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Chapter 9.80 Administration

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 Plans 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, Site Plan and Design Review Permit, Specific Plans, 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 on 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, Planning Commission or Town 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 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 Town 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. Form 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

- A. Applicant's Agreement to Indemnify and Hold Harmless.** 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, Town 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

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 Town 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

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 Town 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 Town Council. Notwithstanding this paragraph, the amount of penalty to be assessed by means of an administrative citation may be established by resolution of the Town 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 Town 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 or designee. 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 (f)(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 (f)(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 9.84 Permit Amendments

Sections:

- 9.84.010 – Purpose
- 9.84.020 – When Permit Amendments May be Considered.
- 9.84.030 – Types of Amendments.
- 9.84.040 – Procedures for Amendments
- 9.84.050 – Required Findings
- 9.84.060 – Limitation of Authority

9.84.010 – Purpose

Amendments or modifications of the conditions of approval, project design of an approved project, or for 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.

9.84.020 – 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.

9.84.030 – 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.

9.84.040 – 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 Town 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. Town Council Initiation. The Town Council, based upon a recommendation from the Planning 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.

9.84.050 – 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.

9.84.060 – 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 9.85 Permit Revocations

Sections:

- 9.85.010 – Purpose
- 9.85.020 – Permits Which May Be Revoked.
- 9.85.030 – Authority.
- 9.85.040 – Hearing Procedure.
- 9.85.050 – Appeal Procedures.

9.85.010 – 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.

9.85.020 – 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.

9.85.030 – 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.

9.85.040 – 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.

9.85.050 – 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 9.86 Public Notices and Hearings

Sections:

- 9.86.010 – Purpose
- 9.86.020 – Notice of Hearing
- 9.86.030 – Hearing Procedure
- 9.86.040 – Recommendation by Commission

9.86.010 – 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.

9.86.020 – 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.

9.86.030 – 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.

9.86.040 – 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.

Chapter 9.88 Time Limitations and Time Extensions

Sections:

- 9.88.010 – Purpose
- 9.88.020 – Effective Dates of Permits
- 9.88.030 – Time Limits
- 9.88.040 – Time Extensions

9.88.010 – 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.

9.88.020 – 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 11th 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 11th day is not a Town business day, the following business day shall be deemed the effective date.

9.88.030 – 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 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).

9.88.040 – 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.

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- 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 original approval can still be made and the application is consistent with the General Plan, Development Code, Master Plans and Specific Plans.
- D. Findings.
1. Requests for extensions shall only be granted if the following findings can be made: 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. Phased Projects. This subsection shall not be applied to extend the time limits provided in Section 9.88.030 (B), above.
- F. 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.
- G. 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.
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