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MEMO

Date: August 27, 2009
To: Planning Commission
From: Charles K. LaClaire, Community Development Director

Re: Building Height Definition Clarification

At its meeting of August 18, 2009, the Planning Commission considered a number of Code Amendments under PC 09-51. One of those amendments addressed the definition of Building Height. Within the staff report for the amendment, staff provided two (2) alternative definitions for the Commission to consider and decide upon. In taking its action to forward a recommendation to the City Council, staff failed to note which of the two (2) alternatives the Commission preferred. To clarify which definition should be included within the information about Development Code Amendment PC 09-51 forwarded to the Council, staff requests that the Commission again identify which alternative is preferred.

As was presented within the August 18th Public Hearing Report:

“The exemption to the height limit noted within Table 19.10-B “Office and Commercial Districts Development Standards” appears to clearly state that only superfluous features not essential to the building’s overall structural integrity or stability (although these features often add significantly to the architectural and aesthetic appearance of the structure) are allowed to exceed the zoning districts maximum height. As alluded to above, a difficulty arises in that when the Code exempts cupolas and steeples from the height determination, these mostly architectural features are, in fact, significant, though generally not essential, parts of the roofline of the structure. Excluding these types of rooflines confuses the height limit issue. On its face, it would appear that the roof of a structure, whether flat with associated parapet features or gently to steeply sloped (as with cupolas and steeples), is a basic, essential and integral portion of any building and this structural attribute is, and should be, intended to be a portion of the structure included within the established height limit. If this is the correct understanding of the definition of “Building Height” it is suggested that language be added to the Code to further clarify this limit. Alternatively, however, if the Commission understands the exemptions to the height limit were meant to include the roof and/or parapet of a structure, declarative language should be placed within the Code to clearly state this fact. In the following, language proposed for deletion is highlighted with ~~double strikethrough~~, while new language is shown in *italics*.

Date: August 27, 2009
Re: Building Height Amendment Clarification

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Proposed Language:

“Building Height. The ~~vertical~~ distance *measured vertically* from finished grade to the highest point of any gable, gambrel, hip, shed or similar pitched roofline, parapet or other structural feature that is an essential and integral portion of the structure.”

Alternatively,

“Building Height. The vertical distance from finished grade to the highest point of the structure *excluding any roof, parapet, other non-essential structural feature, chimneys, cupola or steeple.*”



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

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To: Planning Commission
From: Community Development Director
Date: September 2, 2009 – Community Workshop

RE: PC 09-32, an amendment to the “Development Code” of the City of Twentynine Palms by the addition of Chapter 19.55 regarding Vacation Home Rentals.

RECOMMENDATION

Open and conduct the community workshop, consider public comment and provide direction to staff to advertise and bring forth a code amendment addressing Vacation Home Rentals or terminate these proceedings.

PROJECT DESCRIPTION

The City of Twentynine Palms Planning Commission directed that a workshop be held to discuss the possibility of amending Title 19 “Development Code” of the City’s Municipal Code. The proposal under discussion at the workshop could result in an amendment to the Development Code by adding a new Chapter 19.55 “Vacation Home Rentals”, establishing the review requirements, as well as the standards and criteria to allow a Vacation Home Rental (short-term rental - less than 30 days - of a residential dwelling) in appropriately designated zoning districts within the City.

Attachments

July 10, 2009 Memo to Planning Commission (with attachments)

Ordinances and Material from the Cities of:

- Big Bear
- San Luis Obispo
- Laguna Beach
- Capitola
- Napa

BACKGROUND AND PREVIOUS MATERIALS

At its meeting of March 17, 2009, the Planning Commission conducted a Public Hearing for PC 09-07, receiving public testimony and providing guidance to staff with regard to a number of changes proposed to the Development Code. The guidance received allowed several Code Amendment provisions to go forth to the City Council (which approved the Amendments at its meeting of April 14, 2009). At the March 17th meeting, however, the Commission removed Vacation Home Rentals from PC 09-07, directing that a public workshop be advertised and conducted to request and receive input from the community on this issue.

At the April 30, 2009 workshop, the Commission determined that additional information and input was needed to address this important topic and directed that staff seek the opinions and input from potentially affected community members and businesses, and to research VHR Ordinances from other communities. Staff subsequently distributed the input received to the Commission (July 10, 2009 memo) and at its regularly scheduled meeting of August 4, 2009, the Commission directed that a workshop to continue its review of the Vacation Home Rental issue be scheduled for the Commission’s meeting of September 2, 2009.

The material regarding Vacation Home Rentals that had been offered at the March 17th Public Hearing for PC 09-07, revised at the direction received from the Planning Commission at its March 3, 2009 Public Hearing, is provided below as it was presented at that meeting (*with slight modifications resulting from multiple reviews of the enclosed material*). In addition to that material, staff has included within this report a copy of the July 10th memo with attachments, and additional material received subsequent to that memo's distribution.

It is suggested that the Commission, in conducting this workshop, first address the concept of Vacation Home Rentals in its broadest terms (i.e., does the City want to allow Vacation Home Rentals?). If the City does desire to allow this land use, then the Commission may proceed by breaking down the discussion of Vacation Home Rentals into small pieces, deciding upon one aspect of the concept, then moving on to the next. If the concept is not acceptable, the discussion may be terminated by a consensus of the Commission.

If the concept is acceptable, then the discussion moves on to where this use should be allowed; for example, should it be allowed in single-family zones, multi-family zones or both? Once this is decided upon, the next issues could be whether a minimum lot size should be established. If so, what should that minimum be? Third, should a separation distance be required? If so, how much? This type of "decision tree" process would allow the Commission to discuss each issue (and subsequent associated standard), progressing through the issues as offered within the previous public hearing report and as detailed below. In this workshop, however, not all issues need to be debated at length. There may be issues that the Commission, as a group, strongly believe should be in or out of the Code Amendment and in such cases a simple consensus to accept or reject this issue will allow the discussion to move on to the next topic.

Amendment (as presented within the March 17, 2009 Public Hearing, with modifications as directed during that meeting)

The fourth code amendment considered by the Commission addressed creating a new provision in the Development Code to add "Vacation Home Rentals" (VHR) as a permitted use. During the open Public Hearing, five interested individuals spoke to this matter. One speaker noted that the proposal did not address the unique "Cultural Heritage" of some buildings within the community and that requiring some of the changes as proposed in the new provisions would destroy the uniqueness of the structures. This individual also disagreed with requiring fire sprinklers, limiting VHRs to only Single-Family Residential zones, requiring paved parking and a garage (especially for the older homes) and that the 1,000 foot separation between VHRs was excessive for some properties. A second speaker stated she liked the idea of allowing Vacation Home Rentals, but felt that placing too many restrictions upon this use would discourage property owners from establishing these homes within Twentynine Palms. This individual stated that requiring paved parking, sprinklers, a garage and a 15,000 square foot minimum lot size were all problems in establishing these vacation homes.

A third speaker, although commenting that a Vacation Home Rental's occupancy could be limited based upon the number of bedrooms within the home, also stated he felt that in general terms this proposed amendment did not work for this community. The fourth speaker agreed with the concept of making allowances to preserve the community's cultural heritage when converting a home to a VHR. Additionally, the fourth speaker suggested that the minimum lot size be 7,200 square feet, that the VHR need not be adjacent to a paved roadway, that sprinklers should not be required and that the Americans with Disabilities Act (ADA) requirements are too stringent.

The final public speaker expressed concern that establishing this Code provision would allow

the intrusion of a basically commercial use into residential areas. The speaker further noted that establishing VHRs as a permitted use on larger lots would force these commercial uses into rural areas where the larger lots are commonly located. As a final comment, the speaker noted that if this use were to be established as a permitted use, he would suggest that the requirements for a paved roadway remain.

Following the closure of public comment, the Commission discussed the merits of the different requirements raised by the speakers and other requirements raised by individual Commissioners. The Commission discussed limiting the occupancy based upon lot size or a person per bedroom ratio. Additionally, the Commission addressed whether fire sprinklers, enclosed garages, ADA requirements, paved road adjacency and Conditional Use Permit approval should apply.

It appeared that the consensus of the Commission was to establish a minimum lot size based upon the size of the home on the property and/or establish an occupancy limit based upon a persons/bedroom ratio. It also appeared to be the consensus of the Commission to keep the requirement for ADA compliance (which is not triggered until the home has more than five bedrooms) and add a requirement for emergency lighting, but to remove the originally suggested requirements for fire sprinklers, an enclosed garage and adjacency to a paved roadway.

In considering the amended language offered below to address the consensus, the Commission may also wish to revisit the issue of separation distance and single- verse multiple-family residential zoning. The issue of preserving cultural heritage appears to resolve itself by the elimination of requirements for garages and sprinklers, allowing more than one VHR on a legally recorded lot and the reduced impact from ADA requirements (the home needing to be more than five bedrooms in size).

In addition to the information above, an issue overlooked in the original Public Hearing report has come to light and the Commission may wish to address the issue. None of the provisions discussed places a limit upon or prohibits the owner of a single-family residence from adding room after room to their Vacation Home Rental, thus expanding the home to include eight, ten, fifteen or more “bedrooms”, more of a hotel than a single-family residence. Although it may be argued that the proposed provisions that do not allow changes to the home that would make it “out-of-character” with the surrounding neighborhood would prevent this, language is proposed below (paragraph 19.55.040 A 5) that would more directly address this issue.

Proposed language to address the issues described above are presented below in ***bold, italics*** for additions and ~~strike-outs~~ for deletions (again, these additions and deletions are a result of the direction staff received from the Commission at the March 17, 2009 Public Hearing on Code Amendment PC 09-07). Once, and if, the Commission votes to consider a recommendation to the City Council to adopt a Code Amendment to add Vacation Home Rentals to the Development Code, a Public Hearing on Code Amendment PC 09-32 will need to be advertised and a Public Hearing Report will be presented with a draft Planning Commission Resolution for consideration.

PROPOSED LANGUAGE:

19.55.010 Purpose. This chapter establishes the regulations for Vacation Home Rental uses within all Single-Family ***and Multiple-Family*** Residential land use districts.

19.55.020 Requirements. The following requirements shall be applicable to all Vacation Home Rental uses.

- A. A Vacation Home Rental use may be established on any parcel within any Single-family Residential land use district **or Multiple-Family Residential land use district when such property is occupied by one or more physically separated structures built as individual single-family residential homes**, subject to the requirements and standards established within this Chapter and subject to Planning Commission approval of a Conditional Use Permit in compliance with the procedures established within Chapter 19.30 “Conditional Use Permits”.
- B. A property used as a Vacation Home Rental shall be separated from any other property used for the same purpose by a minimum of one thousand (1,000) feet. **A lesser separation distance may be allowed by the Planning Commission if in its review of the Conditional Use Permit the Commission determines that sufficient evidence has been provided that illustrates that due to the unique character of the property or properties requesting approval or due to the unique historic character and/or significance of the structure(s) being considered under the Conditional Use Permit to the community of Twentynine Palms that a lesser distance is appropriate. In no instance shall the separation distance be reduced to less than two hundred and fifty (250) feet. Separation requirements shall not apply to multiple Vacation Home Rentals located upon the same legally recorded lot.**
- C. All property owners within one thousand (1,000) feet of the exterior perimeter of the property whereupon the Vacation Home Rental will be located shall be notified of the proposed Conditional Use Permit Public Hearing as provided in Chapter 19.44 “Public Hearings and Notices”.
- D. Minimum parcel size to establish a Vacation Home Rental use **shall be based upon the size of the residential structure located upon the lot in question. For homes of two bedrooms or less, the minimum parcel size to establish a Vacation Home Rental use shall be the minimum lot size established for the underlying zoning district in which the property is located. For all other Vacation Home Rentals, the minimum lot size shall be fifteen thousand (15,000) square feet. Where multiple structures are located upon the same property, the minimum lot size shall be determined as noted above by using the cumulative total of all bedrooms of all structures located upon that property.**
- ~~E. A Vacation Home Rental unit shall be located upon a parcel adjacent to a paved roadway which connects to the City’s paved and maintained roadway system.~~
- E. **Where a home or residential structure is non-conforming due to setback, lot coverage or building height, the Commission may approve or conditionally approve a Conditional Use Permit without modification to the home or residential structure relative to that (those) nonconformity. Where a home or residential structure is nonconforming due to deficient parking, the Commission shall approve or conditionally approve a Conditional Use Permit only if the home or residential structure is brought into full conformance to the parking standards established in Subsection “F. Parking, Access and Driveways” of Section 19.55.040 “Operating Conditions” herein. Where a home or residential structure is non-conforming due to land use (i.e., a residential use in a commercial, industrial, open space or other zone) the Commission is expressly prohibited from approving a Conditional Use Permit for a Vacation Home Rental land use.**

19.55.030 Findings Required. In addition to the “Findings” for approval of a Conditional Use Permit as prescribed within Code Section 19.30 “Conditional Use Permits”, prior to approving an application for a Conditional Use Permit for a Vacation Home Rental use, the Approval Authority shall find that all of the following are true:

- A. That the site upon which the Vacation Home Rental use is to be established conforms to all standards of the Land Use District in which it is located ***except as allowed herein under existing nonconforming homes or residential structures***, and that the site for the proposed use is adequate in size and shape to accommodate said use in conformance to all yard, building coverage, setback, parking area and other applicable requirements of the Code.
- B. That the residential character of the neighborhood in which the use is located shall be maintained and preserved and that the issuance of the permit shall not be detrimental to the public health, safety and welfare of the residents within the neighborhood or injurious to the community within the vicinity and district in which the use is located.

19.55.040 Operating Conditions.

Failure to comply and/or conform with the following Operating Conditions shall constitute a violation of the City of Twentynine Palms Municipal Code and shall be grounds to revoke an approved Conditional Use Permit for a Vacation Home Rental use.

A. Structural and Design Features

- 1. Each dwelling used as a Vacation Home Rental shall comply with the standards and specifications of the Uniform Building Code and the underlying zoning district; ***and be subject to both a pre- and post- approval site inspection by the City’s Building Inspector.***
- 2. Each dwelling used as a Vacation Home Rental shall ~~have be equipped with fire sprinklers approved and inspected by the Fire Agency.~~ Additionally, a fire extinguisher and smoke detector(s) (one per bedroom plus one in each hallway) conforming to the Uniform Building Code Standards (UBC No. 43-6) which shall be maintained on site, and exit/egress and an emergency evacuation map must be displayed in a prominent location in each room used for sleeping purposes. ***Emergency lighting shall be required within the home.***
- 3. Access for the physically handicapped shall be provided per the requirements of the Americans With Disabilities Act (ADA) and Title 24 of the California Code of Regulations.
- 4. Alterations and modifications made to any structure(s) and to the site used for a Vacation Home Rental use shall be compatible with the character of a single-family residence and with the character of the surrounding residential neighborhood. Alterations and modifications made to the structure shall not increase the number of independent residential units on site. Such alterations and modifications shall also comply with all applicable provisions, requirements and standards of the City of Twentynine Palms Municipal Code.
- 5. ***Alterations and modifications made to any structure(s) and/or to the site used for a Vacation Home Rental use shall not increase the total number of bedrooms on site (whether within one or more residential structures on site) to more than ten (10) bedrooms or rooms used for sleeping purposes.***

6. The appearance of the structure shall not be altered nor the occupation within the residence be conducted in a manner which would cause the premises to differ from its residential character either by the use of colors, materials, construction, lighting, signs, or the emission of sounds, noises and vibrations.
7. Any lights used to illuminate a site used for a Vacation Home Rental purpose shall be designed so as to reflect away from adjoining properties, all public rights-of-ways and shall comply with Chapter 19.70 "Lighting Standards".
8. The single-family residential home used for a Vacation Home Rental shall not be modified to allow or contain more than one kitchen/cooking facility.
9. All pools and/or spas on site shall be maintained in a neat, clean and healthy manner at all times. Additionally, each and every pool and/or spa shall conform to the requirements of the City of Twentynine Palms Building & Safety Codes and all applicable codes of the County of San Bernardino and the State of California.

B. Contact Information

1. Prior to the first rental, and annually thereafter, the property owner shall provide to each property owner and each tenant of property within two hundred (200) feet from the exterior boundary of the property occupied by the Vacation Home Rental an informational notice of the Vacation Home Rental. Proof of receipt of this notification shall be provided to the City of Twentynine Palms Community Development Department. Such notification shall provide information about the Vacation Home Rental, including both a day and evening contact telephone number for the owner or responsible individual of the Vacation Home Rental, a contact phone number for the City of Twentynine Palms Code Enforcement Division and both a day and evening phone contact number for the Sheriff's Office.

C. Records, Business License, **Transient Occupancy Tax** and Performance Deposit

1. Records of all guests who patronize the Vacation Home Rental unit shall be preserved for a minimum period of three (3) years before such records are discarded. Such records shall be made available to the City within five working days upon written request from the City. Failure to preserve patronage records or failure to present patronage records when requested by the City shall be grounds to revoke the approved Conditional Use Permit for the Vacation Home Rental.
2. A valid Business License shall be required for each Vacation Home Rental.
3. Each Vacation Home Rental use shall register with the City Finance Department for Transient Occupancy Tax (TOT) reporting and payment **prior to the first rental**.
4. A deposit of \$1,000 shall **be maintained and** remain with the City of Twentynine Palms Finance Department during the life of the CUP approved Vacation Home Rental use. The City shall have the right to withdraw sufficient funds from this deposit to reimburse the City for costs and expenses incurred for City Staff, Fire Agency or Sheriff Officers which have responded to any calls received regarding the Vacation Home Rental. Additionally, sufficient funds may be withdrawn from this deposit to reimburse the City for expenditures incurred to abate any clean-up of trash or debris removed from the property pursuant to the proceeding described in Code Section 19.92 "Nuisance

Abatement”.

D. Rental Agreement

1. A “Rental Agreement” shall be required for each rental of an approved Vacation Home Rental unit. The Rental Agreement shall specify that riding Off Road Vehicles is prohibited on the Vacation Home Rental property. The Rental Agreement shall disclose that riding Off Road Vehicles is restricted to appropriate OHV approved areas only. The Rental Agreement shall also inform the tenant that they are subject to all local Noise Control Ordinances. The Rental Agreement shall disclose that all animals under the renter’s control shall be cared for in a manner consistent to Subsection 19.55.040 G “Animals” and in conformance to all City and County animal standards. The Rental Agreement shall inform the tenant that dog(s) **or other animals** are not allowed to be restrained or allowed to roam freely outside of the rental home between the hours of 9:00 p.m. and 6:00 a.m.

E. Annual Inspection

1. Each year on or before the anniversary date of the approval of the Conditional Use Permit for the Vacation Home Rental, the owner(s) shall provide proof to the Community Development Department of an annual safety inspection from the Fire Agency. Further, each year on or before the anniversary date of the approval of the Conditional Use Permit for the Vacation Home Rental, the owner(s) shall request, and pay any applicable fee, for an inspection from the City’s Building & Safety Division.

F. Parking, Access and Driveways

1. The property owner of each Vacation Home Rental shall ensure that all required accesses, driveways and parking spaces remain clear and unobstructed, and are available and ready for the occupants’ use at all times.
- ~~2. At a minimum, an enclosed two-car garage shall be available on site, clear and free from any obstruction that may prevent its use for its intended parking purpose consistent with the parking requirements for a Single-family Residence established in Chapter 19.82 “Off-Street Parking and Loading Regulations”.~~
2. When the Vacation Home Rental unit consists of more than four bedrooms, each additional bedroom or sleeping area beyond the first four shall be provided with one (1) paved parking stall measuring nineteen (19) feet in length and nine (9) feet in width. No portion of any such required parking stall shall be located within either a required front or street side yard setback area.
3. Additional landscaping may be required to screen parked vehicles from view when said parking area is not located within an approved driveway leading to an enclosed garage.
4. All required parking spaces shall comply with the location and design standards established by the applicable Land Use District and the provisions of Chapter 19.82 “Off-Street Parking and Loading Regulations”.
5. Parking of commercial vehicle(s) anywhere on a site approved for a Vacation Home Rental, except temporarily for durations of less than four (4) hours when actively being loaded or unloaded, shall be prohibited.

6. Additional parking spaces may be required when deemed necessary by the Approval Authority.

G. Animals

1. Renters are prohibited from allowing animals under their control to be restrained or allowed to roam freely outside of the rental home between the hours of 9:00 p.m. and 6:00 a.m. Further, all animals under the renter's control shall be cared for in a manner consistent with all City and County animal standards.

H. Clean Premises

1. The property owner shall keep or cause to be kept the Vacation Home Rental property in a neat, clean and orderly manner at all times. The property owner shall provide the City of Twentynine Palms Community Development Department with written permission that specifies that following the expiration of a written notice from the City to return the Vacation Home Rental property to its required neat, clean and orderly manner under the provisions and requirements of this Code and the Conditions of Approval of the Conditional Use Permit applied by the Planning Commission, that the City shall have the right to enter and clean, or cause to be cleaned, said property and the cost of such cleaning shall be the responsibility of the property owner. If the property owner fails to reimburse the City for the cost of cleaning the property as noted above, the City may first withdraw funds from the Deposit held by the City's Finance Department as described in Subsection 19.55.040 C. Where the funds within this deposit are insufficient to cover the actual costs of the restoration, a lien shall be placed against the property for the remaining balance.
2. All landscaping on site shall be maintained in a neat, clean, weed and disease free manner at all times. Where a property is not maintained as specified herein, the Property owner shall be required to restore the property and/or landscaping to its required neat, clean, weed and disease free manner under the provisions and requirements of Code Section 19.55.040 "Operating Conditions" H 1 ~~herein above~~ and Code Section 19.92 "Nuisance Abatement".
3. In accepting the right to operate a Vacation Home Rental as approved under a Conditional Use Permit, if the property owner fails to restore the property and/or landscaping to its required neat, clean and orderly manner, the property owner with the acceptance of the CUP declares and provides an express permission and consent to the City of Twentynine Palms, or agents acting on its behalf, to enter the property to restore the property and/or landscaping to its required neat, clean and orderly manner as prescribed in Code Section 19.92 "Nuisance Abatement". All costs of said restoration shall first be withdrawn from the Deposit required in Section 19.55.040 C. "Records, Business License, **Transient Occupancy Tax** and Performance Deposit" herein and where the funds within this deposit are insufficient to cover the actual costs of the restoration, a lien shall be placed against the property for the remaining balance.

I. Miscellaneous Conditions

1. ***The maximum occupancy allowed upon the Rental Agreement of the Vacation Home Rental shall be based upon a ratio of two (2) persons per bedroom plus two additional persons.***

2. Pedestrian and vehicular traffic will be limited to that normally associated with residential districts.
3. The Vacation Home Rental use shall not involve the use of commercial vehicles for the delivery of materials to or from the premises beyond those commercial vehicles normally associated with residential uses nor storage of delivered materials beyond those items which would normally be associated with a residential use of the property.
4. There shall be no outdoor storage of materials or equipment, nor shall merchandise be visible from outside the home.
5. The sale of food or other materials is limited to current guests of the premises where the use is located and not to the general public.
6. The use of utilities and community facilities shall be limited to that normally associated with the use of the property for residential purposes.
7. No signage of any type or nature shall be placed upon the site to identify the property as a Vacation Home Rental or to solicit rental of such residence.
8. Renters shall not operate Off Road Vehicles upon any premises approved for Vacation Home Rental use.

19.54.050 Penalty for Non-Compliance. The Approval Authority may revoke or void any Conditional Use Permit for a Vacation Home Rental use for noncompliance with the conditions set forth within this Chapter and/or under the approved CUP in conformance to the procedures established in Code Section 19.30.110 "Revocation", and shall give notice of such action to the permittee. In lieu of revocation, the Planning Commission, at its sole discretion, may suspend the right to use a property as a Vacation Home Rental use for three (3), six (6) or twelve (12) months, based upon the severity of the violations proven at an advertised revocation hearing in conformance to Code Section 19.30.110 "Revocation".

CEQA Environmental Review

Pursuant to the State Guidelines to Implement the California Environmental Quality Act (CEQA), a study session (such as a community workshop) will have no direct effect upon the environment and is, therefore, exempt from environmental review.

Findings

Although Section 19.22.050 "Findings" of the City's Development Code requires that the Planning Commission make Findings of approval prior to recommending that the City Council approve a Development Code Amendment, the study session is not subject to this requirement.

Approval Process

As no final decisions or recommendations are proposed or will take place at the community study session/workshop, no Reviewing or Approving Authority is at question.

ATTACHMENTS: Attachments are available under separate cover at either the City Clerk's Office or the Community Development Offices.