

ORDINANCE NO.

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF YUCCA VALLEY, CALIFORNIA, AMENDING TITLE 9, YUCCA VALLEY DEVELOPMENT CODE, BY ADOPTING ARTICLE 5, CHAPTERS 9.80 THRU 9.86, ADMINISTRATION, AND REPEALING SECTIONS 81.0205-81.0235, SECTIONS 83.010605-83.010630 AND SECTIONS 87.1201-87.1202 OF TITLE 8 OF THE YUCCA VALLEY DEVELOPMENT CODE.

The Yucca Valley Town Council Ordains as follows:

Section I:

Article 5: Administration

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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 Plan, Special Use Permit, and other permits issued and approved under this Development Code that are 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 a 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 applicant/owner 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 or Planning Commission 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 Attorney.
4. The security shall remain in effect until all of the secured conditions have been performed.

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.

9.80.040 – Easements and Deed Notices

A. Implementation.

The Town may require offers of dedication, the granting of easements, or the recordation of deed notices to assist the 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 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.

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. A copy of the recorded Easement shall be forwarded to the Town 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 on file with the Town Clerk. A copy of the recorded Deed Notice shall be forwarded to the Town and the Yucca Valley Airport District.

2. Drainage Easements.

A grant of easement may be required by the Town 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. 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 and/or County of San Bernardino.

3. Public Rights of Way.

A grant of easement may be required by the Town 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. Owners/Applicants 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 the Town's roadway and trails networks.

9.80.050 – 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.

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

9.81.010 – 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 of land use decisions made by the Commission.

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 Town.
- B. **Appeal submittals.** Applications for appeals addressed to the Commission and Town Council shall be submitted to the Planning Division.
- 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.

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 matter shall be set for hearing and notice shall give 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 subject 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 Town in writing that they wish to withdraw the appeal.

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 – Filing of a Notice of Liens/Pendency

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 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, and shall include and not be limited to the Town Manager, Deputy Town Manager, Town Engineer, Building Official, Code Compliance Officers, Animal Control Officers, and Town Attorney.
- 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.
- 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 civil, criminal and/or administrative processes including 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, and administrative citations.

- 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 or 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 punishable, upon conviction or upon a plea of nolo contendere (commonly called no contest), by: (1) a base fine as established by the Council or 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 punishable, upon conviction or upon a plea of nolo contendere (commonly called no contest), by a base fine as established by the Council or 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 by Town code.

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 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.
- 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).
- D. Statute of Limitation.** Any court action or proceeding to attach, review, set aside, void or annul any decision relating to the adoption or amendment of the Town General Plan or any specific plan or any decision of matters listed in this Development Code otherwise subject to court review (other than those listed in Sections 65907 and 66499.37 of the State Government Code and Section 21167 of the State Public Resources Code) or concerning any of the proceedings, acts or determinations taken, done or made prior to such decision, or to determine the reasonableness, legality, or validity of any conditions attached thereto, shall not be maintained by any person unless such action or proceeding is commenced with service of summons effected within thirty (30) calendar days after the effective date of such decision. Thereafter, all persons are barred from any such action or proceeding or any defense of invalidity or unreasonableness of such decision or of such proceedings, acts or determinations.

9.82.100 – Filing of a Notice of Liens/Pendency

Whenever the Town institutes a judicial action or proceeding to enforce the Development Code, a Notice of Lien/Pendency 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 California Code of Civil Procedure.

Chapter 9.83 Permit Amendments

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, or 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 A, B, and C 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 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

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 upon one or both of the following findings:

1. Any term or condition of that permit has not been, or is not being complied with; or
2. 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 9.85 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 9.85 of this Code, *Public Notices and Hearings*. A copy of the Resolution of

Intention shall be sent to the permittee and 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 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.

- A. Purpose.** Discretionary permits or approvals issued in compliance with this Development Code may be revoked or modified in compliance with Chapter 9.84, Permit Revocations.
- 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.
 - 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).

Chapter 9.85 Public Notices and Hearings

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, the public shall be provided notice of the hearing in compliance with Government Code Sections 65090 thru 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), 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. If said amendment(s) affects permitted uses or intensity of uses of real property, the potentially affected property owners shall be provided notice as required by paragraph 2(d) below.

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 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, 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 as follows:
 1. If the subject property is less than five (5) acres, notice shall be mailed to all property owners within 300 feet of the real property that is the subject of the hearing.
 2. If the subject property is five (5) acres or more but less than 20 acres, notice shall be mailed to all property owners within 500 feet of the real property that is subject to the hearing.
 3. If the subject property is 20 acres or more, notice shall be mailed to all property owners within 1000 feet of the real property that is the subject of the hearing.
 - e. 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.
 - f. 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 Government Code 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 Town may charge a fee which is reasonably related to the costs of providing this service..

b. Any request for notification shall be renewed annually.

c.. 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, the Town 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.

Chapter 9.86 Time Limitations and Time Extensions

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 9.62) or Development Agreement (Chapter 9.64), 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.

9.86.030 – Time Limits

- A. **Time limits.**
 1. 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 9.86.040 (Time Extensions), below.
 2. Unless another provision of this Development Code establishes a different time limit, Special Use Permit, 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 9.86.040 (Time Extensions), 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 9.86.040 (Time Extensions), 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

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 9.86.030 (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.

Section 2: Repeal of County Code as Adopted and Amended by the Town: The Town Council hereby repeals Sections 81.0205-81.0235, Sections 83.010605-83.010630 and Sections 87.1201-87.1202 of Title 8 of the Yucca Valley Development Code.

Section 3. Severability: If any provision of this Ordinance or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of this Ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this Ordinance are severable. The Town Council hereby declares that it would have adopted this Ordinance irrespective of the invalidity of any particular portion thereof.

Section 4. Certification; Publication: The Town Clerk shall certify to the adoption of this Ordinance and cause it, or a summary of it, to be published once within 15 days of adoption in a newspaper of general circulation printed and published within the Town of Yucca Valley, and shall post a certified copy of this Ordinance, including the vote for and against the same, in the Office of the Town Clerk in accordance with Government Code § 36933.

Section 5. Effective Date: This Ordinance shall become effective thirty (30) days from its adoption.

APPROVED AND ADOPTED this ____ day of _____, 2014.

MAYOR

APPROVED AS TO FORM:

TOWN ATTORNEY

ATTEST:

TOWN CLERK

DRAFT