is granted.
- F. Modifications and Extensions to Legal Nonconforming Uses**
1. A legal nonconforming use shall not be modified in any manner that expands, extends, or enlarges the use beyond its existing scope upon the date the nonconformity was created, except as specified below.
    - a. The changes are, in and of themselves, in conformance with the provisions of this Development Code.
    - b. The changes are limited to minor alterations, improvements, or repairs that do not increase the degree of nonconformity present and do not constitute or tend to produce an expansion or intensification of a nonconforming use. A minor alteration shall not increase the area of the nonconforming structure by more than 120 square feet cumulative.
    - c. The changes are required by other laws.
    - d. The changes are incidental to the public acquisition of a portion of a site, no greater degree of nonconformity will be created other than that caused as a result of the public acquisition, and the changed development will conform to current regulations to the maximum extent feasible.
  2. No change made to any development or use shall be construed as automatically permitting an extension of any time limit for the termination of a nonconformity.
  3. Notwithstanding the provisions regarding Conditional Use Permit or variance, the Director may allow the construction of an additional modification to a legally existing structure within a current yard setback area, as established by an applicable residential Land Use District, when such legally existing building is within the yard setback area, and provided such additional modification does not exceed the projection of the existing structure into such current yard setback area and does not come closer than three (3) feet to any property line.
  4. The requirements for a Conditional Use Permit shall not apply to nonconforming residential uses, where such uses are being expanded or modified by no more than twenty-

five percent (25%) of the floor space or ground area existing at the time such use became a nonconforming use.

**G. Discontinuance of Legal Nonconforming Use**

1. If any legal nonconforming use is discontinued for a period of 180 consecutive days or more, subsequent use of the land shall be in conformity with the provisions of this Development Code. Maintenance of a valid business license shall of itself not be considered a continuation of the use.
2. This section shall not apply to any use for which a different period of discontinuance or abandonment is specified under other provisions of this Development Code.



**NOTICE OF PUBLIC HEARING  
YUCCA VALLEY COMMUNITY CENTER  
57090 29 PALMS HIGHWAY  
YUCCA VALLEY, CALIFORNIA 92284**

**TUESDAY JULY 08, 2014 - BEGINNING AT 6:00 P.M.**

A PUBLIC HEARING HAS BEEN SCHEDULED BEFORE THE TOWN OF YUCCA VALLEY PLANNING COMMISSION TO CONSIDER THE FOLLOWING DESCRIBED APPLICATION:

**CASE NUMBER:** Development Code Amendment, DCA 04-14  
Article 1, Authority and Applicability

**APPLICANT:** Town of Yucca Valley  
58928 Business Center Drive  
Yucca Valley, CA 92284

**PROPOSAL:** Proposed amendment to Title 9, Yucca Valley Development Code adding Article 1, Chapter 9.01 thru Chapter 9.03, Authority and Applicability, identifying the purposes of the Development Code, the general standards of the Development Code and standards and procedures for non-conforming lots and repealing Sections 81.0101-81.0195, Section 81.0305 and Sections 84.0801-84.0830 of the Yucca Valley Development Code.

**LOCATION:** Town wide

**ENVIRONMENTAL**

**DETERMINATION:** The project was reviewed under the California Environmental Quality Act (CEQA) and the Town's Guidelines to implement same. The project is exempt from CEQA under Section 15061(b) (3) since there is no possibility of a significant impact on the environment caused by this amendment.

The proposed amendment to revise the Town's Development Code regulations has no potential to impact the environment. The proposed amendment does not alter the existing requirements that specific development projects must comply with the provisions of the California Environmental Quality Act. Development Code Amendment, DCA 04-14 meets the exemption criteria which states "that if an activity 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 where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment, the activity is not subject to CEQA".

Any person affected by the application(s) may appear and be heard in support of or opposition to the proposal at the time of the hearing. The environmental findings, along the with proposed project application(s) are available and may be reviewed at the Town of Yucca Valley Planning Division, 58928 Business Center Drive, Yucca Valley, CA 92284 from 7.30 a.m. to 5:30 p.m., Monday through Thursday or obtain information at (760) 369-6575.

The Planning Commission in its deliberation could recommend approval of the project, deny the project, or approve the project in an alternative form. If you challenge any of the projects in court, you may be limited to raising only the issues you or someone else raised at the

Public Hearing described in this notice, or in written correspondence delivered to the Town Planning Division at, or prior to the Public Hearing.

Publish Date: Published on June 25, 2014.

June 18, 2014

Date

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Lesley Copeland  
Town Clerk

**PLANNING COMMISSION STAFF REPORT**

**To:** Chairman & Planning Commission  
**From:** Shane Stueckle, Deputy Town Manager  
**Date:** June 25, 2014  
**For Commission Meeting:** July 08, 2014

**Subject:** Development Code Amendment, DCA-03-14  
Draft Development Code Article 5, Administration  
CEQA Exemption 15061(b)(3)

**Prior Commission Review:** There has been no prior Planning Commission review of this item.

**Recommendation:** That the Planning Commission:

- A. Finds that the project is exempt from CEQA in accordance with Section 15061 (b)(3) of the California Environmental Quality Act. The proposed amendment to revise the Town's Development Code has no potential to impact the environment. The proposed amendment does not alter the existing requirements that specific development projects must comply with the provisions of the California Environmental Quality Act. Development Code Amendment, DCA 03-14 meets the exemption criteria which states "that if an activity 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 where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment, the activity is not subject to CEQA".
- B. Recommends that the Town Council adopts the Ordinance and repeals Sections 81.0101-81.0195, Section 81.0305 and Sections 84.0801-84.0830 of Title 8 of Title 8 of the Yucca Valley Development Code.

**Executive Summary:** Article 5, Administration, provides standards and procedures for appeals, enforcement and violations, permit amendments, permit revocations, public notices and hearings and time limitations and time extensions and repeals Sections 83.010605-83.010630, Section 81.0150, Sections 81.0205-81.0235 and Sections 87.1201-87.1202 of Title 8 of the Town of Yucca Valley Development Code

Department Report       Ordinance Action       Resolution Action       Public Hearing  
 Consent                       Minute Action               Receive and File               Study Session

**Order of Procedure:**

- Request Staff Report
- Open the Public Hearing
- Request Public Comment
- Close the Public Hearing
- Commission Discussion/Questions of Staff
- Motion/Second
- Discussion on Motion
- Call the Question (Voice Vote)

**Discussion:** Article 5, Administration, provides standards and procedures for appeals, enforcement and violations, permit amendments, permit revocations, public notices and hearings and time limitations and time extensions and repeals Sections 83.010605-83.010630, Section 81.0150, Sections 81.0205-81.0235 and Sections 87.1201-87.1202 of Title 8 of the Town of Yucca Valley Development Code

Seven Chapters are established within Article 5, and those Chapters are structured in the following manner:

- Chapter 9.80 Administration
- Chapter 9.81 Appeals
- Chapter 9.82 Enforcement and Violations
- Chapter 9.83 Permit Amendments
- Chapter 9.84 Permit Revocations
- Chapter 9.85 Public Notices and Hearings
- Chapter 9.86 Time Limitations and Time Extensions

**Chapter 9.80 Administration**

Establishes general administrative provisions for implementation and administration of the Development Code.

**Chapter 9.81 Appeals**

Establishes procedures for the processing of appeal applications.

**Chapter 9.82 Enforcement and Violations**

Establishes provisions to ensure compliance with the requirements of the Development Code.

**Chapter 9.83 Permit Amendments**

Establishes procedures for the processing of an amendment to Conditions of Approval, project design, or alteration or expansion of an approved use.

**Chapter 9.84 Permit Revocations**

Establishes procedures the revocation of permit approvals.

**Chapter 9.85 Public Notices and Hearings**

Establishes noticing procedures for public hearings.

**Chapter 9.86 Time Limitations and Time Extensions**

Establishes time limits for permit approvals and procedures for approving time extensions.

**Alternatives:** The Planning Commission may elect to make recommended changes to the Article.

**Fiscal impact:** This Ordinance is included in the Town's contract for the Development Code Update project. No additional costs are incurred beyond existing contract services.

**Attachments:** Article 5, Administration



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## Chapter 9.80 Administration

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### Sections:

- 9.80.010 – Purpose
- 9.80.020 – Permits and Conditions to Run with the Land
- 9.80.030 – Performance Guarantees
- 9.80.040 – Easements and Deed Notices
- 9.80.050 – Legal Defense Fee Responsibility

#### 9.80.010 – Purpose

This Chapter establishes general administrative provisions for implementation and administration of the Development Code and the permits which are approved pursuant to the Development Code.

#### 9.80.020 – Permits and Conditions to Run with the Land

A Conditional Use Permit, Land Use Compliance Review, Site Plan and Design Review Permit, Variance, Planned Development Permit, Specific Plan or Special Use Permit approval that is granted in compliance with Article 4 shall be deemed to run with the land through any change of ownership of the subject site, from the effective date of the permit, except in any case where a permit expires and becomes void. All applicable conditions of approval shall continue to apply after a change in property ownership.

#### 9.80.030 – Performance Guarantees

##### A. Deposit of security.

1. As a condition of approval of a Conditional Use Permit, Land Use Compliance Review, Site Plan and Design Review Permit, Specific Plan, Variance, Planned Development Permit, Special use Permit, Temporary Special Event Permit, Temporary Use Permit, or upon a finding that the public health, safety, and welfare warrant, the review authority may require the execution of a covenant to deposit security, and the deposit of security in a reasonable amount to ensure the faithful performance of one or more of the conditions of approval in the event that the obligor fails to perform.
2. The applicant/owner may elect to provide adequate security for the faithful performance of a condition(s) of approval imposed as part of the approval process if the Director determines that the condition(s) may be implemented at a later specified date (e.g., inability to install required landscaping due to poor weather conditions).
3. The security shall, as required by law or otherwise at the option of the Town, be in the form of cash, a certified or cashier's check, letter of credit, a performance bond or other form of surety executed by the applicant and a corporate surety authorized to do business in California and approved by the Town.

4. The security shall remain in effect until all of the secured conditions have been performed to the satisfaction of the Director.
  5. Any security required in compliance with this Section shall be payable to the Town.
- B. Release of security.** Upon satisfactory compliance with all applicable provisions of this Section, the security deposit shall be released.
- C. Failure to comply.**
1. Upon failure to perform any secured condition, the Town may perform the condition, or cause it to be done, and may collect from the obligor, and surety in case of a bond, all costs incurred, including administrative, engineering, legal, and inspection costs.
  2. To the extent that the Director can demonstrate that the obligor willfully breached an obligation in a manner that the obligor knew, or should have known, would create irreparable harm to Town, the entire amount of the bond or deposit may be withheld.
  3. The Director's determination may be appealed to the Council by the obligor by filing an appeal within 10 days after the decision to withhold the bond, in compliance with Chapter 9.81 *Appeals*.

**9.80.040 – Easements and Deed Notices**

**A. Implementation.**

The Town of Yucca Valley may require offers of dedication, the granting of easements, or the recordation of deed notices to assist to Town in the implementation of the General Plan and/or adopted Master Plans, including but not limited to the Town's Master Plan of Drainage, Parks and Trails Master Plans, and Airport Comprehensive Land Use Plan.

**B. Requirements for Easements and Deed Notices**

A grant of easement or deed notice may be required by the Town of Yucca Valley as a condition of issuing a building permit for any residential or nonresidential project that includes additional square-footage for a new or existing structure and/or any other entitlement. Recordation of all grants of easement and deed notices on forms to be provided by the Town shall occur prior to the issuance of a building permit or as otherwise approved by the Town of Yucca Valley Community Development Department, Commission or Council.

1. Avigation and Noise Easements or Deed Notices:
  - a. An Avigation and Noise Easement shall be granted to the Yucca Valley Airport District and shall be recorded against those parcels of property within the Avigation Easement Area as identified on the Avigation Easement & Deed Notice Map on file with the Town Planning Division. A copy of the recorded Easement shall be forwarded to the Town of Yucca Valley and the Yucca Valley Airport District.

- b. A Deed Notice shall be recorded against those parcels of property outside of the Avigation Easement Area but within the Airport Influence Area as identified on the Airport Influence Map. A copy of the recorded Deed Notice shall be forwarded to the Town of Yucca Valley and the Yucca Valley Airport District.

2. Drainage Easements.

Parcels that are affected by the Yucca Valley Master Plan of Drainage and as deemed necessary by the Town Engineer shall offer a drainage easement to the Town of Yucca Valley and/or County of San Bernardino.

3. Public Rights of Way.

Parcels shall offer easements or dedication of right-of-ways for streets, roads, alley, sidewalks, utilities or trails as deemed necessary by the Director to implement Town's roadway and trails networks.

**C. Covenants of Easements**

1. Applicability. When necessary to achieve the land use goals of the Town, the Town may require a property owner holding property in common ownership to execute and record a Covenant of Easement in favor of the Town, in compliance with Government Code Section 65870 et seq. A Covenant of Easement may be:
  - a. Required to provide for emergency access, ingress and egress, landscaping, light and air access, open space, parking, or for solar access; and
  - b. Imposed as a condition of approval by the review authority.
2. Form of covenant. The form of the Covenant shall be approved by the Council, and the Covenant of Easement shall:
  - a. Describe the real property subject to the easement and the real property to be benefited by the easement;
  - b. Identify the Town approval or planning permit granted that relied on or required the Covenant; and
  - c. Identify the purposes of the easement.
3. Recordation. A Covenant of Easement shall be recorded in the County's Recorder's Office.
4. Effect of covenant.
  - a. From and after the time of its recordation, a Covenant of Easement shall:

- (1) Act as an easement in compliance with Civil Code Section 801 et seq., except that it shall not merge into any other interest in the real property. Civil Code Section 1104 shall be applicable to the conveyance of the affected real property; and
  - (2) Impart notice to all persons to the extent afforded by the recording laws of the State.
- b. Upon recordation, the burdens of the Covenant shall be binding on, and the Covenant shall benefit all successors-in-interest to the real property.
5. **Enforceability.** A Covenant of Easement shall be enforceable by the successors-in-interest to the real property benefited by the Covenant and the Town. Nothing in this Section creates standing in any person, other than the Town, and any owner of the real property burdened or benefited by the Covenant, to enforce or to challenge the Covenant or any requested amendment or release.
6. **Release of covenant.** A Covenant of Easement may be released by the Director, or by another appropriate review authority in the event of an appeal, at the request of any person, including the Town, or an affected property owner.
- a. **Process for release.** The release of a Covenant Easement shall require that the review authority first:
    - (1) Conduct a noticed public hearing in compliance with Chapter 9.60.020(A) *Public Hearings*; and
    - (2) Find that the Covenant on the site is no longer necessary to achieve the land use goals of the Town.
  - b. **Recordation.** A notice of the release of the Covenant of Easement shall be recorded by the Town Clerk in the County Recorder's Office.
  - c. **Fees.** The applicant for a release of a Covenant of Easement shall pay the fee for the processing of the release in compliance with the Engineering fee schedule.

**9.80.050 – Legal Defense Fee Responsibility**

Applicant's Agreement to Indemnify and Hold Harmless. The applicant shall agree to defend, indemnify and hold harmless the Town of Yucca Valley, its agents, officers and employees, at his sole expense, against any action, claim or proceedings brought against the Town or its agents, officers or employees, to attack, set aside, void, or annul this approval or because of the issuance of such approval, or in the alternative, to relinquish such approval, in compliance with the Town of Yucca Valley Development Code. The applicant shall reimburse the Town, its agents, officers, or employees for any court costs, and attorney's fees which the Town, its agents, officers or employees may be required by a court to pay as a result of such action. The Town may, at its sole discretion, participate at its own expense in the defense of any such action but such participation shall not relieve applicant of his obligations under this condition. The Town shall promptly notify

the applicant of any claim, action or proceedings arising from the Town's approval of this project, and the Town shall cooperate in the defense.

~~A. As a condition of approval of a land use application, the applicant shall agree to defend, indemnify, and hold harmless the Town or its agents, officers, and employees from any claim, action, or proceeding against the Town or its agents, officers, or employees to attack, set aside, void, or annul an approval of the Town, an advisory agency, Council or legislative body concerning the map or permit or any other action relating to or arising out of Town approval, as determined by the Town attorney based upon language in substantial conformance to the following:~~

~~The applicant shall agree to defend, indemnify and hold harmless the Town of Yucca Valley, its agents, officers and employees, at his sole expense, against any action, claim or proceedings brought against the Town or its agents, officers or employees, to attack, set aside, void, or annul this approval or because of the issuance of such approval, or in the alternative, to relinquish such approval, in compliance with the Town of Yucca Valley Development Code. The applicant shall reimburse the Town, its agents, officers, or employees for any court costs, and attorney's fees which the Town, its agents, officers or employees may be required by a court to pay as a result of such action. The Town may, at its sole discretion, participate at its own expense in the defense of any such action but such participation shall not relieve applicant of his obligations under this condition. The Town shall promptly notify the applicant of any claim, action or proceedings arising from the Town's approval of this project, and the Town shall cooperate in the defense.~~

**B. Town's Duty to Notify Applicant and Cooperate in Defense.** Any condition of approval imposed in compliance with this Development Code shall include a requirement that the Town act reasonably to promptly notify the applicant of any claim, action, or proceeding and that the Town cooperates fully in the defense.

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## Chapter 9.81 Appeals

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### Sections:

- 9.81.010 – Appeal of Land Use Decision
- 9.81.020 – Application for the Appeal of a Land Use Decision
- 9.81.030 – Time for Filing an Appeal
- 9.81.040 – Notice of Appeal
- 9.81.050 – Authority of Appeal Body
- 9.81.060 – Withdrawal of Appeal
- 9.81.070 – Judicial Appeal

### 9.81.010 – Appeal of Land Use Decision

Any land use decision made in compliance with the provisions of this Development Code by a review authority other than the Council may be appealed by the applicant or other affected party as described in this Chapter.

- A. **Director's decisions.** The Director's decision on determinations required by this Code where the Director's decision would otherwise be final is subject to appeal to the Commission.
- B. **Commission's decisions.** The Commission's decision on determinations required by this Code where the Commission's decision would otherwise be final is subject to appeal to the Council.
- C. **Council considerations.**
  - 1. The Council shall consider appeals regarding land use decisions made by the Commission.
  - 2. The Council shall only conduct hearings regarding an EIR or other environmental action in conjunction with consideration of the subject land use application and project for which the EIR was prepared or other environmental action proposed.

### 9.81.020 – Application for the Appeal of a Land Use Decision

- A. **Appropriate forms.** Applications for an appeal of a land use decision shall be made on forms supplied by the review authority to which the appeal is being made.
- B. **Appeal submittals.** Applications for appeals addressed to the Commission shall be submitted to the Planning Division. Applications for appeals addressed to the Council shall be submitted to the Town Clerk.

- C. **Grounds for appeal.** Application for appeals shall include a written statement of the grounds upon which the appeal is based.
- D. **Appeal fees.** An appeal fee, as established by the Town, shall accompany any application.
- E. **Contents of appeal application.** The appeal application shall identify:
  - 1. The subject land use application;
  - 2. The specific decision, condition of approval, or other matter being appealed;
  - 3. The date of the action;
  - 4. The justification for the appeal; and
  - 5. Any remedy or solution for which the appellant petitions.
- F. **Appeal shall stay all proceedings.** A properly filed application for appeal shall stay the proceedings in the matter appealed until a decision is rendered on the appeal.

**9.81.030 – Time for Filing an Appeal**

Appeals shall be filed with the Planning Division within ten (10) consecutive calendar days following the date of action. If the last day to act is not a Town business day, the following business day shall be deemed to be the last day to act. Appeals requiring Council consideration will be forwarded to the Town Clerk by the Director.

**9.81.040 – Notice of Appeal**

- A. **Notice of appeal required.** Within 30 days of the acceptance of an application for an appeal of a land use decision, the Director shall set the matter for hearing and shall give notice of the date, time, and place of the hearing to the appellant, the applicant, and to any other party who has requested in writing to be so notified.
- B. **Same notice as originally required.** In addition, notice shall also be given in the same manner as notice was given for the land use decision being appealed.

**9.81.050 – Authority of Appeal Body**

- A. **Action on appeal.** Upon hearing the appeal, the appeal body shall consider the record and any additional evidence that may be offered, and may affirm, reverse, or modify, in whole or in part, the decision appealed.
- B. **Applicable criteria, findings, and requirements.** The appeal body is subjected to all of the criteria, findings, and requirements imposed by this Development Code upon the original decision maker (e.g., review authority).

**9.81.060 – Withdrawal of Appeal**

An appeal may be withdrawn before the time that the review authority issues a decision. The applicant or the applicant's representative shall notify the Planning Division in writing that they wish to withdraw the appeal.

**9.81.070 – Judicial Appeal**

No person shall seek judicial review of a Town decision on a planning permit or other matter in compliance with this Development Code until all appeals to the Commission and Council have been first exhausted in compliance with this Chapter.

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## Chapter 9.82 Enforcement and Violations

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### Sections:

- 9.82.010 – Purpose
- 9.82.020 – Permits and Approvals
- 9.82.030 – Authority of Enforcement
- 9.82.040 – Unlawful to Violate Development Code Provisions
- 9.82.050 – Violations of Development Code and Conditions of Approval Declared Public Nuisance
- 9.82.060 – Unlawful to Refuse or Fail to Comply With a Condition of Land Use Approval
- 9.82.070 – Enforcement
- 9.82.080 – Criminal Actions
- 9.82.090 – Civil Actions
- 9.82.100 – Administrative Actions
- 9.82.110 – Filing of a Notice of Liens
- 9.82.120 – Filing Notice of Action
- 9.82.130 – Initial Investigation Procedures
- 9.82.140 – Inspections
- 9.82.150 – Stop Work Orders
- 9.82.160 – Revocation or Modification of Permits or Approvals
- 9.82.170 – Recovery of Costs
- 9.82.180 – Additional Permit Processing Fees
- 9.82.190 – Reinspection Fees
- 9.82.200 – Documentation

### **9.82.010 – Purpose**

This Chapter establishes provisions that are intended to ensure compliance with the requirements of this Development Code and any conditions of planning permit approval, to promote the Town's planning efforts, and for the protection of the public health, safety, and welfare of the Town.

### **9.82.020 – Permits and Approvals**

All departments, officials, and public employees of the Town who are assigned the authority or duty to issue authorizations, certificates, licenses, or permits shall comply with the provisions of this Development Code.

- A. Permits in conflict with Development Code.** Authorizations, certificates, licenses, or permits for uses or structures that would be in conflict with the provisions of this Development Code shall not be issued.

- B. **Permits deemed void.** Any authorization, certificate, license, or permit issued in conflict with the provisions of this Development Code shall be void and of no effect.

#### 9.82.030 – Authority of Enforcement

- A. **Responsibility of Director.** The Director and designated employees and representatives shall have the authority to enforce the provisions of this Development Code.
- B. **Authority to Inspect.** All persons authorized to enforce the provisions of this Development Code are authorized to enter upon any property or premises within the Town to ascertain whether the property or premises is in compliance with this Development Code, and to make any inspections as may be necessary in the performance of their enforcement duties. These inspections may include the taking of photographs, samples, or other physical evidence, and the making of video and/or audio recordings. All such entries and inspections shall be done in a reasonable manner. If an owner, lawful occupant, or the respective agent, employee, or representative thereof refuses permission to enter and/or inspect, the Town, acting by and through such persons authorized to enforce this Development Code, may seek an administrative inspection warrant pursuant to the procedures provided by California Code of Civil Procedures §§ 1822.50 through 1822.59, as may be amended from time to time, or the successor provisions thereto.

#### 9.82.040 – Unlawful to Violate Development Code Provisions

- A. It is unlawful for any person to violate or to cause or to allow a violation of any provision of this Development Code. Any act or omission constituting a violation of the Development Code includes the aiding, abetting, allowing, or causing that act or omission.
- B. Each and every day, and during any portion of which, any violation of this Development Code, or of the provisions of any code adopted and incorporated by reference by this Development Code, is committed, continued, or allowed, is a new and separate offense.

#### 9.82.050 – Violations of Development Code and Conditions of Approval Declared Public Nuisance

- A. **Use of land.** Any use of land that is not allowed by this Development Code (either as a matter of right or through the application of the appropriate land use approval or permit) and/or which is conducted without first obtaining all permits and/or licenses otherwise required pursuant to all applicable state and/or federal laws and/or other provisions of the Development Code (and thereafter maintaining each such permit and/or license so as to remain legally valid at all times) is hereby declared unlawful and a public nuisance.
- B. **Use of occupancy of structure.** Any structure used or occupied in a manner not allowed by this Development Code (either as a matter of right or through the application of the appropriate land use approval or permit) and/or which is used or occupied without first obtaining all permits and/or licenses otherwise required pursuant to all applicable state and/or federal laws and/or other provisions of the Town Code (and thereafter maintaining each such permit and/or license so as to remain legally valid at all times) is hereby declared unlawful and a public nuisance.
- C. **Property Not in Compliance with a Condition of Land Use Approval Declared Public Nuisance.** Any property not in compliance with an applicable condition of approval imposed

upon any land use approval authorization, permit, or variance is hereby declared to be unlawful and a public nuisance.

**9.82.060 – Unlawful to Refuse or Fail to Comply With a Condition of Land Use Approval**

- A. It is unlawful for the owner, the owner's agent or representative, or other person in whose favor or for whose benefit, a land use approval of any kind has been granted for the parcel of real property at issue, to refuse or to fail to comply with the conditions of approval, either individually or collectively in any number.
- B. Each and every day, and during any portion of which, any failure or refusal to comply with the condition or conditions of approval imposed on any land use approval, authorization, permit, or variance, is committed, continued, or allowed, is a new and separate offense.

**9.82.070 – Enforcement**

- A. **Notices, orders, and citations.** This Development Code may be enforced through the issuance of various notices and orders pertaining to any land use; or to any addition, alteration, construction, conversion, enlargement, installation, moving, reconstruction, rehabilitation of any structure; or to any use of any structure; that is contrary to any provision of this Development Code as provided herein. Such notices may include, without limitation, notice of violation, notice to correct, notice to vacate, stop work orders, infraction citations, misdemeanor citations, administrative citation, and etc..
- B. **Enforcement remedies are cumulative and discretionary, not exclusive.** All remedies contained in this Development Code for the handling of violation or enforcement of the provisions of this Development Code shall be discretionary and cumulative, and not exclusive of any other applicable provisions of the Town Code or other applicable State law. The Town at its sole discretion and acting through the officials designated in this Chapter and in consultation with Town Attorney may enforce this Development Code through the application of criminal, civil, and administrative remedies as set forth in this Chapter. In the exercise of such discretion in selecting an appropriate code enforcement remedy, the Town shall not be required to institute available code enforcement remedies in any particular order, or to prefer the application of one remedy to another.

**9.82.080 – Criminal Actions**

- A. Notwithstanding any other provision of the Town Code, each person violating, causing, or allowing a violation of any provision of this Development Code or any permit or condition of approval granted pursuant thereto, shall be guilty of an infraction, unless the violation is specifically declared to be a misdemeanor.
- B. Every violation of any provision of this Development Code, or of any permit issued pursuant to this Development Code (including any of the conditions of approval for such permit) that is prosecuted as an infraction shall be punished, upon conviction or upon a plea of nolo contendere (commonly called no contest), by: (1) a base fine as established by the local court of jurisdiction Any court costs that the court may otherwise be required to impose pursuant to applicable state

law or local ordinance shall be imposed in addition to the base fine. Notwithstanding the above, a first or subsequent violation of this Development Code may be charged and prosecuted as a misdemeanor.

- C. A misdemeanor shall be punished, upon conviction or upon a plea of nolo contendere (commonly called no contest), by a base fine as established by the local court of jurisdiction, or by imprisonment in the County jail for a period of not more than six months, or by both such base fine and imprisonment. Any court costs that the court may otherwise be required to impose pursuant to applicable state law or local ordinance shall be imposed in addition to the base fine.
- D. The conviction and punishment of any person of an offense as described in this Section or the payment of a criminal fine by or on behalf of the person convicted, shall not relieve that person from the responsibility for correcting, removing, or abating the violation that resulted in the conviction; nor prevent the enforced correction, removal or abatement thereof by the Town. The correction, removal, or abatement of a violation begun after the issuance of a criminal citation or the filing of a criminal complaint shall not be a defense to the infraction or misdemeanor so charged and, following a conviction or plea of nolo contendere, shall not be grounds for the dismissal of the action or the waiver, stay, or reduction of any fine established in this Section.

#### **9.82.090 – Civil Actions**

- A. **Injunctive relief and abatement.** At the request of any person authorized to enforce this Development Code, the Town may commence proceedings for the abatement, removal, correction and enjoinder of any act or omission that constitutes or will constitute a violation of this Development Code or any permit or land use approval granted pursuant thereto, and an order requiring the violator(s) to pay civil penalties and/or abatement costs. Where multiple violators are involved, they shall be jointly and severally liable for the civil penalties and/or abatement costs.
- B. **Civil Remedies and Penalties.** Any person, whether acting as principal, agent, employee, owner, lessor, lessee, tenant, occupant, operator, contractor, or otherwise, who violates any provision of this Development Code or any permit or any condition of land use approval granted pursuant thereto, shall be liable for a civil penalty as established by Council per violation for each day or any portion thereof, that the violation continues to exist. In determining the amount of civil penalty to be imposed, both as to the daily rate and the subsequent total amount for any given violation, the court shall consider all relevant circumstances, including, but not limited to, the extent of the harm caused by the conduct constituting the violation, the nature and persistence of such conduct, the length of time over which the conduct occurred or as repeated, the assets, liabilities, and net worth of the violator, whether a corporate entity or an individual, and any corrective action taken by the violator.
- C. **Attorney's Fees.** In any civil action, administrative proceeding, or special proceeding to abate a public nuisance, whether by seeking injunctive relief and/or an abatement order, or other order: attorney's fees may be recovered by the prevailing party and shall not exceed the amount of reasonable attorney's fees incurred by the Town in that action or proceeding (Government Code §§ 25845).

**9.82.100 – Administrative Actions**

- A. Application.** All violations of any provision of this Development Code or any permit or land use approval granted pursuant thereto are subject to enforcement through the use of administrative citations in accordance with Government Code Section 53069.4 and this Section. The following procedures shall govern the imposition, enforcement, collection, administrative, and judicial review of administrative citations and penalties.
- B. Content of Citation.** The administrative citation shall be issued on a form approved by the Town Administrative Officer in consultation with the Town Attorney. The administrative citation form may be tailored to the specific needs of the issuing department as approved by the Director; however, all administrative citations regardless of the issuing department shall contain the following information:
1. The administrative citation shall refer to the date and location of the violation and the approximate time, if applicable, that the violation was observed.
  2. The administrative citation shall identify each violation by the applicable section number of this code and by either the section's title or a brief descriptive caption; or by reference to the applicable permit or land use approval and describing the condition violated.
  3. The administrative citation shall describe the action required to correct the violations.
  4. The administrative citation shall require the responsible party to immediately correct the violation and shall explain the consequences of failure to correct the violation.
  5. The administrative citation shall state the amount of the penalty imposed for the violation. Multiple violations may be listed on the same citation form. In the event of multiple violations, the administrative citation shall list the penalty amount for each violation and the total amount of all of the penalties.
  6. The administrative citation shall contain a notation box for the enforcement officer to indicate whether or not the citation is issued as a "warning only" and without penalty. The administrative citation shall also include a notation box for the enforcement officer to indicate that the penalty will be waived if the violation is corrected by the compliance deadline date indicated on the citation form.
  7. The administrative citation shall explain how the penalties shall be paid and the time period by which it shall be paid, and the consequences of failure to pay the penalty within this time period.
  8. The administrative citation shall identify all appeal rights and instructions on how to appeal the citation.

9. The administrative citation shall contain the printed name and the signature of the enforcement officer and the signature of the responsible party, if he/she can be located, as set forth in subsection "C" below.

**C. Service of Citation.**

1. If the responsible party is present at the scene of the violation, the enforcement officer shall attempt to obtain their signature on the administrative citation and shall deliver a copy of the administrative citation to them.
2. If the responsible party is a business, and the business owner is on the premises, the enforcement officer shall attempt to deliver the administrative citation to them. If the enforcement officer is unable to serve the business owner on the premises and the enforcement officer can only locate the manager or on-site supervisor, the administrative citation may be issued in the name of the business and a copy given to the manager or on-site supervisor. A copy of the administrative citation shall also be mailed to the business owner by certified mail, return receipt requested and by first class mail. If a copy of the administrative citation that is sent by certified mail is returned by the United States Postal Service unsigned or marked "unclaimed" and/or "refused", then service by first class mail shall be deemed effective provided it is not returned by the United States Postal Service.
3. If no one can be located at the property, then a copy of the administrative citation shall be posted in a conspicuous place on or near that property and a copy mailed by certified mail, return receipt requested and by first class mail, to each responsible party at their last known addresses as they appear on the last County equalized assessment role, or other available public records related to title or ownership of the property that is the subject of the administrative citation. If the copy of the administrative citation sent by certified mail to a responsible party is returned by the United States Postal Service with the mail receipt unsigned, or marked "unclaimed" and/or "refused", then service by first class mail shall be deemed effective provided it is also not returned by the United States Postal Service.
4. The failure of any responsible party to receive a copy of the administrative citation shall not affect the validity of the proceedings.

**D. Administrative Penalties.**

1. Unless otherwise provided in this code, the amount of penalty to be imposed for a violation of this code and assessed by means of an administrative citation shall be established by a resolution of the Council. Notwithstanding this paragraph, the amount of penalty to be assessed by means of an administrative citation may be established by resolution of the Council.
2. If the violation is not corrected, additional administrative citations may be issued for the same violation. The amount of the penalty shall increase at the rate as adopted by the Town.
  - a. Payment of the penalty shall not excuse failure to correct the violation nor shall it bar further enforcement action by the Town.

- b. The penalties assessed shall be payable to the Town within 30 calendar days from the date the administrative citation is issued.
- c. Except as provided below, any person who fails to pay to the Town any penalty imposed pursuant to the provisions of this Chapter on or before the date that the penalty is due shall also be liable for the payment of any applicable late payment charges as established by the Council.
- d. The Town may collect any past due administrative citation penalty or late payment charge by use of any available legal means, including without limitation, the filing of a notice of lien, describing the real property affected and the amount of the costs, penalties or damages to the County Assessor, who shall place the amount thereof on the assessment role as a special assessment to be paid with County taxes, unless sooner paid. The Town may also recover its collection costs. A judgment or award of such costs, penalties or damages may also be enforced in other manner provided by law.
- e. The Town may also recover administrative costs for defending the citation at the appeal hearing.

**E. Appeal of Administrative Citation.**

1. Notice of Appeal. A responsible party may appeal the administrative citation by filing a written notice of appeal with the department that issued the administrative citation. The written notice of appeal must be filed within 20 calendar days of the date the administrative citation was served in a manner set forth in subsection "D" of this Section. Failure to file a written notice of appeal within this time period shall constitute a waiver of the right to appeal the administrative citation. The notice of appeal shall be submitted on Town forms and shall contain the following information:
  - a. A brief statement setting forth the appealing responsible party's (hereinafter appellant) interest in the proceedings;
  - b. A brief statement of the material facts, which the appellant claims supports their contention that no administrative penalties should be imposed or that an administrative penalty of a different amount is warranted under the circumstances;
  - c. An address at which the appellant agrees that notice of any additional proceeding, or an order relating to the imposition of an administrative citation penalty, shall be received by the appellant by mail;
  - d. The notice of appeal must be signed by the appellant.
2. Administrative Hearing. Upon a timely, written notice of appeal by the appellant, an administrative hearing shall be held as follows:

- a. **Hearing Date.** The date of the hearing shall be set for a date that is no later than 60 days from the date of the violation.
- b. **Notice of Hearing.** Notice of the administrative hearing shall be given at least 10 calendar days before the hearing to the appellant. The notice may be delivered to the appellant or mailed by first class mail to the address listed in the notice of appeal.
- c. **Hearing Officer.** The administrative hearing shall be held before the Director. The hearing officer shall not be the enforcement officer who issued the administrative citation. The Director may contract with a qualified provider to conduct administrative hearings and process administrative citations including the collection of payment of administrative citation penalties and processes.
- d. **Conduct of the Hearing.**
  - (1) The enforcement officer who issued the administrative citation shall not be required to participate in the administrative hearing. The contents of the enforcement officer's file in the case shall be admitted as prima facie evidence of the facts stated therein. The hearing officer shall not be limited by the technical rules of evidence. The issuing department shall bear the burden of proof at the administrative hearing to establish the existence of a violation of this code by a preponderance of the evidence.
  - (2) If the appellant requesting the review fails to appear at the administrative hearing, the hearing officer shall make their determination based on the information contained in the enforcement officer's file in the case and the appellant's notice of appeal.
  - (3) The only evidence that shall be permitted at the administrative hearing and considered by the administrative hearing officer in reaching a decision is that evidence which is relevant to the proof or disproof of:
    - (a) Ownership of the subject property, when applicable;
    - (b) Whether a person noticed by the issuing department as a responsible party is, in fact, a responsible party;
    - (c) Whether a violation of this code occurred and/or continues to occur on the date or dates specified in the administrative citation;
    - (d) Whether the responsible party has committed, caused, maintained, or permitted a violation of this code on the date or dates specified on the administrative citation.

**F. Hearing Officer's Decision.**

1. After considering all the testimony and evidence submitted at the hearing, the hearing officer shall promptly issue a written decision ("Administrative Citation Appeal Ruling") to uphold or cancel the administrative citation and shall list in the decision the reasons for that decision.
2. If the hearing officer determines that the administrative citation should be upheld, then the amount of the penalties set forth in the citation shall not be reduced or waived for any reason. This subsection shall not apply to "warning only" administrative citations or to any administrative citation that indicates on its face that the penalty will be waived if the violation is corrected by the deadline compliance date and the violation is so corrected.
3. If the administrative citation has been upheld, the hearing officer may allow payment of the administrative penalty in installments, if the appellant has provided evidence satisfactory to the hearing officer of an inability to pay the penalty in full.
4. If the hearing officer denies the administrative citation, then no penalty shall be assessed and any penalty otherwise deposited with the issuing department shall be promptly refunded to the appellant.
5. The appellant shall be served with a copy of the hearing officer's written decision either at the conclusion of the hearing or sent by first class mail. The hearing officer's written decision shall become final on the date of the hearing unless mailed; otherwise it shall become final on the date of mailing.
6. The hearing officer's written decision shall contain instructions for obtaining judicial review of the decision pursuant to California Government Code Section 53069.4, as that section may be from time to time amended, or the successor provision thereto.
7. If the administrative citation is upheld, the Hearing Officer shall award the costs of the Town's enforcement and costs in defense of the citation to the Town as outlined in full in an itemized summary of costs presented at the hearing, including cost of the actual time spent to conduct the hearing.

**G. Judicial Review of Administrative Hearing Officer's Decision.**

1. Notice of Appeal. Within 20 calendar days of the date of the delivery or mailing of the hearing officer's decision to the appellant, the appellant (hereafter "contestant") may contest that decision by filing an appeal to be heard by the Superior Court, and paying the filing fee set forth at Government Code Section 53069.4, or the successor provision thereto. The failure to file the written appeal and to pay the filing fee within this period shall constitute a waiver of the right to an appeal and the decision shall be deemed confirmed. The contestant shall serve a copy of the notice of appeal in person or by first class mail upon the Town department that had issued the original administrative citation.
2. Conduct. The Superior Court Appeal Hearing. The conduct of the appeal before the superior court is a subordinate judicial duty and may be performed by traffic trial

commissioners and other subordinate judicial officers at the direction of the presiding judge at the superior court. The appeal shall be heard de novo, except that the contents of the issuing department's file in the case shall be received in evidence. A copy of the document or instrument of the issuing agency providing notice of the violation and imposition of the administrative penalty (i.e., the administrative citation) shall be admitted into evidence as prima facie evidence of the facts stated therein. The court shall request that the issuing department's file in the case be forwarded to the court, to be received within 15 calendar days of the request.

3. Judgment. The court shall retain the filing fee regardless of the outcome of the appeal. If the court finds in favor of the contestant, the amount of the fee shall be reimbursed to the contestant by the issuing department. Any deposit of the administrative penalty shall be refunded by the issuing department in accordance with the judgment of the court. If the administrative penalty has not been deposited and the decision of the court is against the contestant and in favor of the issuing department, the issuing department may proceed to collect the penalty pursuant to the procedures set forth in this Chapter, or in any other manner provided by law.

#### **9.82.110 – Filing of a Notice of Liens**

Whenever the Town institutes a judicial action or proceeding to enforce the Development Code, a Notice of Lien of the action or proceeding may be filed with the County Recorder's Office. The notice shall be filed at the time of the commencement of the action or proceeding, and upon recordation of the notice, consistent with the standards and requirements of the County Recorder's Office. The notice shall have the same effect as a notice recorded in compliance with Section 409 of the State Code of Civil Procedure.

- A. **The County Recorder shall record and index the Notice of Lien of action or proceeding in the Grantor/Grantee Index.**
- B. **Any Notice of Lien of action or proceeding filed in compliance with this Section may, upon motion of a party to the action or proceeding, be vacated upon an appropriate showing of need therefore by an order of a judge of the court in which the action or proceeding is pending.**
  1. A certified copy of the "Order to Vacate Notice of Lien" may be recorded with the County Recorder's Office, and upon the recordation, the Notice of Lien of the action or proceeding shall not constitute constructive notice of any of the matters contained therein nor create any duty of inquiry in any person thereafter dealing with the property described therein.
  2. An "Order to Vacate Notice of Lien" shall not be appealable, but the party aggrieved by the order may, within 20 days after service of written notice of the order, or within additional time not exceeding 20 days as the court may, within the original 20 days allow, but in no event later than 60 days after entry of the order, petition the proper reviewing court to review the order by Writ of Mandate.
  3. No "Order to Vacate Notice of Lien" shall be effective, nor shall it be recorded with the County Recorder's Office, until the time within which a petition for the filing of a Writ of Mandate has expired in compliance with this Section.

**9.82.120 – Filing Notice of Action**

Whenever an enforcement action is initiated and prior to filing a Notice of Lien, the Code Enforcement Division, may pursuant to Government Code Section 27280, file with the County Recorder's Office a notice of action identifying the enforcement action taken for violation of the Development Code or other applicable law.

**9.82.130 – Initial Investigation Procedures**

This Section describes the procedures for initiating enforcement action in cases where the Director has determined that real property within the Town is being used, maintained, or allowed to exist in violation of the provisions of this Development Code. It is the objective of these provisions to encourage the voluntary cooperation of responsible parties in the prompt correction of violations, so that the other enforcement measures provided by this Chapter may be avoided.

- A. **Notice.** Subject to Subsection (c) of this Section upon investigation and a determination that a violation of any of the provisions of this Development Code or any condition(s) imposed on any approval, authorization, permit, or variance is found to exist, the Director shall notify the record owner or any person having possession or control of the property by mail, of the existence of the violation(s), the Department's intent to charge the property owner for all administrative costs associated with enforcement, and of the owner's right to a hearing on any objections they may have. The notice shall be in a form approved by the Town Attorney.
  
- B. **Notice of Violation.** The Director shall provide the record owner of the subject site and/or any person in possession or control of the site with a written Notice of Violation, which shall include the following information:
  - 1. A description of each violation, and citation of applicable Development Code provisions being violated;
  - 2. A time limit for correcting for violation(s) in compliance with Subsection "C", below;
  - 3. A statement that the Town intends to charge the property owner for all administrative costs associated with the abatement of the violation(s) in compliance with Section 9.82.170 (Recovery of Costs), and/or initiate legal action as described in Section 9.82.070 (Enforcement).
  
- C. **Time limit for correction.**
  - 1. The Notice of Violation shall state that the violation(s) shall be corrected within 30 days from the date of the notice to avoid further enforcement action by the Town, unless the responsible party contracts the Code Enforcement Division within that time to arrange for a longer period for correction
  - 2. The 30-day time limit may be extended by the Director upon a showing of good cause.

3. The Director may also require through the Notice of Violation that the correction occur within less than 30 days if the Director determines that the violation(s) constitutes a hazard to public health or safety.

**D. Use of other enforcement procedures.** The enforcement procedures of Section 9.82.070 (Enforcement), may be employed by the Director after or instead of the provisions of this Section where the Director determines that this Section would be ineffective in securing the correction of the violation(s) within a reasonable time.

#### 9.82.140 – Inspections

- A. Pre-approval inspections.** Every applicant seeking an authorization, permit, or any other action in compliance with this Development Code shall allow the Town officials handling the application access to any premises or property which is the subject of the application.
- B. Post approval inspections.** If the authorization, permit, or other action in compliance with this Development Code is approved, the owner or applicant shall allow appropriate Town officials access to the premises in order to determine continued compliance with the approved authorization or permit and/or any conditions of approval imposed on the approval, authorization, permit, or Variance.

#### 9.82.150 – Stop Work Orders

- A.** Any construction in violation of this Development Code or any conditions imposed on any approval, authorization, permit, or Variance shall be subject to the issuance of a “Stop Work Order.”
- B.** Any violation of a Stop Work Order shall constitute a misdemeanor and a public nuisance, and shall be subject to the remedies and penalties established by the Town Code and this Chapter.

#### 9.82.160 – Revocation or Modification of Permits or Approvals

- A. Purpose.** Discretionary permits or approvals issued in compliance with this Development Code may be revoked or modified in compliance with this Section.
- B. Procedures.** This Section provides procedures for securing revocation or punitive modification of previously approved permits or approvals.
- C. Revocations.** The Town’s action to revoke a permit or approval shall have the effect of terminating the permit and denying the privileges granted by the original approval.
- D. Modifications.** Town modification of a permit or approval instead of revocation may include any operational aspect of the project, including buffers, duration of the permit or entitlement, hours of operation, landscaping and maintenance, lighting, parking, performance guarantees, property maintenance, signs, surfacing, traffic circulation, or any other aspect/condition determined to be reasonable and necessary to ensure that the permit is operated in a manner consistent with the original finding for approval.

**E. Hearings and notice.**

1. The appropriate review authority shall hold a public hearing to revoke or modify a permit or approval granted in compliance with the provisions of this Development Code.
2. At least ten days before the public hearing, notice shall be "delivered" in writing to the applicant for the permit or approval being considered for revocation, and/or owner of the property for which the permit was granted. The only exception to the 10-day notice provision shall be for Temporary Use Permits which, because of their short term nature, shall only require a 24-hour notice.
3. Notice shall be deemed "delivered" two days after being mailed, certified and first class, through the United States Postal Service, postage paid, to the owner as shown on the County's current equalized assessment roll and to the project applicant, if not the owner of the subject property.

**F. Action by Reviewing Authority.**

1. Permits. A Conditional Use Permit, Site Plan and Design Review, or other Town planning permit or approval (except a Variance, see Subsection (I)(2), below) may be revoked or modified by the reviewing authority (e.g., Director, Commission, or Council) that originally approved the permit, if the reviewing authority first makes any one of the following findings:
  - a. Circumstances under which the permit or approval was granted have been changed by the applicant to an extent that one or more of the findings that justified the original approval can no longer be made, and the public health, safety, and welfare require the revocation or modification;
  - b. The permit or other approval was granted, in whole or in part, on the basis of a misrepresentation or omission of a material statement in the application, or in the applicant's testimony presented during the public hearing, for the permit or approval;
  - c. One or more of the conditions of the original permit or approval have not been substantially fulfilled or have been violated;
  - d. The approved use or structure has ceased to exist or has been suspended for at least 12 months;
  - e. An improvement authorized in compliance with the permit is in violation of any applicable code, law, ordinance, regulation, or statute; or
  - f. The improvement allowed by the permit has become detrimental to the public health, safety, or welfare or the manner of operation constitutes or is creating a nuisance.

2. Variances. A Variance may be revoked or modified by the review authority which originally approved the Variance, if the review authority first makes any one of the following findings, in addition to any one of the findings in Subsection (1)(1), above:
    - a. Circumstances under which the original approval was granted have been changed by the applicant to a degree that one or more of the findings contained in the original approval can no longer be made in a positive manner, and the grantee has not substantially exercised the rights granted by the Variance; or
    - b. One or more of the conditions of the Variance have not been met, or have been violated, and the grantee has not substantially exercised the rights granted by the Variance.
- G. Amortization.** If a revocation is ordered, the Commission may provide for a reasonable period of time to amortize any lawful existing uses on the site. Extensions of this time period may be granted for good cause shown on an application to the applicable review authority by any affected person.
- H. Action is appealable.** The revocation or modification of a permit or Variance is appealable in compliance with Chapter 9.81 (Appeals).
- I. Enforcement.** The Town department or agency that issues the permit shall have the primary responsibility for enforcing compliance with the permit.

#### 9.82.170 – Recovery of Costs

This Section establishes procedures for the recovery of administrative costs, including staff and Town Attorney time expended on the enforcement of the provisions of this Development Code, other than administrative citation cases, to correct a violation. The intent of this Section is to recover Town administrative costs reasonably related to enforcement.

**A. Record of Costs.**

1. The Department shall maintain records of all administrative costs incurred by responsible Town departments, associated with the processing of violations and enforcement of this development Code; and shall recover the costs from the property owner in compliance with this Section.
2. Staff time shall be calculated at an hourly rate as established and revised from time to time by the Council.

**B. Summary of costs and notice.**

1. At the conclusion of the case, the Director shall send a summary of costs associated with enforcement to the owner and/or person having possession or control of the property by certified and first class mail.

2. The summary shall include a notice in a form approved by the Town Attorney, advising the responsible party of their right to request a hearing on the charges for Town cost recovery within 10 days of the date of the notice, and that if no request for hearing is filed, the responsible party will be liable for the charges.
3. In the event that no request for hearing is timely filed or, after a hearing the Director affirms the validity of the costs, the property owner or person in control shall be liable to the Town in the amount stated in the summary or any lesser amount as determined by the Director.
4. The costs shall be recoverable in a civil action in the name of the Town, in any court of competent jurisdiction, or by tax assessment, or by a lien on the property, at the Town's election.

**C. Attorney's fees.** In any action or administrative proceeding to abate a nuisance, the prevailing party in the action or proceeding shall be entitled to recover reasonable attorney's fees; however, the amount of attorney's fees awarded to a prevailing party shall not exceed the amount of attorney's fees incurred by the Town in the action or proceeding. Further, an award of attorney's fees in compliance with this Section shall only be allowed where the Town elects, at the initiation of the action or proceeding, to seek recovery of its own attorney's fees.

**D. Request for hearing on costs.** Any property owner, or other person having possession and control of the subject property, who receives a summary of costs shall have the right to a hearing before the Director on their objections to the proposed costs.

1. A written request for hearing shall be filed with the Department within 10 days of the service by mail of the Department's summary of costs, on a form provided by the Department.
2. Within 30 days of the filing of the request, and on 10 days written notice to the owner, the Director shall hold a hearing on the owner's objections, and determine their validity.
3. In determining the validity of the costs, the Director shall consider whether total costs are reasonable in the circumstances of the case. Factors to be considered include:
  - a. Whether the present owner created the violation(s);
  - b. Whether there is a present ability to correct the violation(s);
  - c. Whether the owner promptly corrected the violation(s);
  - d. The degree of cooperation provided by the owner; and
  - e. Whether reasonable minds can differ as to whether a violation(s) exists.
4. The Director's decision shall be appealable as provided by Chapter 9.81 (Appeals).

**9.82.180 – Additional Permit Processing Fees**

Any person who establishes a land use, or alters, constructs, demolishes, enlarges, erects, maintains, or moves any structure without first obtaining any authorization or permit required by this Development Code, shall pay the additional permit processing fees in compliance with the Town Fee Ordinance for the correction of the violations, before being granted an authorization or permit for a use or structure on the site.

**9.82.190 – Reinspection Fees**

**A. Amount and applicability of reinspection fee.**

1. A reinspection fee shall be imposed on each person who receives a Notice of Violation, notice and order, or letter of correction of any provision of this Development Code or the Town Code, adopted Building Code, or State law.
  - a. The fee amount shall be established in compliance with the current Fee Ordinance.
  - b. The fee may be assessed for each inspection conducted when the particular violation, for which a Notice of Violation, notice and order, or letter of correction was issued, was not fully abated or corrected as directed by, and within the time and manner specified in, the notice or letter.
2. The fee shall not apply to the original verification inspection to document the violations and shall apply to the first compliance inspection made after the issuance of a notice or letter, unless the correction has been made.

**B. Continuation of the original case.**

1. If a notice or letter has been previously issued for the same violation and the property has been in compliance with the provisions of this Development Code or the Town Code for less than 90 days, the violation shall be deemed a continuation of the original case, and all inspections or reinspections, including the first inspection for the repeated offense, shall be charged a reinspection fee.
2. This fee is intended to compensate for administrative costs for unnecessary Town inspections, and is not a penalty for violating this Development Code or the Town Code.
3. Any reinspection fees imposed shall be separate and apart from any fines or penalties imposed for violation of this Development Code or the Town Code, or costs incurred by the Town for the abatement of a public nuisance.

**9.82.200 – Documentation**

It is highly recommended that the property owner initiate a Land Use Compliance Review application to document any existing use where an application was not processed but determined to be a legal use and where the zoning or land use designation has changed and where a court decision determined a use to be legally established. This process records a document with the County Recorder's Office and is readily

available to future property owners, the public and agencies. It is also recommended that the property owner initiate a General Plan and Development Code Interpretation application whenever it is unclear to the owner, or may be to a future owner, what a specific use is determined to be considered under the Development Code.

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## Chapter 9.83 Permit Amendments

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### Sections:

- 9.83.010 – Purpose
- 9.83.020 – When Permit Amendments May be Considered.
- 9.83.030 – Types of Amendments.
- 9.83.040 – Procedures for Amendments
- 9.83.050 – Required Findings
- 9.83.060 – Limitation of Authority

### 9.83.010 – Purpose

Amendments or modifications of the conditions of approval, project design of an approved project, or the alteration or expansion of an approved use subject to a permit may be allowed through the approval of a Permit Amendment in compliance with this Chapter.

### 9.83.020 – When Permit Amendments May be Considered.

Amendments to projects approved in compliance with this Chapter may be made on the following grounds:

1. Change of circumstances;
2. New Information;
3. Correction of errors;
4. Public health, safety and welfare considerations; or
5. Changes in applicable General Plan designation or policy or applicable zoning regulations.

### 9.83.030 – Types of Amendments.

The following types of amendments apply to all projects approved in compliance with this Chapter, including Development Permits and land division approval:

- A. **Minor Amendments.** A Minor Amendment may include changes to project design, improvements, or conditions of approval, if the amendment does not affect the overall concept, density or intensity of use of the approved project, and if it does not involve either a modification of a design consideration, an improvement or a significant revision to a condition of approval which was a matter of controversy during the review and approval of the original permit, or which was required to mitigate a significant adverse environmental effect.
- B. **Corrections.** A correction is a change which corrects an error or omission in an approval which is otherwise at variance with the decision of the review authority or at variance with Town ordinances or regulations, and which correction does not involve either a modification of a design

consideration, an improvement or a condition of approval which was a matter of controversy during the review and approval of the original permit, or which was required to mitigate a significant adverse environmental effect.

- C. Correction and Amendment of Subdivision Maps.** The correction and amendment of subdivision maps are provided for in Section 9.92.080 (Correction and Amendment of Recorded Maps) of this Code.
- D. Major Amendments.** Any change to an approval which does not qualify as a Minor Amendment, Correction, or Correction and Amendment of a Subdivision Map, as defined in paragraphs 1, 2 and 3 above, shall be deemed a Major Amendment.

#### 9.83.040 – Procedures for Amendments

- A. Initiation.** Except as otherwise provided herein, any amendment may be initiated by the current holder of the approval, the Director, the Commission, or the Council.
1. **Initiation by the Director.** The Director may initiate amendments involving Minor Variations and Corrections. The Director shall send written notice of the pending action to amend the current permit to the current holder of the approved permit at least thirty (30) days prior to taking action on the amendment.
  2. **Initiation of corrections and amendments of subdivision maps.** The procedures and review authority for Correction and Amendment of Subdivision Maps are provided in Section 9.92.080 (Correction and Amendment of Recorded Maps) of this Code.
  3. **Council Initiation.** The Council, based upon a recommendation from the Commission may initiate an amendment. If the amendment is initiated by the Council, a Resolution of Intention shall be adopted. Such Resolution of Intention shall provide notice to the current holder of the approved permit at least thirty (30) days prior to an action being taken on the amendment, unless the public health, safety or welfare requires more immediate action.
  4. **Initiation by current holder of approved permit.** Permit amendments initiated by the current holder of an approved permit shall be made on forms provided by the Planning Division.
- B. Review Authority.** Except as otherwise provided in this Code, the review authority for a permit amendment shall be as follows:
1. **Minor amendments and corrections.** The Director shall be the review authority for Minor Variations and Corrections. No public hearing or notice of adjacent property owners shall be required.
  2. **Correction and amendment of subdivision maps.** The procedures and review authority for the Correction and Amendment of Subdivision Maps are provided in Section 9.92.080 (Correction and Amendment of Recorded Maps).

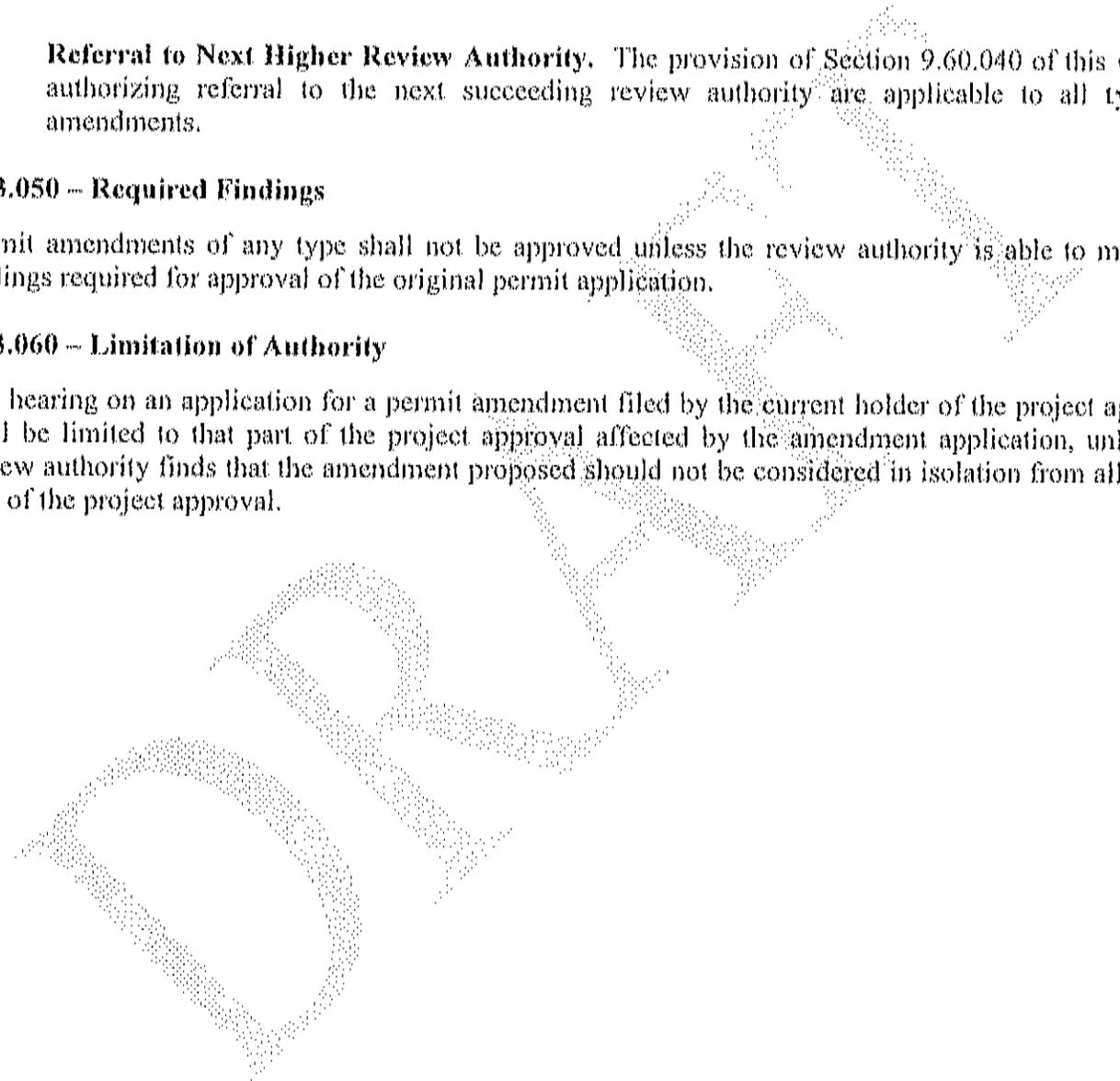
3. Major amendments. The review authority and processing procedures for Major Amendments shall be the same as for the original approval.
  4. Amendment initiated by the Council. Amendments initiated by the Council shall be reviewed and final action shall be taken by the body which initiated the amendment, unless the original approving body was the Council, in which case the Council shall take final action.
- C. Referral to Next Higher Review Authority.** The provision of Section 9.60.040 of this Chapter authorizing referral to the next succeeding review authority are applicable to all types of amendments.

**9.83.050 – Required Findings**

Permit amendments of any type shall not be approved unless the review authority is able to make the findings required for approval of the original permit application.

**9.83.060 – Limitation of Authority**

The hearing on an application for a permit amendment filed by the current holder of the project approval shall be limited to that part of the project approval affected by the amendment application, unless the review authority finds that the amendment proposed should not be considered in isolation from all or any part of the project approval.



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## Chapter 9.84 Permit Revocations

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### Sections:

- 9.84.010 – Purpose
- 9.84.020 – Permits Which May Be Revoked.
- 9.84.030 – Authority.
- 9.84.040 – Hearing Procedure.
- 9.84.050 – Appeal Procedures.

### 9.84.010 – Purpose

To the extent consistent with law, in order to protect the public health, safety, and welfare, and in order to enforce the provisions of this Code, it may become necessary to revoke a previously authorized approval or approved permit. The purpose of this Section is to protect the public health, safety and welfare, as well as the rights to due process of permit holders within the Town.

### 9.84.020 – Permits Which May Be Revoked.

Any permit granted in compliance with this Code may be revoked by the Commission or Council upon one or both of the following findings: Any term or condition of that permit has not been, or is not being complied with; or the permit has been issued or exercised in a manner which creates a nuisance, or is otherwise detrimental to the public health, safety, or welfare. Such revocation may be initiated by a Resolution of Intention adopted by either the Commission or the Council. Such Resolution of Intention shall provide notice to the holder of the permit in noncompliance, violation or nuisance, reasonable opportunity to correct the noncompliance to the satisfaction of the Town. Such reasonable opportunity for correction may be provided by scheduling the actual hearing on revocation for a date which will allow time for such correction.

### 9.84.030 – Authority.

Authority to revoke permits or approvals shall be vested with the Commission for permits approved by staff or the Commission or vested with the Council where the Council was the final review authority in granting the permit or approval. A public hearing in compliance with Chapter 9.86 of this Code, *Public Notices and Hearings*, shall be required for revocation of permits or previous approvals.

### 9.84.040 – Hearing Procedure.

If a Resolution of Intention is adopted to initiate the revocation of any previously authorized approval or approved permit, the Commission or Council shall set the matter for a hearing, giving notice of the time, place and review authority as prescribed in Chapter 9.86 of this Code, *Public Notices and Hearings*. A copy of the Resolution of Intention shall be sent to the current owner of record. Upon the conclusion of the hearing, the Commission or the Council may, upon making the appropriate findings, either revoke the permit or amend the permit in lieu of revocation.

**9.84.050 – Appeal Procedures.**

Any decision of the Commission regarding an action to revoke or to amend a permit may be appealed to the Council in compliance with Chapter 9.81 of this Code, *Appeals*. Any decision of the Council to revoke a permit or to amend a permit shall be final.

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## Chapter 9.85 Public Notices and Hearings

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### Sections:

- 9.85.010 – Purpose
- 9.85.020 – Notice of Hearing
- 9.85.030 – Hearing Procedure
- 9.85.040 – Recommendation by Commission

### 9.85.010 – Purpose

This Chapter provides procedures for public hearings required by this Development Code and State law. When a public hearing is required, advance notice of the hearing shall be given, and the hearing shall be conducted, in compliance with this Chapter.

### 9.85.020 – Notice of Hearing

When this Development Code requires a public hearing before a decision on a permit, or for another matter, the public shall be provided notice of the hearing in compliance with Government Code Sections 65090, 65091, 65092, 65093, and 65094, and Public Resources Code 21000 et seq., and as required by this Chapter.

- A. Content of notice.** Notice of a public hearing shall include all of the following information, as applicable.
1. **Hearing Information.** The date, time, and place of the hearing and the name of the review authority; a brief description of the public's right to appear and be heard, and where an interested person may obtain additional information.
  2. **Project Information.** The name of the applicant, the Town's file number assigned to the application; a general explanation of the matter to be considered; and a general description, in text and/or by diagram, of the location of the property that is the subject of the hearing.
  3. **Statement on environmental document.** If a proposed Negative Declaration or final Environmental Impact Report has been prepared for the project in compliance with the California Environmental Quality Act (CEQA) and the Town's Environmental Review Procedures, the hearing notice shall include a statement that the review authority will also consider approval of the proposed Negative Declaration or certification of the final Environmental Impact Report.
- B. Notification Procedures.**
1. **Published Notice.** For General Plan Amendments and Amendments to the Development Code not affecting the permitted uses or intensity of uses of real property, notice of public

hearing shall be provided in at least one paper of general circulation within the Town at least 10 days prior to the hearing. If there is no such newspaper of general circulation, the notice shall be posted at least 10 days prior to the hearing in at least three public places within the Town.

2. Mailed Notice. For all other Public Hearings required by this Code, notice shall be given in all of the following ways:
  - a. Notice of the hearing shall be mailed or delivered at least 10 days prior to the hearing to the owner of the subject real property as shown on the latest equalized assessment roll. Instead of using the assessment roll, the local agency may use records of the county assessor or tax collector if those records contain more recent information than the information contained on the assessment roll. Notices shall also be mailed to the owner's duly authorized agent, if any, and to the project applicant.
  - b. When the Subdivision Map Act (Div. 2 (commencing with Section 66410)) requires notice of a public hearing to be given pursuant to this section, notice shall also be given to any owner of a mineral right pertaining to the subject real property who has recorded a notice of intent to preserve the mineral right pursuant to Section 883.230 of the Civil Code.
  - c. Notice of the hearing shall be mailed or delivered at least 10 days prior to the hearing to each local agency expected to provide water, sewage, streets, roads, schools, or other essential facilities or services to the project, whose ability to provide those facilities and services may be significantly affected.
  - d. Notice of the hearing shall be mailed or delivered at least 10 days prior to the hearing to all owners of real property as shown on the latest equalized assessment roll within 300 feet of the real property that is the subject of the hearing. In lieu of using the assessment roll, the local agency may use records of the county assessor or tax collector which contain more recent information than the assessment roll. If the number of owners to whom notice would be mailed or delivered pursuant to this paragraph or paragraph (1) is greater than 1,000, a local agency, in lieu of mailed or delivered notice, may provide notice by placing a display advertisement of at least one-eighth page in at least one newspaper of general circulation within the local agency in which the proceeding is conducted at least 10 days prior to the hearing.
  - e. If the notice is mailed or delivered pursuant to paragraph (d), the notice shall also either be:
    - (1) Published in at least one newspaper of general circulation within the local agency which is conducting the proceeding at least 10 days prior to the hearing.

- (2) Posted at least 10 days prior to the hearing in at least three public places within the boundaries of the local agency, including one public place in the area directly affected by the proceeding.
3. Request for notification.
  - a. When a provision of this title requires notice of a public hearing to be given pursuant to Section 65090 or 65091, the notice shall also be mailed or delivered at least 10 days prior to the hearing to any person who has filed a written request for a notice with either the clerk of the governing body or with any other person designated by the governing body to receive these requests. The local agency may charge a fee which is reasonably related to the costs of providing this service and the local agency may require each request to be annually renewed.
  - b. As used in this chapter, "person" includes a California Native American tribe that is on the contact list maintained by the Native American Heritage Commission.
2. In addition to the notice required by this section, a local agency may give notice of the hearing in any other manner it deems necessary or desirable.

#### **9.85.030 – Hearing Procedure**

- A. Time and place of hearing.** A hearing shall be held at the date, time, and place for which notice was given.
- B. Continued hearing.** Any hearing may be continued from time to time without further notice; provided, the chairperson of the hearing body announces the date, time, and place to which the hearing will be continued before the adjournment or recess of the hearing.
- C. Deferral of final decision.** The review authority may announce a tentative decision, and defer their action on a final decision until appropriate findings and/or conditions of approval have been prepared.

#### **9.85.040 – Recommendation by Commission**

After a public hearing on a proposed legislative act (e.g. amendment to the General Plan, this Development Code, a development agreement, a specific plan, a Planned Development, or an action referred to the Council by the Commission) the recommendation and findings of the Commission shall be forwarded to the Council. A copy of the recommendation shall be mailed to the applicant at the address shown on the application.

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## **Chapter 9.86 Time Limitations and Time Extensions**

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### **Sections:**

- 9.86.010 – Purpose
- 9.86.020 – Effective Dates of Permits
- 9.86.030 – Time Limits
- 9.86.040 – Time Extensions

### **9.86.010 – Purpose**

This Chapter provides requirements for the implementation or “exercising” of the permits and authorizations required by this Development Code, including time limits and procedures for granting extensions of time.

### **9.86.020 – Effective Dates of Permits**

- A. Effective date for planning permits and other approvals.** Except in the case of an Amendment and Zone Change (Chapter 9.63) or Development Agreement (Chapter 9.65), final action on any planning approval (e.g., Conditional Use Permits, Site Plan and Design Review, Variance, or other entitlement) shall become effective on the 11<sup>th</sup> consecutive calendar day following the date of application approval, where no appeal of the approval has been filed in compliance with Chapter 9.81 (Appeals).
- B.** If the 11<sup>th</sup> day is not a Town business day, the following business day shall be deemed the effective date.

### **9.86.030 – Time Limits**

- A. Time limits.**
  - 1. Specified permits shall be exercised within 36 months. Unless a condition of approval or other provision of this Development Code establishes a different time limit, a Conditional Use Permit, Site Plan and Design Review, Variance, Planned Development Permit, Land Use Compliance Review, Tentative Parcel Map or Tentative Tract Map not exercised within 36 months of the actual date of the decision granting the permit or authorization shall expire and become void, except where an extension of time is approved in compliance with Section 9.88.040 (Time Extensions), below.
  - 2. Specified permits shall be exercised within 12 months. Unless another provision of this Development Code establishes a different time limit, Special Use Permit, or Temporary Use Permit or any other land use permit not exercised within 12 months of the actual date of the decision granting the permit or authorization shall expire and become void, except where an extension of time is approved in compliance with Section 9.88.040 (Extension of time), below.

3. Definition of "exercised." The permit or authorization shall not be deemed "exercised" until the permittee has commenced actual construction or alteration under a valid Building Permit, or has substantially commenced the approved activity or allowed use of the site in compliance with the conditions of approval, in cases where a Building Permit is not required.
4. Run with the land. After it has been exercised, a planning permit or authorization shall remain valid and run with the land in compliance with Section 9.80.020 (Permits and Conditions to Run with the Land), as long as a Building Permit is active for the project, and after a final building inspection or Certificate of Occupancy has been granted.

**B. Phased project.**

1. Projects other than Planned Development Permits. If a project (other than a Planned Development Permit) is to be developed in approved phases, each subsequent phase shall be exercised within 36 months from the date that the previous phase was exercised, unless otherwise specified in the permit or authorization, or the permit or authorization shall expire and become void, except where an extension of time is approved in compliance with Section 9.88.040 (Extensions of time), below. If the project also involves the approval of a Tentative Map, the phasing shall be consistent with the Tentative Map and the permit or authorization shall be exercised before the expiration of the Tentative Map, or the permit or authorization shall expire and become void.
2. Planned Development Permits. Notwithstanding the above provisions of this Section, a conditionally approved Planned Development Permit for a phased project shall be subject to a time limitation not to exceed that specified by the condition of approval for the Development Plan approval. The applicant, however, shall either record a tract map or obtain Building Permits for at least one phase of the project within three (3) years of the Development Plan conditional approval and, as applicable, within each succeeding three-year period. Each three-year period shall begin with the last Town approved action that was accomplished (e.g., recordation of a tract map, obtain a Building Permit).

**9.86.040 -- Time Extensions**

- A. **Review Authority.** Approvals for an extension of time beyond the original expiration date of any project may only be granted by the original approving review authority.
- B. **Submittal Requirements.**
  1. Extension of time requests for projects shall be considered only if filed with the Planning Division prior to the expiration date for the permit or approval.
  2. A subdivider may request an extension for projects subject to the Subdivision Map Act by written application to the Director in accordance with Chapter 9.91.110 (Tentative Map Expiration and Extensions) of this Code, Subdivision Regulations.
- C. **Time Limits on Extensions.** Other than Tentative Parcel Maps and Tract Maps, extensions may not exceed an aggregate total of three (3) years from the original date of expiration unless otherwise provided by law, unless the review authority finds that all findings required for the

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original approval can still be made and the application is consistent with the General Plan, Development Code, Master Plans and Specific Plans.

**D. Findings.**

Requests for extensions shall only be granted if the following findings can be made:

1. The project is consistent with the provisions of the General Plan and the Town Code in effect at the time of extension request is considered.
2. There have been no significant changes in the character of the area within which the project is located that would cause the approved project to become inconsistent or nonconforming and that the granting of an extension will not be detrimental to the public health, safety or welfare, or materially injurious to properties or improvements in the vicinity.

**E. Action on extension of a project subject to the Subdivision Map Act.** The expiration date of a Tentative Map may only be extended in compliance with the Map Act Section 66452.6.

**F. Effect of expiration.** After the expiration of a planning permit or authorization in compliance with Subsection 9.76.030 (A), above, no further work shall be done on the site until a new planning permit or authorization and any required Building Permit or other Town permits are first obtained.

**NOTICE OF PUBLIC HEARING  
YUCCA VALLEY COMMUNITY CENTER  
57090 29 PALMS HIGHWAY  
YUCCA VALLEY, CALIFORNIA 92284**

**TUESDAY JULY 08, 2014 - BEGINNING AT 6:00 P.M.**

A PUBLIC HEARING HAS BEEN SCHEDULED BEFORE THE TOWN OF YUCCA VALLEY PLANNING COMMISSION TO CONSIDER THE FOLLOWING DESCRIBED APPLICATION:

**CASE NUMBER:** Development Code Amendment, DCA 03-14  
Article 5, Administration

**APPLICANT:** Town of Yucca Valley  
58928 Business Center Drive  
Yucca Valley, CA 92284

**PROPOSAL:** Proposed amendment to Title 9, Yucca Valley Development Code adding Article 5, Chapter 9.80 thru Chapter 9.86, Administration, providing standards and procedures for appeals, enforcement and violations, permit amendments, permit revocations, public notices and hearings and time limitations and time extensions and repealing Sections 83.010605-83.010630, Section 81.0150, Sections 81.0205-81.0235 and Sections 87.1201-87.1202 of the Town of Yucca Valley Development Code.

**LOCATION:** Town wide

**ENVIRONMENTAL**

**DETERMINATION:** The project was reviewed under the California Environmental Quality Act (CEQA) and the Town's Guidelines to implement same. The project is exempt from CEQA under Section 15061(b) (3) since there is no possibility of a significant impact on the environment caused by this amendment.

The proposed amendment to revise the Town's Development Code regulations has no potential to impact the environment. The proposed amendment does not alter the existing requirements that specific development projects must comply with the provisions of the California Environmental Quality Act. Development Code Amendment, DCA 03-14 meets the exemption criteria which states "that if an activity 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 where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment, the activity is not subject to CEQA".

Any person affected by the application(s) may appear and be heard in support of or opposition to the proposal at the time of the hearing. The environmental findings, along the with proposed project application(s) are available and may be reviewed at the Town of Yucca Valley Planning Division, 58928 Business Center Drive, Yucca Valley, CA 92284 from 7.30 a.m. to 5:30 p.m., Monday through Thursday or obtain information at (760) 369-6575.

The Planning Commission in its deliberation could recommend approval of the project, deny the project, or approve the project in an alternative form. If you challenge any of the projects

in court, you may be limited to raising only those issues you or someone else raised at the Public Hearing described in this notice, or in written correspondence delivered to the Town Planning Division at, or prior to the Public Hearing.

Publish Date: Published on June 25, 2014.

June 18, 2014

Date

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Lesley Copeland  
Town Clerk

