



CITY OF TWENTYNINE PALMS
CITY COUNCIL STAFF REPORT
6136 Adobe Road
Twentynine Palms, CA 92277
(760) 367-6799 – Fax (760) 367-5400

TO: City Council
FROM: Community Development Director
DATE: May 11, 2011

FOR COMMISION MEETING: May 24, 2011

SUBJECT: PC 11-40 – Appeal of the Planning Commission’s interpretation of Development Code Section 19.48.030 “Accessory Uses in Residential Districts”.

RECOMMENDATION

Open the Public Hearing, receive public comment and continue the hearing until June 14, 2011 to allow the full Council to be present to consider the Commission’s interpretation of the requirements of Code Section 19.48.030 “Accessory Uses in Residential Districts” regarding the appearance of allowed accessory structures.

ORDER OF PROCEDURE

- Request Staff Report (Charles LaClaire Presenting)
- Council Questions of Staff
- Open to Public Comment
- Council Discussion
- Motion/Second
- Discussion of Motion
- Call the Question

- | Attachments |
|---|
| 1. Applicant Drawn Site Plan |
| 2. Design Information |
| 3. Aerial/Surrounding Properties |
| 4. Photographs of Site and Surrounding Area |
| 5. Minute Excerpt, Commission meeting of April 19, 2011 |
| 6. Development Code Section 19.48.030 “Accessory Uses in Residential Districts” |

PROJECT DESCRIPTION

Appeal of the Planning Commission’s April 19, 2011 interpretation of Development Code Section 19.48.030 “Accessory Uses in Residential Districts” regarding the architectural requirements applicable to an accessory structure that would apply to the proposed construction of a metal Recreational Vehicle (RV) cover/carport structure.

BACKGROUND

At its meeting of April 5, 2011 the Planning Commission initiated its review of an Appeal filed by applicant Carl (C.J.) Horn with regard to the denial of his Building Permit to install a metal Recreational Vehicle (RV) cover/carport upon his property located at 5789 La Luna (APN 0618-073-25), Twentynine Palms. At the April 5th Public Hearing, the Commission received a staff presentation, comments from Mr. Horn and debated the issue amongst its members. Some Commissioners expressed a desire to allow the proposed structure due to its basic appearance and as the applicant had commented that he had already committed money to the metal cover. It was also suggested that the cover/carport could be approved awaiting the outcome of a Code Amendment, and subsequently modified if the Code Amendment required such modifications.

Review of Staff Report:

City Manager

City Attorney

City Engineer

Department Head

While debate amongst the Commissioners examined the difference between a “building” and “structure”, at least one Commissioner clearly stated a belief that the carport, as proposed, does not meet the letter of the Code as written.

It is important to note that the Commission is currently reviewing, at Study Sessions, the Development Code relative to allowed accessory structures and architectural compatibility requirements (see PC 11-09). At one of the Study Sessions, current Code requirements were examined, as were the definition of structure, building and compatibility, and the possibility of using Code Section 19.48.030 “C” (“Non-habitable accessory facilities such as a cabana, play yard, tennis court, porch, ramada {porch/trellis}, awning, patio slab, water tower and well, swimming pool, storage buildings and similar uses”) as the standard for structures such as the “non-habitable”, metal cover/carports requested by the applicant.

As was noted within the Public Hearing report for the Commission’s meeting of April 5, 2011, the metal roofed and partially metal sided structure shall measure eighteen feet (18’) by forty-two feet (42’), with a footprint totaling 756 square feet. The structure shall consist of a metal pole framework forming a peaked RV “carport” of fourteen (14) feet in height, without eaves and with metal siding that extends from the roof to approximately six (6) feet from the ground (See Design Information attached). The all metal structure is proposed to be located to the rear of the home on site, utilizing the existing home to shield the view of the RV cover/carport from the public right-of-way (See Site Plan attached). Although partially shielded from view from the public street by the home on site, portions of the proposed structure shall still be visible from the street and clearly visible from neighboring and adjoining properties.

The existing one-story, 1,886 square foot home is located on a lot of 301 foot by 110 foot (33,110 square feet or 0.76 acres), situated within the RS-4 Single-Family Residential zoning district (See attached Aerial). The existing home is treated with stucco siding material (non-reflective), eaves of between eighteen (18) and twenty-four (24) inches, a sloped roof covered with asphalt shingles and stucco window pop-outs as decorative treatments. As the proposed RV cover/carport consists of metal roofing and flat, smooth siding, lacks an eave overhang and has no vertical or horizontal accents to mimic the main home, staff did not consider the appearance of the cover/carport to be architecturally compatible with the main home which triggered the original denial of the requested Building Permit and the Appeal to the Planning Commission.

Surrounding the property in question are single-family residential homes, all one-story in nature, with stucco siding, predominantly asphalt shingled roofing and various, but minimal, decorative treatments or architectural relief features (such as window surrounds and pop-out, archways, rock and/or stucco columns). As may be seen upon the attached aerial of the neighborhood, only a few properties have accessory structures. As was noted previously, a field investigation of the neighborhood revealed that within the immediate area two (2) homes have small metal sided/roofed buildings without eaves (neither appear to be over 200 square feet in size). In addition, it was observed that two (2) properties have one cargo container each; neither of which are provided with any architectural or decorative treatments.

Code Provision

Listed below is an excerpt from the Development Code Section in question (the entire Section is attached to the end of this report).

19.48.030 Accessory Uses in Residential Districts. The following uses shall be permitted as accessory uses to each single dwelling unit which is allowed:

>>>>>

- C. Non-habitable accessory facilities such as a cabana, play yard, tennis court, porch, ramada, awning, patio slab, water tower and well, swimming pool, storage buildings and similar uses.
- D. Accessory Structure Regulations. The following additional regulations shall apply to accessory structures as specified:
 - 1. All accessory buildings shall be required to be architecturally compatible with the main structure(s).

At the April 5th meeting, the Commission continued the Appeal to its next regularly scheduled meeting of April 19, 2011. At the April 19th Public Hearing, the Commission again addressed the Appeal, discussing the requirements of the Code, the specific wording of the Code (debating the meaning between “structure”, “building” and “architectural compatibility”), and discussed alternative interpretations of the material and how the Code should apply in consideration of this specific proposal. Staff was questioned as to how it would or has interpreted the Code, to which the response was strictly as written. A Commissioner then responded that the Commission has the choice to apply the strictness of the Code verse interpreting the Code to help people.

Following further discussion of the wording of the regulations and which regulations should apply, the Commission determined that the proposed RV carport was a “Non-habitable accessory facilities” such as a cabana, porch, awning, storage buildings and similar uses as allowed under Code Section 19.48.030 “C”, not subject to the requirements for “architectural compatibility”. Under this determination, the Commission moved and approved, on a three-to-one vote (3-1) (one Commissioner absent), to approve the applicant’s Appeal of the Director’s interpretation of the Code. Under this interpretation of the Code, staff understands that it is the Commission’s direction that all structures that are “Non-habitable”, as defined by either the Development Code or Building Code, are not subject to the requirements to be “architecturally compatible” with the main structure as defined in Section 19.48.030 “D”.

ANALYSIS

As was presented within the Commission’s report for its April 19th Public Hearing, currently under the provisions of Development Coe Section 19.48.030 “Accessory Uses in Residential Districts” the Code requires that “All accessory buildings shall be required to be architecturally compatible with the main structure(s).” This requirement, however, is preceded by a provision that identifies other allowed uses (structures) that states “C. “Non-habitable accessory facilities such as a cabana, play yard, tennis court, porch, ramada, awning, patio slab, water tower and well, swimming pool, storage buildings and similar uses”. Under the appeal at hand, the applicant is proposing a metal RV cover/carport which although it can be described as a non-habitable accessory facility (building or structure, all three {3} words could apply), allowed by Section 19.49.030, subsection “C” of the Code, subsection 19.48.030 “D” states that “The following *additional* (emphasis added) regulations shall apply” to accessory structures and goes on to require in paragraph “1” architectural compatibility.

Staff had interpreted the above requirements, “additional regulations” and “architectural compatibility”, to mean that whenever an accessory structure is proposed within the community, that proposed accessory structure must have the fundamental characteristics (appearance, texture, style and architectural/decorative features or complimentary features) as the main structure on site (the main structure that the requested additional structure is accessory to). This would entail the accessory structure having a similar exterior color and texture (lap siding,

wood, stucco or combinations thereof), similar roofing material (shingle, tile or tile simulation material), and physical features such as eaves and notable architectural decorations (for example, vertical accents, window surrounds or “pop-outs”, etc.) to that of the main structure.

Under the above interpretation of this Code provision, staff had previously interpreted the Code in a manner that it believed was prudent and fair interpretation of the written material. Thus, as the proposed RV carport, as originally proposed, was taken as inconsistent with the primary structure on site (home) (for the reasons listed below), it could not be approved.

The home does not have smooth, flat metallic appearing exterior siding, and/or potentially reflective siding;

The proposed RV cover/carport exterior walls do not cover the sides of the structure to the ground;

The roofing material does not resemble, imitate or compliment the roofing of the home;

The proposed RV cover/carport does not have eaves; and,

The proposed structure has no architectural enhancements to match, compliment or imitate the main home.

As was taken by the Commission, the Council has the opportunity to examine the language within the Code and provide an alternate interpretation of the material on how to apply the Code. Also as with the Commission, the Council must be aware that whatever interpretation and application that is provided to this request shall be carried forth to other future requests for accessory structures once the precedent is set (unless the Code interpretation is clearly applicable to a specific type of accessory structure).

As the meaning of “building”, “structure” and “compatibility” were issues of discussion for the Commission, the following is provided as it was with the Commission’s Public Hearing material. It is noted that under the definitions provided below, “All accessory buildings (‘Any structure having a roof supported by columns or walls and intended for the shelter, housing, or enclosure of any individual, animal, process, equipment, or materials of any kind’) shall be required to be architecturally compatible with the main structure(s).”

Definition of “Compatible” – Webster’s New Universal Unabridged Dictionary 1983.

“Capable of living together harmoniously or getting along well together; in agreement; congruous.”

Definition of “Compatible” – Merriam-Webster dictionary (2011) (Internet).

1. Capable of existing together in harmony.
2. Capable of cross-fertilizing freely or uniting vegetatively.
3. Capable of forming a harmonious mixture that neither separates nor is altered by chemical interaction.
4. Capable of being used in transfusions or grasping without immunological reaction (as agglutination or tissue rejection).
5. Designed to work with another device or system without modification; is specially: being a computer designed to operate in the same manner and used the same software has another computer.

Definition from Development Code – Chapter 19.06 “Definitions”

“Building” - Any structure having a roof supported by columns or walls and intended for the shelter, housing, or enclosure of any individual, animal, process, equipment, or materials of any kind.

“Building, Primary” - A building in which the principal use is conducted.

“Structure” - A walled and roofed building that is principally above ground; this includes a gas or liquid storage tank or a manufactured home.

Definition from Building Code -2010

“Building” – Any structure used or intended for supporting or sheltering any use or occupancy.

“Structure” – That which is built or constructed.

Definition from Health and Safety Code

Section 17920

“Building” means a structure subject to this part.

As had been noted within materials presented to the Commission (PC 11-09, Study Session) examining the letter of the current Code, staff had based its interpretation of the requirements as follows:

- D. Accessory Structure Regulations. The following additional regulations shall apply to accessory structures as specified (*presumably under a and b of this section*):

All accessory buildings (*defined as “Any structure having a roof supported by columns or walls and intended for the shelter, housing, or enclosure of any individual, animal, process, equipment, or materials of any kind”*) shall be required to be architecturally (Defined as “appearance of the building”) compatible (*Defined as “Capable of living together harmoniously or getting along well together; in agreement; congruous”*) with the main structure(s).

It was noted within the Commission’s April 19th Public Hearing report, the Commission had the opportunity to find that although the exterior of the home is stucco and the exterior of the RV cover/carport is smooth and minimally reflective, this difference is not inharmonious and that these structures can be viewed together without a specific adverse visual reaction, and that these structures can be accepted as congruous (appropriate) when compared to one another. Further, although the RV cover/carport does not propose siding that extends to the ground (as do the walls of the home), has no decorative features to mimic the home, nor eaves or roofing material similar to the main home, it will have a pitched roofline, it can be painted (treated/manufactured) with a similar or complimentary color to the main home and it shall be mostly shielded from view from the street by the main home on site. As such, all of these illustrate how the proposed cover/carport can be seen as being in harmony (non-conflicting) with the main home on site and surrounding properties, how it can be accepted as “getting along” and/or being in agreement (capable of existing together in harmony) with the appearance of the main home, as well as be determined to be appropriate for the property as it does not directly

create a visual conflict with the appearance of the main home and may even be seen by some as complimentary to the main home.

With the above articulated, it may also be stated that although staff, the Commission or the applicant may be able to craft language or string words together to describe a phrase that would justify approval of the specific Appeal request, the basic or fundamental question still remains relative to the letter and intent of the Code. If the letter of the Code is as interpreted by staff or the Commission, and the Council believes that the Code's intent is one, the other or something different, then new language needs to be created to accurately reflect that intent. If, however, the Council believes the letter of the Code and the intent are consistent, then the Code may stand as written.

To address the present Appeal request, the Council may note that the Commission is currently reviewing the Code pertaining to Accessory Structures and thus the Council may advise the applicant that until the Commission has completed its review, no decision on the appeal request shall be rendered. This direction, however, places the applicant in limbo, as the Council is not acting upon the Appeal, allowing the applicant to move forward. Alternatively, the Council may uphold the Commission's interpretation of the Code to grant the Appeal or may deny the Appeal, allowing the applicant to change their planned RV cover/carport to one that is consistent with the requirements of the Code.

As a final possibility, the Council may provide an alternative interpretation of the Code that would grant the RV cover/carport, but limit the larger application of the interpretation to a narrow, more limited array of accessory structures. For example, the Council may interpret the Code to deem that professionally manufactured metal shade covers are deemed to be architecturally compatible with the main structure upon the property as they can be seen to be in harmony (non-conflicting) with the main home on site and surrounding properties, accepted as being in agreement with and capable of existing together in harmony with the appearance of the main home on site, as well as being determined to be appropriate for the property as it does not directly create a visual conflict with, or is complimentary to, the appearance of the main home. Along with this interpretation, the Council may suggest that this interpretation be included within the Commission's review of Code Section 19.42.030 "Accessory Uses in Residential Districts."

CEQA Environmental Review

Pursuant to the State Guidelines to Implement the California Environmental Quality Act (CEQA), the proposal has been reviewed for its potential to impact the environment. It has been determined that the proposal, consisting of a decision as to how to apply an existing Code provision addressing accessory structures, cannot by itself have a direct impact upon the environment. As such, under the provisions of Government Code Section 15303 (new construction of small structure) the request is exempt from further environmental review.

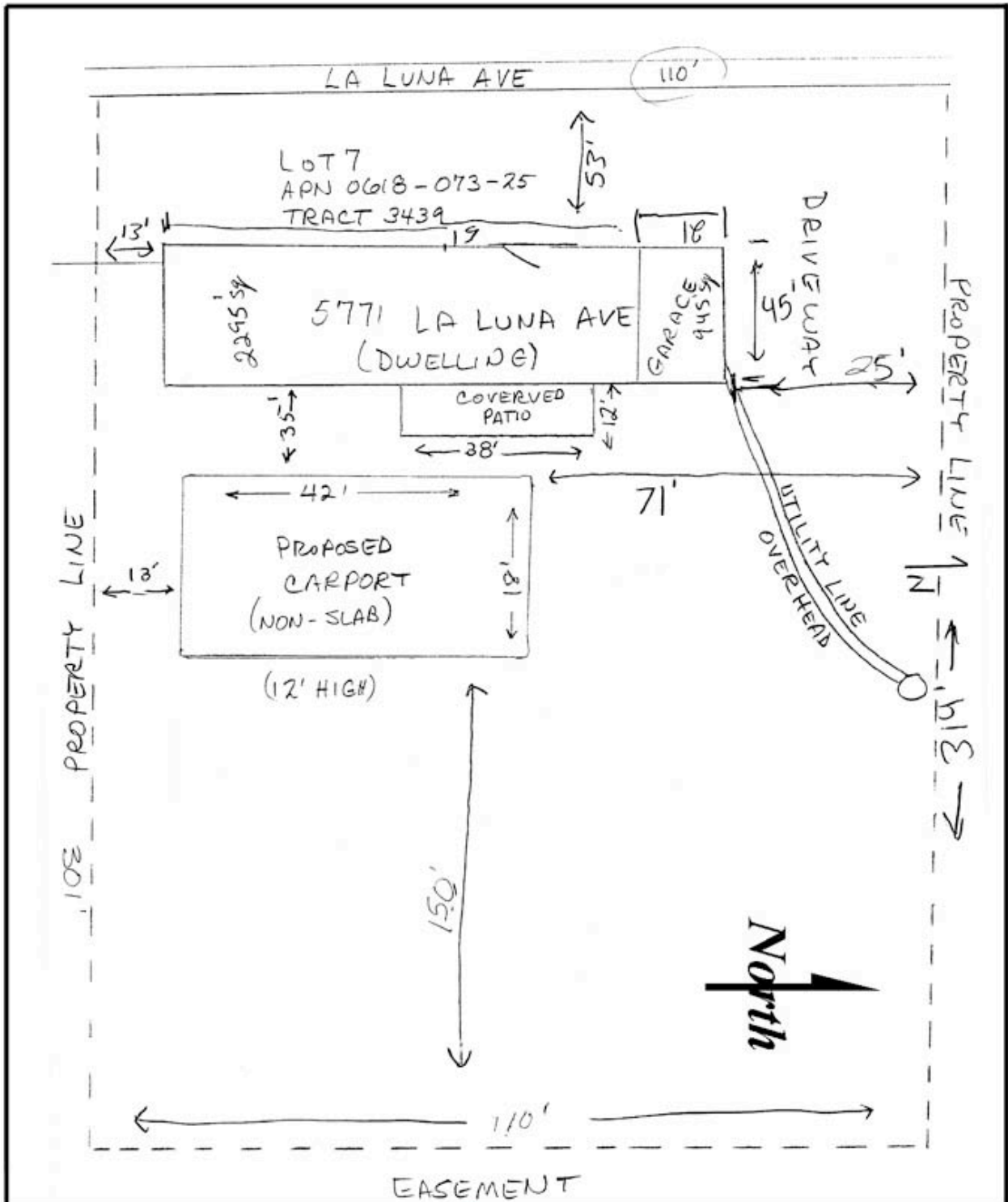
Findings

Pursuant to the City's Development Code, there are no specific "Findings" that must be made to provide the Commission and staff with an interpretation of the Code. If the Council initiates a Code Amendment to formalize a change to the intent or language of the Code, at that time the Development Code would require making four (4) specific "Findings" of approval, in a positive manner, prior to recommending (Planning Commission) or adopting (City Council) a Development Code Amendment.

Alternatives

In considering this appeal, the Council has at least six (6) alternatives. The Council may:

- 1) Continue the Public Hearing to await the presence of the full Council to consider the issue (*staff recommendation*);
- 2) Uphold the Appeal, overturning the Commission's interpretation of the Code, thus allowing the original Building Permit applicant to amend their Building Plans to again pursue the desired RV cover/carport consistent with the Code;
- 3) Deny the Appeal, upholding the Commission's interpretation of the Code and allowing the original Building Permit applicant to proceed with the Building Plans as originally submitted;
- 4) Remand the issue back to the Commission with guidance from the Council as to how to interpret the Development Code provisions;
- 5) Suspend the decision regarding how to interpret the Code provision until a Code Amendment has been processed and is in effect (which may or may not allow the original Building Permit applicant to proceed with the desired RV cover/carport as originally planned);
- 6) The Council may provide an alternative interpretation of the Code provision to address metal accessory structures.



<p>Applicant Drawn Site Plan</p>		<p>PC 11-40 May 24, 2011</p>
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OWNER:
AMERICAN CARPORT

LOCATION: CALIFORNIA

DRAWING NO.: AMS-18

DATE: 5/4/2010

PROJECT NUMBER:
233-10-0347

DRAWN BY: JMS

CHECKED BY: OA

A & A ENGINEERING
CIVIL • STRUCTURAL

5911 Karamatada Pl., Suite 111
Torrance, Calif. 90503

Tel: (419) 262-1885
Fax: (419) 262-0955

DRAWING TITLE:
COVER

SHEET NO.: 1 OF 9



DATE SIGNED: 7/21/2010

AMERICAN CARPORT INC.

457 N. BROADWAY
JOSHUA, TX 76058
MAIN - 1-866-730-9865
FAX - 1-866-730-2154



REGULAR / A-FRAME - VERTICAL / HORIZ.
18' CARPORT
(STATE OF CALIFORNIA)
AS PER DESIGN CRITERIA

DESIGN NOTES	DESIGN CRITERIA	DRAWING INDEX
<ol style="list-style-type: none"> ALL CONSTRUCTION SHALL BE PROVIDED IN ACCORDANCE WITH BC 2006, OSHA, WISC, ASCE7-05, AWSG 1.1 CODES AND ALL APPLICABLE LOCAL REQUIREMENTS. SHELTER BASE CONNECTIONS SHALL BE PROVIDED AS SHOWN ON SHEET 9 ALL MATERIALS IDENTIFIED BY MANUFACTURER NAME MAY BE SUBSTITUTED WITH MATERIAL EQUAL OR EXCEEDING ORIGINAL CONNECTIONS. ALL SHOE CONNECTIONS SHALL BE WELDED CONNECTIONS. ALL FIELD CONNECTIONS SHALL BE TKS) #12 (1/4X17). STEEL SHEATHING SHALL BE 29GA. CORRUGATED GALV. OR PAINTED STEEL - MAIN 26B HT. 3/4" (FY=48KSI) OR 10. ALL STRUCTURAL LIGHT GAUGE TUBING AND CHANNELS SHALL BE GRADE 50 STEEL. 	<p>PREVAILING CODE: CBC 2007 USE GROUP: U (CARPORTS, BARNS) BASIC WIND VELOCITY: 90 TO 100 MPH (SEE SCHEDULE) ROOF DEAD LOAD: 2.0 PSF ROOF LIVE LOAD: AS PER GROUND SNOW MIN. 20 PSF / MAX. 30 PSF GROUND SNOW LOAD: 20 TO 40 PSF (SEE SCHEDULE) IMPORTANCE FACTOR = SNOW O.A. WIND 0.57 SEISMIC 1.0 SEISMIC DESIGN CATEGORY: D LOAD COMBINATIONS: DL + LL + 0.6R + WE DL + 0.75LL + 0.75WL</p>	<ol style="list-style-type: none"> COVER SHEET FLOOR PLAN REGULAR / A-FRAME BLDG. SECTIONS SIDE ELEVATIONS SECTION DETAILS END WALL DETAILS OPENING DETAILS LEAN-TO OPTION ANCHORAGE <p>THE INFORMATION CONTAINED IN THESE DRAWINGS ARE THE SOLE PROPERTY OF A & A ENGINEERING. ANY REPRODUCTION IN PART OR WHOLE WITHOUT THE WRITTEN PERMISSION OF A & A ENGINEERING IS PROHIBITED.</p>

Design Information



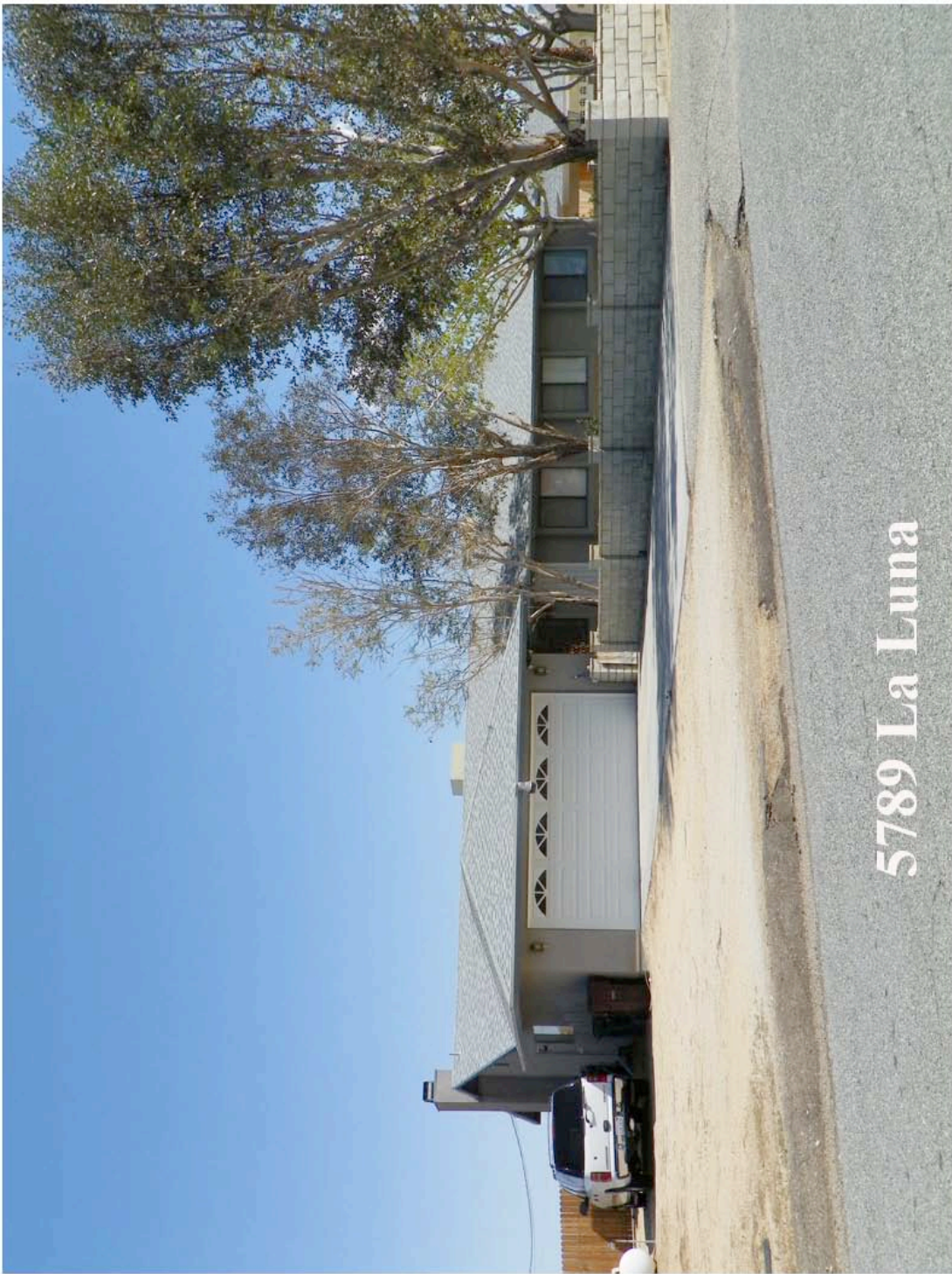
**PC 11-40
May 24, 2011**



Aerial



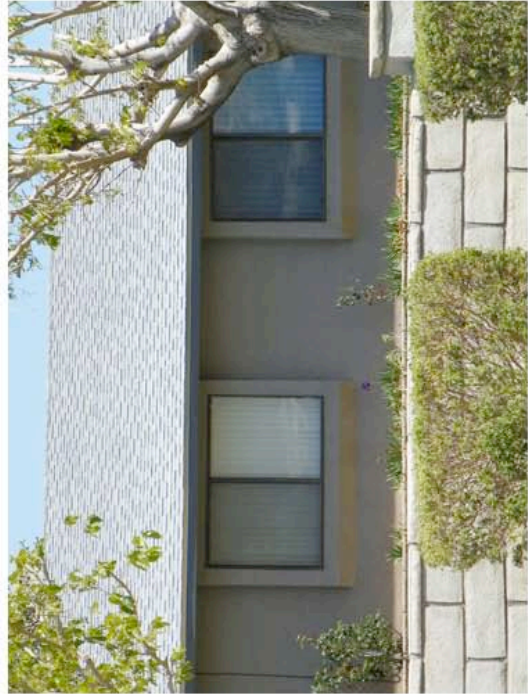
**PC 11-40
May 24, 2011**



Photographs



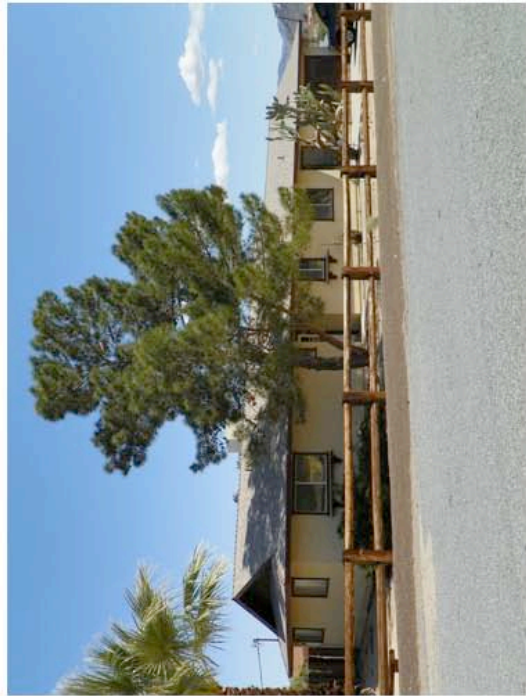
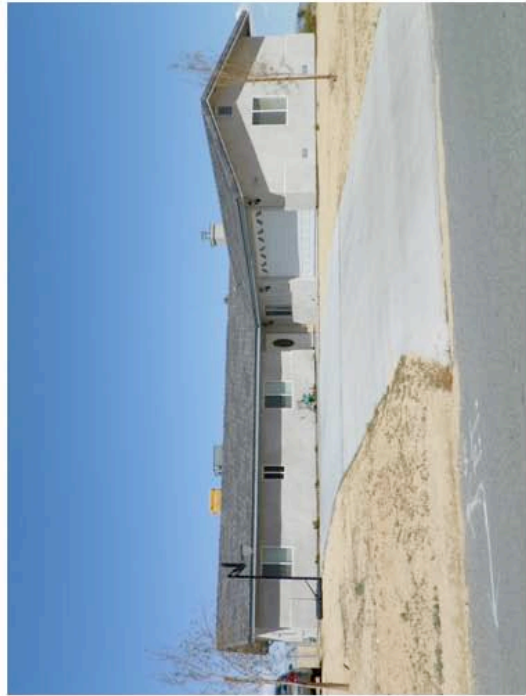
PC 11-40
May 24, 2011



Photographs



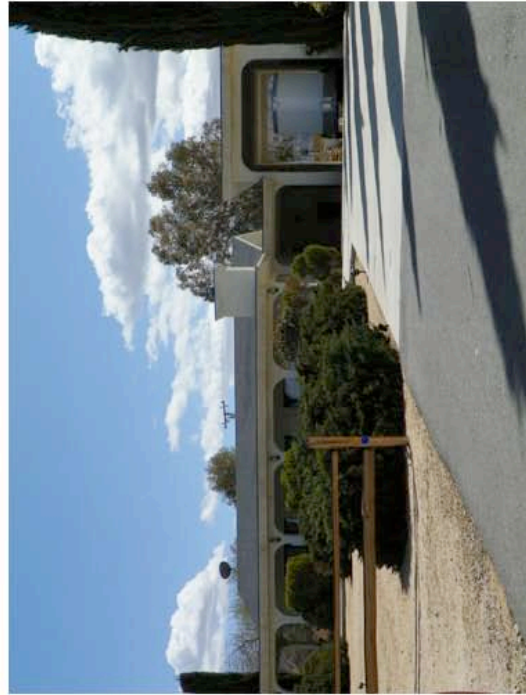
PC 11-40
May 24, 2011



Photographs



**PC 11-40
May 24, 2011**



Photographs



**PC 11-40
May 24, 2011**

TWENTYNINE PALMS PLANNING COMMISSION
CITY COUNCIL CHAMBERS, 6136 ADOBE ROAD
TWENTYNINE PALMS, CALIFORNIA

www.29palms.org

TUESDAY, APRIL 19, 2011

6:00 P.M.

MINUTES (EXCERPTS)

- 1.0 CALL TO ORDER-** Chair Easter called the meeting to order at 6:00 p.m.
PLEDGE OF ALLEGIANCE- Commissioner Whitten led the Pledge of Allegiance.
ROLL CALL- The following Commissioners were present: Alderson, Benton, Whitten and Easter. Commissioner Mendoza had an excused absence.

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7.0 PUBLIC HEARINGS

- 7.2 PC 11-18 – Appeal of the Community Development Director’s interpretation of how to apply Development Code Section 19.48.030 “Accessory Uses in Residential Districts” regarding a proposed metal carport.

RECOMMENDATION: Open the discussion, consider public comment and determine whether the Community Development Director interpreted the requirements of Code Section 19.48.030 “Accessory Uses in Residential Districts” correctly as it would apply to the proposed RV carport.

Director LaClaire presented a staff report to the Planning Commission.

Chair Easter opened the Public Hearing.

C.J. Horn, Twentynine Palms, applicant, spoke in favor of the appeal and said he would like to get on with his project.

Walt Kaufman, Twentynine Palms, spoke in favor of the item.

Chair Easter closed the Public Hearing.

ACTION: On a motion made by Commissioner Whitten, seconded by Commissioner Benton and carried with a 3-1-1 (Alderson no, Mendoza absent) roll call vote, the Planning Commission approved the appeal based upon the determination that the R.V. carport, being a metal structure that is considered a “non-habitable” structure, is not subject to the requirements of Section 19.48.030 “D” 1 of the Development Code.

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- 9.0 ADJOURNMENT-** Chair Easter adjourned the meeting at 7:15 p.m.

Respectfully Submitted,

Jacqueline Palmer, Deputy City Clerk

Development Code Excerpt

19.48.030 Accessory Uses in Residential Districts. The following uses shall be permitted as accessory uses to each single dwelling unit which is allowed:

- A. Guest Housing. Residential occupancy of a living unit, with no kitchen plumbing, located on the same parcel as the primary dwelling unit, but separated from it by at least ten (10) feet. This housing is for use by the occupants or temporary guests of the occupants of the premises and is not to be rented or otherwise used as a separate dwelling, except as provided by this Section.
- B. Accessory animal raising as specified by Chapter 19.52, *Animal Keeping*.
- C. Non-habitable accessory facilities such as a cabana, play yard, tennis court, porch, ramada, awning, patio slab, water tower and well, swimming pool, storage buildings and similar uses.
- D. Accessory Structure Regulations. The following additional regulations shall apply to accessory structures as specified:
 - 1. All accessory buildings shall be required to be architecturally compatible with the main structure(s).
 - 2. In RM and RS districts, the following size restrictions shall apply to accessory structures unless a greater size is approved with a Minor Use Permit:
 - a. In the RS District, the area of accessory buildings or features may not exceed fifty percent (50%) of the area of the main structure or 1,000 sq. ft., whichever is larger.
 - b. In both districts, an accessory building may not be higher than the height of the established main structure.
 - 3. In all districts, the setback of an accessory building shall be greater than the minimum established for the district in question when the height of the structure is greater than the yard setback; in which case the structure shall be setback at least to the line where the height is not greater than the distance from the structure to the property line.
- E. Permanent use of sea-going cargo containers and similar storage devices may be permitted as permanent storage facilities on a lot containing a residence subject to the following conditions:
 - 1. Approval of an Administrative Cargo Container Review where it is demonstrated that the requested container(s) is proposed to be located within the rear yard area of the lot, screened from view of the neighbors and the public rights-of-way by residential structures, landforms or physical features of the lot, landscaping or opaque fencing of up to six (6) feet in height with any visible remaining exterior portion of the container(s) painted in a manner compatible with the principal residence on site.
 - 2. Screening shall be waived if the container(s) is/are completely encased within an on-site, stick-built skin and eaves, which are architecturally consistent with the main home on site and located no closer than fifty (50) feet to any adjoining property line.
 - 3. Containers shall be maintained in “reasonable aesthetic condition” at all times, shall not exceed fifty percent (50%) of the floor area of the primary building on site nor be stacked

one atop another, and shall not be used for habitation of persons or animals.

4. Alternative allowances, including size, screening, condition, location, habitation, etc., may be considered and approved by the Planning Commission under review and approval of a Conditional Use Permit.



CITY OF TWENTYNINE PALMS
CITY COUNCIL STAFF REPORT
6136 Adobe Road
Twentynine Palms, CA 92277
(760) 367-6799 – Fax (760) 367-5400

To: City Council
From: Community Development Director
Date Prepared: May 16, 2011
For Council Meeting Of: May 24, 2011

SUBJECT: PC 11-34 – Proposed City Council Resolution (No. 11-14) to delegate authority to grant or deny Letters of Public Convenience and Necessity to the Planning Commission.

RECOMMENDATION

Receive a report from staff, consider public comment, determine that PC 11-34 is Exempt from further environmental review and adopt City Council Resolution No. 11-14, authorizing the Planning Commission to review and approve or deny Letters of Public Convenience and Necessity.

Attachments

Council Resolution No. 11-14
Business and Professions Code
Section 23958
Notice of Exemption

ORDER OF PROCEDURE

Request Staff Report (Charles LaClaire presenting)
Council Questions of Staff
Receive Public Testimony
Council Discussion
Motion/Second
Discussion of Motion
Call for the Question

PROJECT DESCRIPTION

A proposal to adopt a City Council Resolution (No. 11-14) delegating the authority to the Planning Commission, under the provisions of the Business and Professions Code, to review and grant or deny requests for Letters of Public Convenience and Necessity (LPCN) to allow the State Department of Alcoholic Beverage Control to grant new Liquor licenses within the community, citywide.

Background

At its meeting of March 22, 2011, the City Council was asked to approve a Letter of Public Convenience and Necessity to allow the reestablishment of a bar (The Cactus Room) at 5670 Adobe Road. At the Public Hearing associated with that request, the Council directed staff to investigate whether or not State law required the City Council to approve such Letters of Public Convenience and Necessity or whether instead the Planning Commission could make such decisions. Staff contacted the State Department of Alcoholic Beverage Control (ABC) and was informed that the Council may delegate this authority to the Planning Commission to review, consider and approve/deny Letters of Public Convenience and Necessity as detailed under the State's Business and Professions Code.

Review of Staff Report:

City Manager

City Attorney

City Engineer

Department Head

Analysis

Under the provisions of the State's Business and Professions Code, Section 23958.4, the Department of Alcoholic Beverage Control (ABC) may not approve a new liquor license for a facility if that request is for a location that is within an area that is considered "undue(ly) concentrated" with alcohol sales businesses. An area, a census tract or census division, is considered over-concentrated if the average number of facilities selling alcohol per number of residents within that specific census tract exceeds the average number of such facilities as established for the overall county. With the City's current concentration of retail commercial businesses located mostly along two (2) major thoroughfares, and with the limited number of census tracts within the City, the City's ratio of population to alcoholic sales facilities consistently exceeds the county average. Thus, under this circumstance the State Department of Alcoholic Beverage Control needs a Letter of Public Convenience and Necessity for virtually each new liquor license within the community.

Under the provisions of the State Business and Professions Code, the governing body may designate a "subordinate officer or body" to make a determination on the issuance of a Letter of Public Convenience and Necessity. As the potential location for any new request for a liquor license is generally restricted to either State Route 62 or Adobe Road, the potential for an adverse effect from allowing such new license is generally known and accepted. With little potential to create a significant adverse situation, it may be appropriate to authorize the Planning Commission to review, and thus approve or deny, new requests for Letters of Public Convenience and Necessity.

CEQA Environmental Review

Pursuant to the State Guidelines to Implement the California Environmental Quality Act (CEQA), the proposal has been reviewed for its potential to impact the environment. As the proposal addresses the City' review authority for Letters of Public Convenience and Necessity, but does not remove or change the review requirements, it can be seen with certainty that the proposal will not have an adverse impact upon the environment and it is, therefore, EXEMPT from further environmental review.

Fiscal Impact

The authorization of the Planning Commission to review, grant or deny requests for Letters of Public Convenience and Necessity will not alter the fact that an official City body (whether Commission or Council) must review and decide upon such requests. As a Hearing, open to the public, would be required with review by either body, no change to the fiscal impact to the City would occur with the delegation of authority to approve Letters of Public Convenience and Necessity to the Planning Commission.

CITY OF TWENTYNINE PALMS
CITY COUNCIL
RESOLUTION NO. 11-14

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF TWENTYNINE PALMS, CALIFORNIA, AUTHORIZING THE CITY OF TWENTYNINE PALMS PLANNING COMMISSION TO REVIEW, AND APPROVE OR DENY, REQUESTS FOR LETTERS OF PUBLIC CONVENIENCE AND NECESSITY, CITYWIDE.

WHEREAS, under the requirements of the State of California Business and Professions Code, Section 23958, a request for a new liquor license within a census tract that is considered “undue(ly) concentrated” with such licenses may not be approved by the Department of Alcoholic Beverage Control (ABC) without first receiving a Letter of Public Convenience and Necessity from the local authority; and

WHEREAS, under the provisions of the State of California Business and Professions Code, the authority to review, and either approve or deny such requests for a Letter of Public Convenience and Necessity, may be delegated by the governing body to a “subordinate officer or body” within the Municipal corporation; and

WHEREAS, based upon the State Guidelines to Implement the California Environmental Quality Act (CEQA), the proposed Council Resolution has been reviewed for its potential to impact the environment and it has been found that as the proposal consists of only changing the governmental body assigned to review requests for Letters of Public Convenience and Necessity, it can be seen with certainty that the proposal will not have an adverse impact upon the environment and it is, therefore, EXEMPT from further environmental review; and

WHEREAS, the City Council finds that on the basis of the whole of the record before it (including any comments received from the public at the Hearing) that there is no substantial evidence that the proposal will have a significant effect on the environment and that the Determination of Exemption reflects the Council’s independent judgment and analysis; and

WHEREAS, there are limited opportunities within the community of Twentynine Palms to establish a business that sells or serves alcohol and thus the potential for adverse impacts to the community are limited and generally known; and

WHEREAS, the City Council has considered the ramifications that allowing a body other than the City Council to review requests for Letters of Public Convenience and Necessity may have upon the review process and found that such delegation has little potential for adverse impact(s) to the review process or to the community; and

WHEREAS, on May 24, 2011, a Hearing, open to the public, was held by the City Council of the City of Twentynine Palms to consider delegation of the authority to review requests for Letters of Public Convenience and Necessity to the Planning Commission, at which time all interested persons had the opportunity to appear and be heard on the matter.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF TWENTYNINE PALMS, CALIFORNIA as follows:

Section 1. CALIFORNIA ENVIRONMENTAL QUALITY ACT. That in conformance with the State Guidelines to Implement the California Environmental Quality Act (CEQA), the City Council finds that based upon review of the proposed Council Resolution, which delegates the

Planning Commission to review all requests for Letters of Convenience and Necessity, that such Resolution and delegation of authority will not have an impact upon the environment and, therefore, the proposal is EXEMPT from further environmental review.

Section 2. DELEGATION OF AUTHORITY. Pursuant to the California State Business and Professions Code the City Council of the City of Twentynine Palms hereby delegates the authority to review and either approve or deny, for cause, requests for Letters of Public Convenience and Necessity.

Section 3. SEVERABILITY. If any section, subsection, sentence, clause, phrase or word of this Resolution is for any reason held to be invalid by a Court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Resolution. The City Council hereby declares that it would have passed and adopted this Resolution and each and all provisions thereof, irrespective of the fact that any one or more of said provisions may be declared invalid.

Section 4. EFFECTIVE DATE. Resolution No. 11-14 shall become effective upon its adoption by the City Council of the City of Twentynine Palms.

PASSED, APPROVED AND ADOPTED THIS 24th DAY OF MAY, 2011.

James Harris, Mayor

ATTEST:

Charlene L. Sherwood MMC, City Clerk

I hereby certify that the foregoing is a true copy of Resolution No. 11-14, adopted by majority vote of the City Council of the City of Twentynine Palms in a meeting held on the 24th day of May, 2011, in Twentynine Palms, California by the following vote, to wit:

AYES: COUNCIL MEMBERS:
NOES: COUNCIL MEMBERS:
ABSENT: COUNCIL MEMBERS:

Charlene L. Sherwood MMC, City Clerk

CALIFORNIA CODES
BUSINESS AND PROFESSIONS CODE
SECTION 23958

23958. Upon receipt of an application for a license or for a transfer of a license and the applicable fee, the department shall make a thorough investigation to determine whether the applicant and the premises for which a license is applied qualify for a license and whether the provisions of this division have been complied with, and shall investigate all matters connected therewith which may affect the public welfare and morals. The department shall deny an application for a license or for a transfer of a license if either the applicant or the premises for which a license is applied do not qualify for a license under this division.

The department further shall deny an application for a license if issuance of that license would tend to create a law enforcement problem, or if issuance would result in or add to an undue concentration of licenses, except as provided in Section 23958.4.

23958.1. Notwithstanding the provisions of Section 23958, the department is not required to investigate the personal qualifications of a licensed beer and wine wholesaler who applies for additional beer and wine wholesaler licenses.

23958.2. Notwithstanding the provisions of Section 23958, the department is not required to investigate the personal qualifications or premises of a currently licensed person when a license is being transferred between partners and no new partner is being licensed.

23958.4. (a) For purposes of Section 23958, "undue concentration" means the case in which the applicant premises for an original or premises-to-premises transfer of any retail license are located in an area where any of the following conditions exist:

(1) The applicant premises are located in a crime reporting district that has a 20 percent greater number of reported crimes, as defined in subdivision (c), than the average number of reported crimes as determined from all crime reporting districts within the jurisdiction of the local law enforcement agency.

(2) As to on-sale retail license applications, the ratio of on-sale retail licenses to population in the census tract or census division in which the applicant premises are located exceeds the ratio of on-sale retail licenses to population in the county in which the applicant premises are located.

(3) As to off-sale retail license applications, the ratio of off-sale retail licenses to population in the census tract or census division in which the applicant premises are located exceeds the ratio of off-sale retail licenses to population in the county in which the applicant premises are located.

(b) Notwithstanding Section 23958, the department may issue a license as follows:

(1) With respect to a nonretail license, a retail on-sale bona fide eating place license, a retail license issued for a hotel, motel, or other lodging establishment, as defined in subdivision (b) of Section 25503.16, a retail license issued in conjunction with a beer manufacturer's license, or a winegrower's license, if the applicant shows that public convenience or necessity would be served by the issuance.

(2) With respect to any other license, if the local governing body of the area in which the applicant premises are located, or its designated subordinate officer or body, determines within 90 days of notification of a completed application that public convenience or necessity would be served by the issuance. The 90-day period shall commence upon receipt by the local governing body of (A) notification by the department of an application for licensure, or (B) a completed application according to local requirements, if any, whichever is later.

If the local governing body, or its designated subordinate officer or body, does not make a determination within the 90-day period, then the department may issue a license if the applicant shows the department that public convenience or necessity would be served by the

issuance. In making its determination, the department shall not attribute any weight to the failure of the local governing body, or its designated subordinate officer or body, to make a determination regarding public convenience or necessity within the 90-day period.

(c) For purposes of this section, the following definitions shall apply:

(1) "Reporting districts" means geographical areas within the boundaries of a single governmental entity (city or the unincorporated area of a county) that are identified by the local law enforcement agency in the compilation and maintenance of statistical information on reported crimes and arrests.

(2) "Reported crimes" means the most recent yearly compilation by the local law enforcement agency of reported offenses of criminal homicide, forcible rape, robbery, aggravated assault, burglary, larceny theft, and motor vehicle theft, combined with all arrests for other crimes, both felonies and misdemeanors, except traffic citations.

(3) "Population within the census tract or census division" means the population as determined by the most recent United States decennial or special census. The population determination shall not operate to prevent an applicant from establishing that an increase of resident population has occurred within the census tract or census division.

(4) "Population in the county" shall be determined by the annual population estimate for California counties published by the Population Research Unit of the Department of Finance.

(5) "Retail licenses" shall include the following:

(A) Off-sale retail licenses: Type 20 (off-sale beer and wine) and Type 21 (off-sale general).

(B) On-sale retail licenses: All retail on-sale licenses, except Type 43 (on-sale beer and wine for train), Type 44 (on-sale beer and wine for fishing party boat), Type 45 (on-sale beer and wine for boat), Type 46 (on-sale beer and wine for airplane), Type 53 (on-sale general for train and sleeping car), Type 54 (on-sale general for boat), Type 55 (on-sale general for airplane), Type 56 (on-sale general for vessels of more than 1,000 tons burden), and Type 62 (on-sale general bona fide public eating place intermittent dockside license for vessels of more than 15,000 tons displacement).

(6) A "premises to premises transfer" refers to each license being separate and distinct, and transferable upon approval of the department.

(d) For purposes of this section, the number of retail licenses in the county shall be determined by the most recent yearly retail license count published by the department in its Procedure Manual.

(e) The enactment of this section shall not affect any existing rights of any holder of a retail license issued prior to April 29, 1992, whose premises were destroyed or rendered unusable as a result of the civil disturbances occurring in Los Angeles from April 29 to May 2, 1992, to reopen and operate those licensed premises.

(f) This section shall not apply if the premises have been licensed and operated with the same type license within 90 days of the application.



NOTICE OF EXEMPTION

City of Twentynine Palms
Community Development Department
6136 Adobe Road
Twentynine Palms, CA 92277
(760) 367-6799 - Fax (760) 367-5400

TO: County of San Bernardino, Clerk of the Board of Supervisors
385 North Arrowhead Avenue, 2nd Floor
San Bernardino, CA 92415-0130

Office of Planning and Research (OPR)
P.O. Box 3044
Sacramento, CA 95812-3044

FROM: Community Development
Department
City of Twentynine Palms
6136 Adobe Road
Twentynine Palms, CA 92277

Project Title: PC 11-34; delegation of review Authority.

Project Location - Specific: The project, a proposal to delegate the authority to review and approve/deny "Letters of Public Convenience and Necessity" from the City Council to the Planning Commission, is applicable to all zoning districts throughout the City of Twentynine Palms.

Project Location - City: City of Twentynine Palms

Project Location - County: County of San Bernardino

Description of Nature, Purpose, and Beneficiaries of Project: The proposal to delegate the authority to review and approve/deny "Letters of Public Convenience and Necessity" from the City Council to the Planning Commission, shall allow the local land use authority to review requests that may have an impact upon land uses. Beneficiaries are all community residents and visitors by providing consistency between requested activities and potentially affected abutting and/or surrounding land uses.

Name of Public Agency Approving Project: Twentynine Palms City Council

Name of Person or Agency Carrying Out Project: City of Twentynine Palms Community Development Department

Exempt Status (check one):

- Ministerial (Sec. 21080(b)(1); 15268);
- Declared Emergency (Sec. 21080(b)(3); 15269(a));
- Emergency Project (Sec. 21080 (b)(4); 15269(b)(c));
- Categorical Exemption. State type and Section Number: No possibility to effect the environment. Section 15321
- Statutory Exemption. State Code Number: _____

Reasons why project is exempt: Pursuant to the California Environmental Quality Act (CEQA) Guidelines, the project, the delegation of authority (from the City Council to the Planning Commission) to review requests for Letters of Public Convenience and Necessity, can be seen with certainty to not have the potential to have a direct, adverse impact upon the environment and, therefore, it is exempt from further environmental review.

Lead Agency Contact:

Charles K. LaClaire
Community Development Director
City of Twentynine Palms
6136 Adobe Road
Twentynine Palms, CA 92277

Telephone: (760) 367-6799
Fax: (760) 367-5400
E-mail: claclaire@29palms.org

Signature

Community Development Director
Title

May 25, 2011
Date

Date Received for Filing and Posting at OPR: _____