



**CITY OF TWENTYNINE PALMS
PLANNING COMMISSION STAFF REPORT**

6136 Adobe Road
Twentynine Palms, CA 92277
(760) 367-6799 – Fax (760) 367-5400

To: Planning Commission
From: Community Development Director
Date: June 15, 2011

For Commission Meeting Of: June 21, 2011

SUBJECT: PC 09-76 - An amendment to the Municipal Code and Land Use Tables and Accessory Uses of the City's Development Code regarding commercial and non-commercial shooting ranges and the discharge of firearms within all zoning districts, citywide.

RECOMMENDATION

That the Planning Commission re-open the open, continued Public Hearing, receive comments from the public germane to the issue, then terminate its review of both the Municipal Code and Development Code Amendments. The Commission may then pursue, at its discretion, review of small arms range design criteria.

Attachments:

1. Minute Excerpt from Commission meeting of June 7, 2011
2. Commissioner provided material ("Shooting Range Regulations")

ORDER OF PROCEDURE

Request Staff Report (Charles LaClaire presenting)
Commission Questions of Staff
Open the open, continued Public Hearing
Receive Public Comment
Close Public Hearing
Commission Discussion
Motion/Second
Discussion of Motion
Call the Question

PROJECT DESCRIPTION

Possible Municipal and Development Code Amendments (PC 09-76) to amend the Municipal Code and those portions of Development Code Land Use Tables 19.07-A "Permitted and Conditional Uses", 19.08-A "Permitted and Conditional Uses" 19.09-A "Permitted and Conditional Uses", 19.10-A "Permitted and Conditional Uses", 19.12-A "Permitted and Conditional Uses" and 19.14-A "Permitted and Conditional Uses" pertaining to public and private commercial and non-commercial shooting ranges, or like and similar uses, and the discharge of firearms (weapons) within the City of Twentynine Palms in all residential, commercial and industrial zoning districts.

BACKGROUND

The Commission is familiar with this issue from previous Public Hearings and Study Sessions, wherein the Commission, at a continued Public Hearing on May 17, 2011 again continued the Public Hearing for the Municipal and Development Code Amendments to the Commission's

regularly scheduled meeting of June 21, 2011. These Amendments were a result of a meeting on November 23, 2010, at which the City Council initiated a Development Code Amendment to further define and address within the Municipal and Development Codes the opportunities and restrictions relating to, and associated with, the discharge of weapons within the community.

At each of the Public Hearings and Study Sessions, the Commission received audience comments from various individuals expressing both support and objection to the allowance of weapons discharge within the community. These individuals expressed various concerns, mostly noting that the City needs to allow, but control, shooting and ranges and that they should be allowed but in a manner that would not disturb surrounding property owners. Based upon the variety of comments, and most significantly from the guidance staff received from the Commission, staff had crafted new language for the Commission to consider.

Resuming its previous efforts, the Commission, at its meeting of May 17th (Public Hearing and Study Session), addressed several questions and provided a number of changes to the material presented. In brief, the Commission removed some devices from the firearm list (air gun, air rifle, pellet gun, paintball gun and slingshot), and added two additional items to the exemption list (hunting in season and specified recreational activities). The Commission also decided to change specific definitions (indoor and outdoor ranges), to consider allowing ranges using small arms range design standards in rural residential areas, added annual review (and fee) to the Conditional Use Permit (CUP) requirements, change the separation distance between a sensitive receptor (park, playground, school, etc.) to one-quarter mile (1,320 feet) and extended the notification requirements to one-quarter mile (1,320 feet).

Similar to past Study Sessions and Public Hearings, members of the audience addressed the Commission at the June 7th Study Session. Two individuals spoke, one requesting larger separation distances (4,000 feet) and noted possible adverse impacts from ranges, while the other noted the City's obligation to provide for the protection of its citizens when considering Code Amendments.

At its regularly scheduled meeting of June 7, 2011 (Study Session), Commissioners expressed a desire to solicit further guidance from the City Council regarding whether or not, and to what extent, the Council would like the Commission to continue its pursuit of this issue. As directed, staff prepared a report for the Council's regularly scheduled meeting of June 14, 2011. (Council report available at the City website)

At its regularly scheduled meeting of June 14, 2011, the City Council addressed the Commission request for guidance on the issue of shooting ranges and weapons discharge within City limits. Following a staff presentation, comments from the audience and discussion amongst the Council members, the City Attorney was able to summarize the Council's direction as follows:

1. Staff is directed to bring a Municipal Code Amendment directly to the Council to address the allowance or prohibition of weapon discharge throughout the community (matching the County Code), and the Commission need take no further action on this issue.
2. The Commission shall cease its current review of a Development Code Amendment regarding shooting ranges in general, with the issue of where and under what type of review such land use should be allowed to be addressed during the Commission's upcoming review of the new Development Code.

3. The Commission may complete its review of general range design guidelines, but any such adopted document should clearly state that it is only a policy document meant as a guideline, not establishing standards or code requirements, and that applicants may utilize substitute guidelines from alternative sources (such as the NRA) for the design of a range that would be subject to City review under a Conditional Use Permit.

Analysis:

With the above noted Council response to the Commission's June 7th request for direction, the Commission may now take the opportunity (but is not directed by Council) to pursue its review of small arms range design criteria, creating a useful policy document for anyone interested in creating a small arms range, but it is clear that Council direction is to terminate the Commission's review of the Municipal Code Amendment and delay its review of a Development Code Amendment for the proper location of ranges until its review of the new Development Code. Regarding the creation of design criteria, any such document shall only be a policy document adopted as general guidelines, not code or standards, and substitute design criteria from alternative sources can be used to design future ranges. Any such future range submittals shall be evaluated by staff and the Commission at that time and approved, conditionally approved or denied based upon the merits of the individual request.

With the termination of its review of both the Municipal Code and Development Code Amendments (a new Development Code Amendment shall be initiated with the Commission's review of the new Development Code), the Commission may, at its sole discretion, now resume its work on the design document.

These Tables should refer to a Development Code Section that illustrates the expected and required standards for the development of any range addressing such issues as parking, Surface Danger Zones, separation requirements, noticing requirements, etc. It is also noted that the City is reviewing Small Arms Range Construction and Design Criteria which may either be adopted as part of the Development Code (which mandates strict adherence to the specified criteria) or may be adopted as guidelines (which would allow the Commission, under CUP review, to require some criteria and not apply others where the individual circumstances of the application so warrant).

It is also noted that additional material has been provided by a Commissioner for the Commission's consideration (as was attached to the Commission's June 7th Study Session). That material is again attached. It is noted that this material is in a basic, raw form and would need modification to conform to other provisions of the Development Code. For example, the material as currently written does not clarify what type of "permit" would be issued with the City's approval of a gun range (is it a Conditional Use Permit or a newly created "range permit")? The material references that the permit shall be approved at the next available meeting, but it does not clarify meeting of whom. Finally, time-lines for processing, applicable fees, submission requirements and "findings" should be coordinated with current City procedures and requirements. Even though the Council has directed that the Commission not pursue a Development Code Amendment regarding range standards at this time, the material is presented for general reference that may be germane when the Commission reviews the issue with the new Development Code.

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 possible adoption of a policy statement (guidelines),

is a narrative that cannot, by itself, have a direct impact upon the environment. As such, under the provisions of Government Code Section 15305 "Minor Alterations in Land Use Limitations" a policy document or guideline is exempt from further CEQA review.

General Plan/Zoning Designations Citywide

Any future Development Code Amendment analyzed and considered for adoption by the City Council may affect specific zones or the community as a whole. With guidance from the Commission, staff shall be provided with the details of the specific zones that shall be affected by any such proposed change and thus have the opportunity to address this standard section of Commission Public Hearing reports. At that time, staff shall provide the Commission with Goals and Policies from the General Plan to illustrate how the proposed Amendment does or does not conform to those Goals and Policies. Regarding any future Municipal Code amendment, General Plan and/or Zoning designations do not apply and conformance to Goals and Policies would not be applicable.

Findings

Pursuant to Section 19.22.050 "Findings" of the City's Development Code, both the Planning Commission and City Council are required to make four (4) "Findings" of approval in a positive manner prior to recommending or adopting a Development Code Amendment (listed below). Following receipt of guidance from the Commission and final drafting of proposed language, staff shall provide the Commission with comments to address each Finding for consideration and possible adoption, forwarding its recommendation to the City Council.

- A. The Zone Change or Development Code Amendment is consistent with the intent of the goals and policies of the General Plan; and
- B. The Zone Change or Development Code Amendment prescribes reasonable controls and standards to ensure compatibility with other established uses; and
- C. The Zone Change or Development Code Amendment provides reasonable property development rights while protecting environmentally sensitive land uses and species; and
- D. The Zone Change or Development Code Amendment ensures protection of the general health, safety, and welfare of the community.

No "Findings" are applicable to a Municipal Code amendment.

Approval Process

As the issue is no longer a Development Code Amendment, review and/or approval authority is not applicable. The Commission has the authority to adopt Commission policies that it believes shall aid the community with regard to land use issues.

TWENTYNINE PALMS PLANNING COMMISSION
6136 Adobe Road
Twentynine Palms, CA 92277
www.ci.twentynine-palms.ca.us
Tuesday, June 7, 2011
6:00 P.M.

DRAFT MINUTES (EXCERPTS)

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

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11.0 STUDY SESSION/COMMUNITY WORKSHOP

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- 11.1** PC 09-76 – A Continued Study Session to consider a possible amendment to the Land Use Tables and Accessory Uses of the City’s Development Code regarding commercial and non-commercial shooting ranges and the discharge of firearms within all zoning districts, citywide.

RECOMMENDATION: Staff recommends that the Planning Commission review the enclosed language at the Study Session, open to the public, and then provide guidance regarding possible changes to portions of Tables 19.07-A “Permitted and Conditional Uses”, 19.08-A “Permitted and Conditional Uses” 19.09-A “Permitted and Conditional Uses”, 19.10-A “Permitted and Conditional Uses”, 19.12-A “Permitted and Conditional Uses” and 19.14-A “Permitted and Conditional Uses” pertaining to public and private commercial and non-commercial shooting ranges, or like and similar uses, and the discharge of firearms within the City of Twentynine Palms in all residential, commercial and industrial zoning districts, citywide.

Director LaClaire presented a staff report to the Planning Commission.

James Burdett, Twentynine Palms, spoke in opposition to item 11.1, noting several issues he would like the Commission to be aware of.

Aaron Garcia, Rancho Mirage, Attorney for Doug Cooper and residents in the area of the shooting range, spoke in opposition for the residents of item 11.1.

Chairman Easter reminded the speaker that the issue before the Commission at this Study Session was a review of development standards relating to firearms and weapons discharge citywide, not a discussion of any individual property or properties, asking the speaker to keep his comments generic not specific to individual properties.

Commissioners questioned whether or not the direction they were heading on this issue was consistent with the direction that had been provided originally from the City Council. It was the consensus of the Commission to seek further clarification from the Council on the nature of the firearms issue now being discussed.

ACTION: On a motion made by Vice Chair Alderson, seconded by Commissioner Mendoza and carried with a 5-0 voice vote, the Planning Commission continued the Study Session until the City Council has given the Planning Commission direction regarding the item.

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13.0 ADJOURNMENT- Chair Easter adjourned the meeting at 8:15 p.m.

Respectfully Submitted,

Jacqueline Palmer, Deputy City Clerk

SHOOTING RANGE REGULATIONS

Section 1. Purpose

This Ordinance is intended to regulate the establishment and operation of shooting range facilities within the City limits of the City of Twentynine Palms. Such recreational and training complexes, due to their potential noise impacts and safety concerns, merit careful review to minimize adverse effects on adjoining properties. This Ordinance does not otherwise apply to the general discharge of firearms or the use of bows and arrows in accordance with all other applicable laws or regulations.

Section 2. Intent

It is the intent of this Ordinance to accomplish the following:

A. Permitting, registration and compliance. New shooting range facilities shall only be established and operated in accordance with a valid permit issued by the City of Twentynine Palms. In addition, existing ranges shall be registered within thirty (30) days from the adoption of this Ordinance, and shall comply with sections 6A and 7C within sixty (60) days, section 6B within one hundred twenty (120) days, and all remaining provisions of this Ordinance within one hundred eighty (180) days of the adoption of this Ordinance.

B. Shot containment. Each shooting range facility shall be designed to contain the bullets, shot, arrows and ricochets of same discharged completely on or within the range facility.

C. Noise mitigation. Each shooting range facility shall be designed to minimize off-site noise impacts generated by the activities conducted on the range facility. Noise levels shall not exceed sixty-five (65) decibels at any point along the property line.

Section 3. Authority

This Ordinance is adopted under the authority granted to the City of Twentynine Palms by the California Constitution, and pursuant to the *California Planning and Zoning Law* (Government Code Section 65000, et seq.), the *State Subdivision Map Act* (Government Code Section 66410, et seq.), the *California Environmental Quality Act* (Public Resources Code 21000, et seq.), and other applicable State and local requirements.

Section 4. Definitions

As used in this Ordinance, the following terms shall have the respective meanings ascribed to them:

Archery: The art, sport or skill of shooting with a bow and arrow.

dBA: The sound pressure level, in decibels, as measured using the impulse mode and "A" weighting network on a precision sound level meter.

Firearm: A weapon, including but not limited to pistols, rifles, and shotguns, capable of firing a projectile using an explosive charge as a propellant.

Firing line: A line parallel to a target from which firearms or arrows are discharged.

Person: Any individual, corporation, association, club, firm, or partnership.

Safety fan: An area on a shooting range facility designed to contain all projectiles fired from a shooting range.

Surface Danger Zone: Any area that may reasonably expect projectile impact resulting from direct fire, including misdirected and accidental discharges, and ricochets from any firearm or bow, which takes into consideration all mitigation efforts as submitted by the applicant and determined by a certified engineer.

Shooting range: An area designed and improved to encompass shooting stations or firing lines, target areas, berms and baffles, and other related components.

Shooting range facility: A public or private facility, including individual shooting ranges, safety fans or shotfall zones, structures, parking areas, and other associated improvements, designed for the purpose of providing a place for the discharge of various types of firearms or the practice of archery. Does not include incidental target practice areas on private property.

Shooting station: A fixed point from which firearms or arrows are discharged.

Shotfall zone: An area within which the shot or pellets contained in a shotgun shell typically fall.

Structure: A walled and roofed building that is principally above ground; a manufactured or mobile home; a storage tank for gases or liquids; or any other permanent, manmade facilities.

Target: Any object or area which is used as the intended recipient of the projectiles fired from a firearm or bow.

Section 5. Applicability

This Ordinance is applicable to all existing and future shooting ranges in the City Of Twentynine Palms.

Section 6. Performance Standards

The following performance standards shall apply to all shooting range facilities:

A. *Shot containment.* Shooting range facilities shall be designed to contain all of the bullets, shot, arrows or other projectiles or any other debris on the range facility.

B. *Noise mitigation.* Noise levels measured at the property line where the facility is maintained or, in the case of leased land, at the property line of any leased parcel shall not exceed sixty-five (65) dBA when located adjacent to residential or commercial property or seventy-five (75) dBA when adjacent to industrial property.

C. *Written variance.* These performance measures may be varied by action of the Planning Commission upon receipt of written permission in the form of an affidavit from all adjoining property owners and all rightful leaseholders of dwellings located within the ½ mile surrounding area affected thereby.

Section 7. Development Requirements

A. *Minimum design requirements.* Where not otherwise specified within this Ordinance, shooting range facilities shall meet or exceed the guidelines as specified by the City of Twentynine Palms Small Arms Range Design and Construction Criteria, based on the included references.

B. *Setbacks.* Notwithstanding the performance standards of Section 6 the following setbacks shall apply.

1. All shooting stations and targets on a range facility shall be located a minimum of three hundred (300) feet from any property line; and

2. The surface danger zone shall be contained within the leased boundary line of the range facility on leased land or the property boundary line for non-leased land.

C. *Warning signs.* Warning signs shall be posted in accordance with the City of Twentynine Palms Small Arms Range Design and Construction Criteria.

D. *Distance from occupied dwelling.* All shooting stations, targets and firing lines shall be located at least one-half (½) mile (two thousand six hundred forty {2,640} feet) from any existing, occupied dwelling.

E. *Access to Facility.* Access to the facility and shooting range shall be secured and controlled, with ingress and egress permitted only during operating hours as established in Section 8C. Prior to issuance of a permit pursuant to this Ordinance, a valid driveway permit must be obtained from City of Twentynine Palms City Engineer.

F. *Written variance.* The distance requirements of this Section may be varied by action of the Planning Commission upon receipt of written permission in the form of an affidavit from all adjoining property owners and all rightful leaseholders of dwellings located within the ½ mile (two thousand six hundred forty {2,640} feet) surrounding area affected thereby.

Section 8. Operational Requirements

A. *Maintenance.* Where not otherwise specified within this Ordinance, shooting range facilities shall be operated and maintained in a manner that shall meet or exceed the guidelines as specified by the City of Twentynine Palms Small Arms Range Design and Construction Criteria, based on the included references.

B. *Best Management Practices.* Outdoor Shooting Ranges shall provide a plan outlining its Best Management Practices (BMPs) relating to lead management. Said plan shall meet or exceed the guidelines as specified by the Environmental Protection Agency's (EPA) Best Management Practices for Lead at Outdoor Shooting Ranges, current edition.

C. *Hours of operation.* Shooting ranges shall be allowed to operate between one half hour after sunrise and one half hour after sunset, Monday through Saturday, except that the hours may be extended after sunset for purposes of subdued-lighting certification of law enforcement officers. Operations shall be limited to between 9:00 a.m. and 6:00 p.m., Sundays.

D. *Age requirements.* The owner of the range shall require personnel, instructors and attendants to be at least eighteen (18) years of age. No person under the age of eighteen (18) years shall be permitted to enter a range unless accompanied by an adult.

E. *Liability insurance.* The owner of the range, whether individual, or corporate or other business entity, shall carry liability insurance protecting the general public and users of the range against any injury resulting from the discharge of firearms from or at the range in the amount of not less than two million dollars (\$2,000,000.00) per occurrence for bodily injury and one million dollars (\$1,000,000.00) per occurrence for property damage. Such insurance shall name the City of Twentynine Palms as an additional insured party and shall save and hold the City of Twentynine Palms, its elected and appointed officials, and employees acting within the scope of their duties, harmless from and against all claims, demands and causes of action of any kind or character, including the cost of defense thereof, arising in favor of a person or group's members or employees or third parties on account of any personal injury or property damage arising out of the acts or omissions of the permittee, his/her group, club or its agents or representatives. The City of Twentynine Palms shall be notified of any policy changes or lapses in coverage no less than sixty (60) days prior to the cancellation of any such insurance.

Section 9. Procedure for Securing Approval for Ranges

A. *Permit application.* An application for a permit to establish and operate a shooting range facility shall be submitted by the legal property owner(s) or owner's agent to City of Twentynine Palms Community Development Department. Such permit shall be secured prior to issuance of any other grading, building or improvement permit by the City of Twentynine Palms.

B. *Licensee qualifications.* No license to operate a range shall be granted by the City of Twentynine Palms to any person who, within five (5) years prior to the filing of the application for such license, has been convicted under any federal, state or local law of any offense involving the possession or use of firearms, any misdemeanor involving moral turpitude, or of any felony. For the purposes of this section, a plea of nolo contendere shall constitute a conviction. No license for the operation of a range shall be granted by the City of Twentynine Palms to any person who has had any City license revoked within two (2) years prior to the filing of the application.

C. *Fees.* The application shall be accompanied by an application fee of \$300.00 for Initial or New Construction or as otherwise included within the Fee Schedule of the Community Development Department. An annual site inspection fee of \$100.00 shall be provided by the applicant to allow for an annual inspection of the facilities to insure that such facilities are being operated in a manner consistent with all City requirements.

D. *Required information.* The applicant shall provide sufficient information to evidence compliance as required by these provisions in order to properly evaluate the permit application. In addition, copies of any affidavits from the adjoining property owners and an insurance binder from the insurance company to provide the required liability insurance shall accompany the permit application.

E. *Site plan.* A site plan for the entire range facility which shows the following applicable information drawn to an appropriate scale, shall accompany the permit application:

1. Property lines for any parcel upon which the range facility is to be located, north arrow, plan scale, date and ownership information for the site;
2. Complete layout of each range, including, shooting stations and/or firing lines, target areas, shot-fall zones or safety fans, backstops, berms (natural or man-made), and baffles;
3. Projected noise contours;
4. Existing and proposed structures on site; occupied dwellings within one-half (½) mile (two thousand six hundred forty {2,640} feet); roads, streets or other access areas; buffer areas; and parking areas for the range facility; and
5. Any other appropriate information related to the specific type of range(s) being proposed.

F. *Action.* Within thirty (30) working days or at the next available meeting, whichever is sooner, the City of Twentynine Palms Community Development Department shall take one (1) of the following actions:

1. Reject the application as incomplete; or
2. Approve the issuance of the permit; or
3. Deny the permit request. In any case, the written findings to support the action taken shall be provided to the applicant.

G. *Permit display.* Permits shall be kept and displayed in a readily visible location on the shooting range facility and at all times be available for public inspection.

H. *Permit transferability.* A permit issued pursuant to this Ordinance may not be transferred to another operator without the written approval and consent of the City of Twentynine Palms Community Development Department Director.

I. *Changes or expansions.* If any shooting range facility is intended to be substantially changed or expanded to include additional types of ranges, operations or activities not covered by an approved permit or otherwise cause nonconformance with this Ordinance, a new permit for the entire facility shall be secured in accordance with all of the provisions of this Ordinance.

J. *Unlawful operation declared nuisance.* Any range operated, conducted or maintained contrary to the provisions of this Ordinance shall be and the same is hereby declared to be unlawful and a public nuisance. The City may, in addition to, or in lieu of, prosecuting a criminal action hereunder, commence an action or actions, proceeding or proceedings for abatement, removal or enjoinder thereof, in the manner provided by law.

Section 10. Registration and Compliance of Legally Existing Ranges

A. *Registration.* All legally existing ranges shall provide a site plan, prepared in accordance with Section 9E, within thirty (30) days after the effective date of this Ordinance. No fees will be charged and no permits will be required.

B. *Compliance.* Any existing shooting range facility determined not to be in compliance shall be made to obtain a permit and comply with sections 6A and 7C within sixty (60) days, section 6B within one hundred twenty (120) days, and all remaining provisions of this Ordinance within one hundred eighty (180) days of the adoption of this ordinance.

C. *Abandonment and discontinuance.* When an existing shooting range is discontinued without the intent to reinstate the range use, the property owner shall notify the City of Twentynine Palms Community Development Department of such intent. In any event, the discontinuance of the facility or non-use of the facility for a period in excess of one hundred and eighty (180) days shall create the presumption said facility is abandoned, and any current, valid permits issued shall terminate.

Section 11. Variances

The City of Twentynine Palms Planning Commissioner has the authority to waive or modify the provision or terms of this Ordinance, when a literal enforcement of the provisions of this Ordinance will, in an individual case, result in practical difficulty or extreme hardship; and

- The hardship results from an application of this Ordinance; and
- The hardship must be related to the specific property involved; and
- The practical difficulty or extreme hardship is not self-induced or self-created; and
- The hardship is peculiar or unique to the specific property involved; and
- The enforcement of this Ordinance renders the property with no other legal, reasonable use or value; and
- The waiver or modification will not materially affect the safety of the surrounding property, owners or citizenry.

Such land use approval, which shall be different from the terms of this Ordinance, will not be contrary to the public interest.

To insure that the spirit of the Ordinance shall be observed, public safety and welfare secured, and substantial justice done, such waiver or modification may be granted in individual cases of practical difficulty or extreme hardship after a showing of the items listed above, and upon finding of the following:

A. There are extraordinary and exceptional conditions pertaining to the particular place or property in question because of its size, shape or topography that are not applicable to other shooting ranges governed by this Ordinance.

B. Granting the waiver or modification requested will not confer upon the applicant any special privileges that are denied to other operators of other shooting ranges governed by this Ordinance.

C. A literal interpretation of the provisions of this Ordinance would deprive the applicant of rights commonly enjoyed by other operators of shooting ranges governed by this Ordinance.

D. The requested waiver or modification will be in harmony with the purpose and intent of this Ordinance and will not be injurious to the neighborhood or to the general welfare.

E. The special circumstances are not the result of the action of the applicant.

F. The waiver or modification requested is the minimum that will make possible the legal use of the land in question.

In granting any such waiver or modification, the Planning Commission shall make findings that the requirements of this Section have been met. The Planning Commission shall make a finding, and written notice of the decision shall be prepared and furnished to the applicant. In granting any waiver or modification, the Planning Commission may prescribe appropriate conditions and safeguards in conformity with this Ordinance. Violations of such conditions and safeguards, when made a part of the terms under which the waiver or modification is granted, shall be deemed a violation of this Ordinance.

Section 12. Enforcement, Remedies and Penalties

A. *Enforcement and remedies.* The City of Twentynine Palms Community Development Department, Code Enforcement Division and the San Bernardino County Sheriffs Office shall be responsible for the enforcement of this Ordinance. Any violation or attempted violation of this Ordinance or of any condition or requirement adopted pursuant to these provisions may be restrained, corrected or abated, as the case may be, by injunction or other appropriate proceedings as allowed by State law. Any permit issued under this Ordinance may be suspended or revoked in accordance with the provisions and requirements of the City of Twentynine Palms Development Code.

B. *Civil penalties.* Any person who violates any of the provisions of this Ordinance shall be subject to a civil penalty of five hundred dollars (\$500.00) per violation. No penalty shall be assessed until the person alleged to be in violation has been notified in writing of the violation. Each day of a continuing violation shall constitute a separate actionable violation.

C. *Criminal penalties.* Any person who knowingly or willfully violates this Ordinance or who knowingly or willfully initiates or continues unapproved actions shall be guilty of a misdemeanor punishable by imprisonment not to exceed six (6) months, or by a fine not to exceed five hundred dollars (\$500.00).

D. *Alternative remedies.* This Ordinance may also be enforced by any appropriate equitable action. Such remedy may include injunctive relief and a court order of abatement as part of a judgment in the cause from a court of competent jurisdiction.

The injunctive relief or abatement order may include actions required to make the property comply with the provisions of this Ordinance at the owner's expense.

Section 13. Effective Date

This Ordinance shall become effective as prescribed by State law.



**CITY OF TWENTYNINE PALMS
PLANNING COMMISSION STAFF REPORT**

6136 Adobe Road
Twentynine Palms, CA 92277
(760)367-6799 – Fax (760) 367-5400

To: Planning Commission – Study Session
From: Community Development Director
Date: June 15, 2011

For Commission Meeting Of: June 21, 2011

SUBJECT: PC 11-09 – Guidance on Development Code Section 19.48.030 “Accessory Uses in Residential Districts” regarding the architectural requirements applicable to an accessory structure; citywide.

RECOMMENDATION

Staff recommends that the Planning Commission resume its Study Session review, open to the public, and provide guidance regarding how to apply the Code provision that states “All accessory buildings shall be required to be architecturally compatible with the main structure(s)”. This provision, however, is unclear as to the nature, extent and character of that architectural compatibility.

Attachment:		
Development Code Section		
19.48.030	“Accessory Uses in Residential Districts”	

ORDER OF PROCEDURE

- Request Staff Report (Charles LaClaire presenting)
- Commission Questions of Staff
- Receive Public Comment
- Commission Discussion
- Direction to staff

PROJECT DESCRIPTION

A Study Session to provide guidance to staff on how to apply Development Code Section 19.48.030 “Accessory Uses in Residential Districts”, “All accessory buildings shall be required to be architecturally compatible with the main structure(s)”. This provision is unclear as to the nature, extent and character of the required architectural compatibility.

BACKGROUND

Currently the Commission is in the process of reviewing the Development Code with regard to architectural compatibility between accessory and primary buildings located upon the same property. The Commission began its review of this issue at its regularly scheduled meeting of February 15, 2011, continuing that Study Session discussion to April 19, 2011, May 3, 2011, June 7, 2011 and now June 21, 2011. Initially the Commission was requested to provide guidance to staff with regard to how to apply the Accessory Structure architectural compatibility portion of the Code relative to residential development within the community. During this same time period, the Commission was also requested to address staff’s denial of a Building Permit requested to allow the installation of an accessory building (a metal RV cover) directly relating to the Code provisions the Commission was reviewing. The Commission’s interpretation of the Code was appealed and subsequently heard by the City Council.

In consideration of the history of the issue at hand, the Commission has the opportunity to address accessory structure standards in conformance to the guidance given by the City Council at its meeting of May 24, 2011. To that end, the Commission may wish to discuss what structures are subject to the Code's requirement for "architectural" compatibility, and what architectural compatibility may mean.

Recent Council Action

At its regularly scheduled meeting of May 24, 2011, the City Council considered an Appeal of the Planning Commission's interpretation of the Development Code addressing accessory structures. The Commission's Code interpretation related to a request filed by applicant Carl "C.J." Horn to overturn staff's denial of his Building Permit to install a metal Recreational Vehicle (RV) cover upon his property located at 5789 La Luna (APN 0618-073-25), Twentynine Palms. At the May 24th Council meeting, the Council was presented with a staff report and heard comments, during the Public Hearing, from members of the audience and Planning Commission. Following extensive discussion, a first and then a second motion, the Council moved to provide an interpretation of Section 19.48.030 "Accessory Uses in Residential Districts" regarding the architectural requirements applicable to an accessory structure, directing that the specific language be returned to the Council for affirmation at its next regularly scheduled meeting (that of June 14, 2011). The language included within the material below was confirmed by Council action on June 14, 2011.

"On a motion made by Corbin, seconded by Mintz and carried with a 4-0-1 (Klink absent) roll call vote, the City Council denied, in part, the Planning Commission's interpretation of Code Section 19.48.030 'Accessory Uses in Residential Districts' with regard to its applicability to non-habitable structures, and approved, in part, that freestanding, prefabricated vehicle or machine shade covers are allowed by Code Section 19.48.030 'Accessory Uses in Residential Districts' provided that they are reasonably screened from view by fencing, structures or vegetation that shall mature within the foreseeable future or painted the color of the primary structure on site, and that the approved motion shall be returned to the Council for affirmation at the next regularly scheduled Council meeting."

ANALYSIS

In consideration of the guidance provided by the Commission at its regularly scheduled meeting of June 7, 2011, it appeared to be the consensus of the Commission to separate which "structures"/"buildings"/"things" were subject to the Code requirements of architectural compatibility, and which "structures"/"buildings"/"things" were not subject to this compatibility (without delving into an attempt to redefine "building", "structure", "edifice", "carport", "garage", "shade structure", "shade cover", "covering", "carport", etc.). To this end, it was suggested that staff return at the next regularly scheduled meeting where language could be discussed to achieve three (3) goals.

The first goal was to establish language within the Code that exempted accessory "things" under 200 square feet in floor area from the requirements of the Code (regardless of whether or not the Building Code requires a Building Permit {required of "things" 120 square feet or larger}). The second goal was to define "things" that were, in essence, manmade structures consisting of only supporting features such as poles or columns, roofing and/or with or without siding, but not enclosed, functioning as animal, plant, feed, equipment or vehicle covers, windbreaks and/or animal shelters, exempting these from the architectural compatibility standards. (Examples of this would be the Horn's recent RV cover, but also a pipe and plywood, two/three sided horse corral windbreak.) Finally, the third goal was to define architectural compatibility in a manner that could be easily understood and enforced. A rough example of such architectural

compatibility was provided in the June 7th report, wherein a “thing” subject to architectural compatibility had to be at least the same color as the dominant color of the primary structure on site and not exceed the height of that primary structure. In addition to these absolute requirements for each such architecturally compatible “thing”, that same “thing” must possess at least three (3) traits of the primary structure on site coming from the following list of architectural features:

- Wall covering materials (wood, stucco, metal);
- Wall texture (smooth, stucco, lap siding);
- Roofing material (tile, shake, composition, metal);
- Roofing pitch (flat, 2 and 12, steep);
- Structural eaves (present, absent and extension from support wall);
- Fascia materials (present and if so, decorative or functional);
- Mass and scale of structure relative to structural height (short and broad, tall and thin, massive);
- Windows size (large and/or small relative to surrounding wall)
- Window characteristics (few or numerous, single pane, multi-pane, decorative);
- Decorative treatments (pop-outs, columns, dormers, window surrounds, decorative arches); and
- Street visibility (can it be seen from any public right-of-way).

If the accessory “thing” is the same color as the primary structure on site, did not exceed the height of the primary structure on site, and had a least three (3) of the eleven (11) listed architectural features of the primary structure on site, the “thing” would be defined by these Code provisions as meeting the architectural compatibility requirement.

This list, and the requirement for three (3) similarities, is meant to be a basis for discussion and either may be added to or changed by the Commission in forwarding its recommendation to the City Council for final action. It is also noted that the final architectural feature similarity listed above, street visibility, may be elevated to a higher deciding factor. The reason for the elevation would be that if the accessory “thing” cannot be seen from any surrounding public street and/or right-of-way, should this relieve the property owner of the architectural compatibility requirement? If so, should consideration be given to receiving an acknowledgement from the surrounding property owners that may have a view of any such accessory “thing” that they are aware and accept the appearance of the “thing”? Alternatively, the Commission may wish to build in provisions that allow the Commission to waive compatibility under a specified review. If either is acceptable, language to make these allowances could be crafted for Commission discussion, consideration and future action.

In addition to the above, and although it may seem obvious that a property owner may not establish (build or place) an accessory structure upon a property where there is not a primary structure, it may be prudent at this time to explicitly state this requirement within Section 19.48.020 “General Standards” of the Development Code.

As a further suggestion within the City’s consideration of accessory structures, the Commission may wish to comment upon a public relations program that would provide property owners with the opportunity, once the Code is amended, to receive written confirmation from the City that their accessory structure was legal at a specific date. With this City provided (assumed at no cost to the requesting owner) written declaration of conformity, if the Code is changed in the future, the property owner would have evidence of their accessory structure’s legal nonconforming status (protecting the owner from any City challenge that the structure was ever legally built). Any such program would not be mandatory for property owners, would not cost

the property owner to apply or receive the certification, would rely upon a public information campaign and word-of-mouth, and would be in effect until the Code changes in the future.

As was mentioned within the June 7th staff report, the Commission may wish to consider the possible impacts to adjoining properties from allowed accessory structures, and possibly including consideration for more flexibility for larger lots. At its basic level, the question herein is what type of accessory building/structure (“thing”) does the Commission find acceptable within the community?

And finally, an additional question must be addressed by the Commission regarding the number of accessory structures that are acceptable (for it is possible to have a large number of exempt accessory structures on the property, which exceed the intent of the limitations of the individual accessory structures). Currently, the Code limits accessory structures to no more than fifty percent (50%) of the floor area of the main home in a residential area. Does the Commission wish to keep this limitation (and possibly include exempt “things”), or reduce/enlarge this limitation relative to allowing a number of accessory structures upon a property? (It is suggested that although the Commission is considering exempting accessory “things” from architectural compatibility requirements, the Commission may not wish to exempt them from lot coverage/size limitations.) For example, a property owner may elect to construct ten (10), 150 square foot exempt structures, side by side, resulting in a total covered area of 1,500 square feet. Therefore, should the size of individual or cumulative total of all accessory structures on a site be related to the main structure on site, a specified maximum size or a size related to the lot area? Do these rules change in different zones (rural verses single-family residential) or where the accessory structure is upon larger lots (1, 2.5 or 5 acres)?

Findings

Under the provisions of the Development Code, no “Findings” are required to be made for the Commission to undertake a review of the Development Code. If, however, the Commission feels that a Code Amendment is warranted to address what appropriate standards should be applied to Accessory Structures, then pursuant to Section 19.22.050 “Findings” of the City’s Development Code, both the Planning Commission and City Council are required to make four (4) “Findings” of approval in a positive manner prior to recommending or adopting a Development Code Amendment. If the Commission were to initiate a Code Amendment, at the Public Hearing required for such a proposal, and following receipt of guidance from the Commission from which appropriate draft language would be proposed, staff shall provide the Commission with comments to address each “Finding” for consideration and possible adoption, forwarding its recommendation to the City Council.

- A. The Zone Change or Development Code Amendment is consistent with the intent of the goals and policies of the General Plan; and
- B. The Zone Change or Development Code Amendment prescribes reasonable controls and standards to ensure compatibility with other established uses; and
- C. The Zone Change or Development Code Amendment provides reasonable property development rights while protecting environmentally sensitive land uses and species; and
- D. The Zone Change or Development Code Amendment ensures protection of the general health, safety, and welfare of the community.

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 discussion of the current standards and regulations within the existing Development Code, cannot by themselves have a direct impact upon the environment. As such, under the provisions of Government Code Section 15262 "Feasibility and Planning Studies" a Study Session is statutorily exempt from further environmental review.

Approval Process

If the Commission would like to amend the Code to address Accessory Structures with different standards, the Commission may forward a request to the City Council asking its opinion on whether it is an appropriate use of City resources to pursue a Code Amendment at this time. As the Commission is aware, under the provision of Development Code Section 19.22.040 "Approval Authority and Notification" (for Development Code Amendments) the Planning Commission is the Review Authority for any changes to the Development Code, with the City Council being the Approval Authority. If a Code Amendment is initiated, any suggested changes would be forwarded to the Council for final action.

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.