CITY OF WILDOMAR

# PLANNING COMMISSION

Commission Members

Chairman Robert Devine · Vice-Chairman Harv Dykstra

· Gary Andre · Scott Nowak ·

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REGULAR MEETING

**WEDNESDAY, DECEMBER 2, 2009 AT 7:00 P.M.**

Council Chambers, Wildomar City Hall, 23873 Clinton Keith Road, Wildomar, CA 92595

**PUBLIC COMMENTS:** Prior to the business portion of the agenda, the Planning Commission will receive public comments regarding any agenda items or matters within the jurisdiction of the governing body. This is the only opportunity for public input except for scheduled public hearing items. The Chairperson will separately call for testimony at the time of each public hearing. If you wish to speak, please complete a "Public Speaker/Comment Card" available at the door. The completed form is to be submitted to the Chairperson prior to an individual being heard. Lengthy testimony should be presented to the Planning Commission in writing (8 copies) and only pertinent points presented orally. The time limit established for public comments is three minutes per speaker or less if a large number of requests are received on a particular item.

## AGENDA

## 1.0 CALL TO ORDER

1.1 Roll Call

1.2 Pledge of Allegiance

**2.0 PUBLIC COMMENT:** *Members of the audience may comment on matters that are not included on the agenda. Each person will be allowed three (3) minutes or less if a large number of requests are received on a particular item. No action may be taken on a matter raised under "public comment" until the matter has been specifically included on an agenda as an action item.*

## 3.0 CONSENT ITEMS:

**3.1** October 21, 2009 Regular Meeting Minutes.

**3.2** November 4, 2009 Regular Meeting Minutes.

**3.3** Diversified Landscape Company Almond Street Nursery Resolution
RECOMMENDATION: Approve the Resolution entitled:

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF WILDOMAR RECOMMENDING THAT THE CITY COUNCIL ADOPT A RESOLUTION ENTITLED "A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF WILDOMAR APPROVING CONDITIONAL USE PERMIT 09-0265 TO ALLOW FOR A 5,280 SQUARE FOOT MODULAR BUILDING AND OUTDOOR WHOLESALE NURSERY ON A 1.54 ACRE SITE LOCATED ON THE NORTHWEST CORNER OF ALMOND STREET AND BUNDY CANYON ROAD AS ASSESSOR'S PARCEL NO. 366-210-052

**4.0 CONTINUED PUBLIC HEARING ITEMS:** The Planning Commission will review the proposed request, receive public input and consider action for the following items:

None.

**5.0 PUBLIC HEARING ITEMS:** The Planning Commission will review the proposed request, receive public input and consider action for the following items:

None.

**6.0 GENERAL BUSINESS ITEMS:**

**6.1** Zoning Ordinance Modification – Second Dwelling Units.

**6.2** Zoning Ordinance Modification – Trailer and Boat Storage, Mini Warehouses.

**7.0 ADMINISTRATIVE HEARINGS REPORT:**

None.

**8.0 PLANNING DIRECTOR'S REPORT:** This item is reserved for the Planning Director to comment or report on items not on the agenda. No action will be taken.

**9.0 PLANNING COMMISSION COMMENTS:** This portion of the agenda is reserved for Planning Commission business, for the Planning Commission to make comments on items not on the agenda, and/or for the Planning Commission to request information from staff.

**10.0 ADJOURNMENT**

The next scheduled Regular Meeting of the City of Wildomar Planning Commission is December 16, 2009 at 7:00 P.M.

**RIGHT TO APPEAL:** Any decision of the Planning Commission may be appealed to the City Council within ten (10) calendar days after the date of Planning Commission's action.

**REPORTS:** All agenda items and reports are available for review at Wildomar City Hall, 23873 Clinton Keith Road, Suite 201, Wildomar, California 92595. Any writings or documents provided to a majority of the Planning Commission regarding any item on this agenda (other than writings legally exempt from public disclosure) will be made available for public inspection at City Hall during regular business hours. If you

wish to be added to the regular mailing list to receive a copy of the agenda, a request must be made through the Planning Department in writing or by e-mail.

**PUBLIC COMMENTS:** Prior to the business portion of the agenda, the Planning Commission will receive public comments regarding any agenda items or matters within the jurisdiction of the governing body. This is the only opportunity for public input except for scheduled public hearing items. The Chairperson will separately call for testimony at the time of each public hearing. If you wish to speak, please complete a "Public Speaker/Comment Card" available at the door. The completed form is to be submitted to the Chairperson prior to an individual being heard. Lengthy testimony should be presented to the Planning Commission in writing (8 copies) and only pertinent points presented orally. The time limit established for public comments is three minutes per speaker.

**ADDITIONS/DELETIONS:** Items of business may be added to the agenda upon a motion adopted by a minimum 2/3 vote finding that there is a need to take immediate action and that the need for action came to the attention of the City subsequent to the agenda being posted. Items may be deleted from the agenda upon request of staff or upon action of the Planning Commission.

**ADA COMPLIANCE:** If requested, the agenda and backup materials will be made available in appropriate alternative formats to persons with a disability, as required by Section 202 of the Americans With Disabilities Act of 1990 (42 U.S.C. Sec. 12132), and the federal rules and regulations adopted in implementation thereof. Any person who requires a disability-related modification or accommodation, including auxiliary aids or services, in order to participate in the public meeting may request such modification, accommodation, aid or service by contacting the Planning Department either in person or by telephone at (951) 667-7751, no later than 10:00 A.M. on the day preceding the scheduled meeting.

**POSTING STATEMENT:** On November 25, 2009, a true and correct copy of this agenda was posted at the three designated posting places: Wildomar City Hall, 23873 Clinton Keith Road; U. S. Post Office, 21392 Palomar Street; and the Mission Trail Library, 34303 Mission Trail Blvd.

**REGULAR MEETING**
**CITY OF WILDOMAR**
**PLANNING COMMISSION**
**October 21, 2009**

## 1.0 CALL TO ORDER

The regular meeting of the Wildomar Planning Commission was called to order by Planning Commission Chairman Devine at 7:00 P.M. at Wildomar City Hall, Council Chambers.

1.1 ROLL CALL OF PLANNING COMMISSION

Present: Robert Devine, Chairman
Gary Andre, Commissioner
Scott Nowak, Commissioner
Miguel Casillas, Commissioner

Absent: Harv Dykstra, Vice-Chairman

Staff Present: David Hogan, Planning Director
Thomas Jex, Assistant City Attorney
Jon Crawford, Supervising Engineer
Sean del Solar, Planner

1.2 PLEDGE OF ALLEGIANCE:

Chairman Devine led the flag salute.

## 2.0 COMMUNICATIONS FROM THE PUBLIC:

None.

## 3.0 APPROVAL OF MINUTES:

None.

## 4.0 CONTINUED PUBLIC HEARING ITEMS:

None.

## 5.0 PUBLIC HEARING ITEMS:

5.1 TENTATIVE PARCEL MAP 35963 AND PLOT PLAN 09-0280
Applicant: Property Rehab Services, LLc.

| | |
|---|---|
| Location: | South of Corydon Street, east of Bryant Street and west of Melinda Lane (APN: 370-340-001). |
| Proposals: | The project proposes the construction of a 72,103 square foot enclosed Boat and RV storage facility on a 3.61 acre site. |
| Environmental Action: | In accordance with the California Environmental Quality Act (CEQA), a Mitigated Negative Declaration has been recommended for adoption. |

Planner del Solar made the Staff Report.

Chairman Devine inquired about drainage from neighboring residential properties to the south which flow across the project site.

Planner del Solar responded that the drainage in question would be accepted in the same position it currently flows into the property from and would be conveyed easterly in a landscaped area ultimately being discharged on Melinda Lane and Corydon Street.

Chairman Devine opened the Public Hearing.

Applicant Larry Markham addressed the Commission.

Chairman Devine asked the applicant if he had received and reviewed the Conditions of Approval, including the errata sheet.

Applicant Markham indicated that they had received the Conditions of Approval and the errata sheet and agreed to all the terms. Applicant Markham then discussed the project.

Chairman Devine asked about the drainage from the residential properties to the south.

Applicant Markham responded that the swale along the south side of the property was oversized so that it could accommodate all the water from Bryant Street.

Commissioner Andre asked if the Applicant was aware that the drainage entering the project site from the south flowed across a septic leech field.

Applicant Markham responded that the conditions described were tributary upstream situations.

Commissioner Andre referenced photos he obtained from a resident and then discussed the site conditions when there is water runoff present. He then asked if the Riverside County Economic Development Agency had reviewed the project.

Applicant Markham responded in the affirmative.

Commissioner Andre continued to discuss local conditions on Bryant Street when storm events occur. He then clarified that the issue was that the runoff coming from the south was polluted from the residential septic systems along Bryant Street.

Applicant Markham responded that the project has been conditioned to accept the flows and convey them across the site and discharge them at a safe location.

Commissioner Andre accepted Mr. Markham's response then stated that there are septic systems to the south of the project site and that the water currently drained onto the vacant land of the project site.

Applicant Markham responded that the water currently flows across the property, ultimately ending up at the intersection of Melinda Lane and Corydon Street. At that point, it flows easterly under Melinda Lane onto the Dairy and then northerly under Corydon into the Lake Elsinore back-bay area.

Chairman Devine inquired about the General Plan Land Use Designation and Zoning.

Planning Director Hogan responded that the proposed use was both consistent with the Light Industrial General Plan Land Use Designation and the current Commercial Zoning. Director Hogan continued that alternative industrial zoning would allow the use provided a Plot Plan application was approved, noting that the two approval processes were the same.

Applicant Markham added that the application for the project was filed prior to the County's General Plan update process. He went on to explain that the applicant did not object to the change in the General Plan because the proposed project was consistent with both the General Plan Land Use Designations of commercial and industrial.

Chairman Devine asked for confirmation that the project was consistent with the Light Industrial General Plan Land Use Designation.

Director Hogan responded in the affirmative.

Commissioner Andre asked if vines would be added to the exterior of the building to prevent graffiti.

Applicant Markham responded in the affirmative and discussed the plants that would be used.

Commissioner Andre stated that there was another wall with ivy in the city that is often vandalized with graffiti.

Applicant Markham reminded the Commission that a caretaker would live on the premises 24 hours which will also act as a deterrent.

Commissioner Nowak inquired about the fence separating the project from the residential homes to the south.

Applicant Markham indicated that the fence was a tubular steel and pilaster fence. It was selected to allow drainage to flow through and to prevent graffiti from occurring.

Commissioner Nowak asked the applicant for confirmation that the landscaped area would also convey drainage.

Applicant Markham responded in the affirmative.

Chairman Devine asked about the street improvements.

Applicant Markham discussed the street improvements the project would provide.

Commissioner Nowak asked about the potential of the landscaping on the southern swale preventing the free flow of drainage.

Applicant Markham responded that the landscaping was factored into the coefficient on the calculations for the swale.

Chairman Devine asked about erosion of the swale.

Applicant Markham responded that the runoff was not of significant velocity to pose an erosion hazard to the swale.

Commissioner Andre asked how water in the swale would be prevented from impacting the building.

Applicant Markham responded that the swale was far enough away from the building that it would not pose a risk and then he described the water's flow pattern to Melinda Lane.

Commissioner Nowak asked if the design was based on 10 and 100 year storm events.

Applicant Markham responded in the affirmative.

Commissioner Andre asked about improvements to Melinda Lane and their relationship to the creek on the other side of the street.

Applicant Markham explained that the improvements to Melinda Lane would not impact the existing drainage on the other side of the street.

Commissioner Andre stated that the creek flowed at 775 cfs.

Applicant Markham responded that he was unaware of the flow as it was offsite and was not tributary to the project site.

Commissioner Andre expressed concern that the road could be eroded by the water draining towards the lake.

Applicant Markham responded that the existing 18 inch pipes conveying water under the road may need to be upsized and discussion about drainage ensued.

Chairman Devine inquired about the change in elevation from the development of the site.

Applicant Markham explained that the project would slope towards the north easterly corner of the site, similar to the existing slope of the property.

John Maher expressed concerns about the water flow which crossed his property on Bryant Street and entered the project site from the south. He also explained that if the drainage is blocked, it could back-up on their property and cause their septic system to fail.

Chairman Devine asked if the Applicant's explanation of the water flow satisfied his concerns.

Mr. Maher responded in the affirmative. He went on to ask what was being done to prevent graffiti from occurring on the south facing wall of the project. He concluded by asking about possible noise and lighting from the proposed project.

Applicant Markham responded that the project would improve the drainage and prevent impacts to Mr. Maher's septic system from standing water. He went on to explain that the southern side of the property would be fenced to prevent trespassing and that no lighting was proposed to shine into the homes to the south. Mr. Markham indicated that while tenants would have access to their storage units 24 hours, they

could include CC&R's that discourage excessive noise in the evening. Mr. Markham went on to discuss the project positively.

Commissioner Andre asked if the project was originally proposed for another location.

Applicant Markham responded that he was unaware if that had occurred.

Chairman Devine asked about another RV Storage facility near Clinton Keith.

Director Hogan responded that there was an approved project off Jana Lane, south of Clinton Keith.

Esam Nadrous expressed his support for the project because of the street improvements it would bring to the area.

Chairman Devine closed the Public Hearing.

Commissioner Andre expressed his concern with the potential for the drainage to flow across the residential septic systems in the south. Mr. Andre recalled that the area surrounding the project has been known as 'The Swamp' and described flooding that had occurred in the past. He added that he had contacted the EDA and that they could potentially address some of the area flooding issues. Mr. Andre then asked the City Engineer for comments.

Engineer Crawford responded that the City Manager directed Staff to look into projects needed in the Redevelopment Area. He indicated that drainage was one of the projects Staff was looking into and discussed the drainage problems in the area. Mr. Crawford also noted that Staff was looking at sanitary sewer projects that would take homes off septic systems, as new State requirements may require the connection to sanitary sewer systems.

Commissioner Nowak asked questions about the sewer infrastructure the project would install.

Applicant Markham discussed the project's infrastructure improvements.

Engineer Crawford added that the project would extend the sewer southward down Bryant Street from Corydon Street. Discussion about the sewer infrastructure ensued.

Chairman Devine asked if the RV dump station was accessible to the public.

Applicant Markham responded that it was not.

Commissioner Nowak expressed displeasure with the design of the Bryant Street and southern facing elevations of the project.

Director Hogan stated that project landscaping would also enhance the elevations. He added that the Commission could create a Condition which would require the applicant to enhance the appearance of the project. Mr. Hogan then discussed several design elements which could improve the appearance of the project.

Commissioner Nowak suggested the use of shed roof corbels and the use of flat roof tiles would enhance the appearance of the proposed project.

Director Hogan asked about color preferences.

Commissioner Nowak indicated that grays and earth tones would be acceptable.

Commissioner Andre excused himself and indicated that he had to attend a County meeting. Mr. Andre then left the Council Chambers.

Director Hogan then summarized Commissioner Nowak's preferences as using shed roofs with shake tiles and the use grays and earth tones.

Commissioner Nowak added that he was looking for architectural variety.

Director Hogan suggested that the motion maker include a condition of approval stating that prior to the issuance of Building Permits, the applicant shall submit to the Planning Director for approval revised elevations of the Corydon Street building elevation. The elevations must enhance the appearance of the building and utilize elements such as shed roofs, roof tiles, and earth tone colors.

Assistant City Attorney Jex asked the applicant if they were agreeable to the condition.

Applicant Markham indicated that he accepted the condition and would be happy to work with Staff.

Commissioner Nowak asked if there was a way to address potential engine noises from the site.

Director Hogan responded that limiting the noises from the project was possible. Discussion about noises from the use of the site ensued.

Applicant Markham added that the facility had been designed to block any noises originating from the site from affecting the surrounding properties. He indicated that the noises wouldn't be problematic.

Chairman Devine suggested that the motion maker consider a condition of approval requiring CC&R's to limit noises.

Director Hogan summarized the Commission's direction to prohibit vehicle maintenance during the hours of 9PM to 8AM and for the applicant to provide design enhancements to the façade.

MOTION: Commissioner Casillas motioned to approve resolution PC09-027 adopting Mitigated Negative Declaration number 09-0280. The motion was seconded by Commissioner Nowak. Motion carried, the following vote resulted:

AYES: Devine, Nowak and Casillas.
NOES:
ABSENT: Dykstra, and Andre
ABSTAIN:

MOTION: Commissioner Nowak motioned to approve resolution PC09-028 adopting Tentative Tract Map number 35963 (09-0280) as amended with the errata sheet. The motion was seconded by Commissioner Casillas. Motion carried, the following vote resulted:

AYES: Devine, Nowak and Casillas.
NOES:
ABSENT: Dykstra, and Andre
ABSTAIN:

MOTION: Commissioner Nowak motioned to approve resolution PC09-029 adopting Plot Plan number 09-0280 as amended with the errata sheet and adding conditions for architectural enhancements for the building side facing Corydon Street as the Director previously described as well as the addition of CC&Rs that limited noises and lighting from the site during the hours of 9PM to 8AM. The motion was seconded by Commissioner Casillas. Motion carried, the following vote resulted:

AYES: Devine, Nowak and Casillas.
NOES:
ABSENT: Dykstra, and Andre
ABSTAIN:

**6.0 GENERAL BUSINESS ITEMS:**

None.

**7.0 ADMINISTRATIVE HEARINGS REPORT:**

None.

**8.0 PLANNING DIRECTOR'S REPORT:**

Director Hogan announced the new 4-10 schedule for City Hall and that the November 18th Planning Commission Meeting would be cancelled. He added that the Second Unit Permit issue would return to the Commission on November 4th as a discussion item.

Commissioner Nowak asked if it would be a Public Hearing.

Director Hogan responded that it would not be a Public Hearing item and that no decision would be made but the Commission would be providing direction to Staff on the issue and how to approach an ordinance.

Commissioner Nowak asked if the Council would be involved.

Director Hogan responded that it would ultimately be decided by the City Council and discussed the Ordinance process.

Commissioner Nowak asked if the process would be similar to one establishing design guidelines.

Director Hogan explained the differences and discussion about design guidelines ensued.

Chairman Devine expressed an interest in seeing industrial properties in the community developed fully to generate tax dollars for the City.

Director Hogan agreed with the Chairman and shared his concerns.

Commissioner Nowak noted that there were a significant number of personal storage facilities throughout the City and that they were not an ideal use.

Director Hogan understood the Commission's Concerns and discussed some possible methods to discourage the uses and discussion ensued.

Assistant City Attorney Jex clarified that the Commission can make a policy recommendation to the City Council to consider for adoption.

Director Hogan added that if the consensus of the Commission was to investigate this issue further staff could put together a report for the Commission to discuss the issue.

Chairman Devine stated that he felt the two Commissioners not present would also want to contribute to the discussion.

Attorney Jex suggested that the Commission consider the issue as a discussion item.

The Commission agreed and suggested that the item be added to the next agenda.

**9.0 PLANNING COMMISSION COMMENTS:**

Commissioner Casillas announced that he had purchased a home outside of Wildomar and would have to step down from the Commission.

**10.0 ADJOURNMENT:**

The October 21, 2009 regular meeting of the Wildomar Planning Commission adjourned at 10:38 P.M.

Respectfully submitted:

David Hogan
Commission Secretary

**REGULAR MEETING**
**CITY OF WILDOMAR**
**PLANNING COMMISSION**
**November 4, 2009**

## 1.0 CALL TO ORDER

The regular meeting of the Wildomar Planning Commission was called to order by Planning Commission Chairman Devine at 7:00 P.M. at Wildomar City Hall, Council Chambers.

1.1 ROLL CALL OF PLANNING COMMISSION

Present: Robert Devine, Chairman
Harv Dykstra, Vice-Chairman
Gary Andre, Commissioner
Scott Nowak, Commissioner
Miguel Casillas, Commissioner

Absent:

Staff Present: David Hogan, Planning Director
Thomas Jex, Assistant City Attorney
Jon Crawford, Supervising Engineer
Alia Kanani, Planner
Sean del Solar, Planner

1.2 PLEDGE OF ALLEGIANCE:

Chairman Devine led the flag salute.

## 2.0 COMMUNICATIONS FROM THE PUBLIC:

None.

## 3.0 APPROVAL OF MINUTES:

Commissioner Casillas moved to approve the Minutes of September 16, 2009. The motion was seconded by Commissioner Andre. Motion carried, the following vote resulted:

AYES: Devine, Dykstra, Nowak, Casillas, and Andre.
NOES:
ABSENT:
ABSTAIN:

Commissioner Nowak moved to approve the Minutes of October 7, 2009. The motion was seconded by Vice-Chairman Dykstra. Motion carried, the following vote resulted:

AYES: Devine, Dykstra, Nowak, and Casillas.
NOES:
ABSENT:
ABSTAIN: Andre

**4.0 CONTINUED PUBLIC HEARING ITEMS:**

4.1 CONDITIONAL USE PERMIT 09-0265

| | |
|---|---|
| Applicant: | MDMG Inc. for Morales Enterprises |
| Location: | Northwest corner of Bundy Canyon Road and Almond Street (APN: 366-210-052). |
| Proposals: | The project proposes the construction and operation of a 5,280 square foot office and associated nursery facility on a 1.54 acre site. |
| Environmental Action: | In accordance with the California Environmental Quality Act (CEQA), a Mitigated Negative Declaration has been recommended for adoption. |

Planner Kanani made the Staff Report.

Assistant Attorney Jex added information about the amortization period conditions of approval for the project.

Planner Kanani then concluded by discussing changes made to the plot plan to address some concerns raised during the October 21st Public Hearing.

Commissioner Nowak asked what reasons would be required to revoke the Conditional Use Permit.

Attorney Jex responded that revocation of the permit could be based upon any violation of the conditions of approval or violation of City Code. He then noted that one of the conditions of approval for the project would be that the use will be considered a nuisance if it was continued past a certain period of time.

Commissioner Andre asked how long it would take to remove the use after it had been determined to be a nuisance.

Attorney Jex responded that a Public Hearing would need to be held, a decision would need to be made, an appeal period would need to occur, and litigation could occur after that point.

Commissioner Andre then noted it could go on for years.

Attorney Jex responded in the affirmative, explaining that the applicant was entitled to due process.

Chairman Devine asked what would occur if the applicant was not financially able to remove the structures when the use expires.

Attorney Jex described the City's abatement process and the resulting lean which could recover costs when the property was sold.

Commissioner Andre read section 17.72.020(E)(1) of the Municipal Code and then asked about the distance of the trash bins to the property line.

Planning Director Hogan explained that the section of the Municipal Code referenced was not applicable to the project.

Commissioner Andre responded by stressing that the use must be compatible with community and noted there was not sufficient information about the materials or scope of business which would occur at the site.

Director Hogan suggested that Commissioner Andre direct the operational questions to the Applicant whom could provide accurate information on the scope of the business.

Chairman Devine opened the Public Hearing.

Applicant Larry Markham stated that they were in support of the Conditions of Approval that created the amortization period for the project. He then discussed the changes to the plot plan that were made to address the Commission's concerns expressed during the last Commission Meeting. Mr. Markham explained that the property could develop sooner with a more permanent project if the market improved, but stated that the seven year amortization period outlined in the conditions of approval would be ideal. He added that the project would be compliant with the City's noise ordinance and would be consistent with the zoning.

Commissioner Andre asked about street improvements near the intersection of Almond Street and Bundy Canyon Road.

Applicant Markham responded that improvements would be done in accordance with the City Standards and to the satisfaction of the Public Works Department.

Commissioner Andre discussed the location of the trails near the project site.

Commissioner Nowak disagreed with a statement by the applicant that market conditions would not support a permanent project.

Applicant Markham clarified his statement and discussed potential future development of the site.

Chairman Devine stated that he was still unclear about the exact use of the site. He then asked for clarification on the scope of operations to occur at the site.

Applicant Markham responded that it would be an office with a display area of materials which could be used for construction. He went on to state that the proposed use would be in compliance with the zoning code which allows both office and nursery uses.

Chairman Devine stated that the business was existing and asked about Staff's reference in the report to "start-up" time.

Director Hogan responded that the "start-up" time referenced by Staff referred to the construction time required to establish the site.

Applicant Markham added that the material bins were setback 5 feet from the property line.

Commissioner Andre asked about the contents of the bins.

Applicant and Property Owner Paul Morales responded that the bins would contain materials needed for display purposes. Mr. Morales explained that the operation of the business was limited to administrative uses and that materials would not be stockpiled at the site, trucks would not be dispatched from the site and that the site would be used for administrative offices.

Commissioner Andre stated that the site plan shows two dumpsters which would create a greater capacity for waste disposal than the stated operations would generate.

Applicant Morales offered to reduce the number of dumpsters at the site.

Commissioner Andre added that it was not only the dumpsters but also the material bins are a cause for concern.

Applicant Morales offered to modify the design of the material bins.

Commissioner Andre then expressed his displeasure with the project and stated that he did not feel the project was consistent with commercial zoning. He then inquired about the taxable revenue produced from the completed project and again questioned the inclusion of multiple dumpsters at the site.

Applicant Morales responded that it may have been overdesigned and that they would be happy to reduce the number of dumpsters at the site and clarified that it was not a corporation yard and that company trucks would not be reporting to the project site to dump materials.

Commissioner Andre asked if a study had been conducted to determine what taxable sales would be conducted at the site.

Applicant Morales responded that the proposed use would bring a number of employees and customers to the community and that they would contribute to, and support the local economy. He added that if left undeveloped, the single residential unit at the site would continue to be rented and that none of the benefits of developing the project would occur.

Commissioner Andre affirmed the importance of developing the City's tax base and asked about the inclusion of a retention basin on an adjacent parcel.

Applicant Markham responded that Mr. Morales owns all three sites and that he could place the retention basin at that location.

Commissioner Andre disagreed.

Applicant Markham responded that the parcels had been tied together with a blanket easement across all three parcels and that when the site was completely developed at a later date, the basin would be undergrounded in the parking lot of a future project.

Commissioner Andre stated that his issue was that the proposed project would not produce taxable revenue for the City.

Applicant Markham responded that there was no requirement for projects to generate sales tax revenue for the City and that the application before the Commission was a land use request.

Commissioner Andre again stated the importance of commercial properties to generate taxable revenue for the City.

Applicant Markham responded that there was not a requirement in the zoning code for projects to create taxable revenue for the City.

Commissioner Andre added that he felt the area was saturated with nurseries.

Applicant Markham responded that nurseries were a permitted use in the General Commercial Zone.

Commissioner Andre stated that the project was not a nursery.

Chairman Devine asked for public comment.

Gina Castanon stated her opposition to the project and added that she was the owner of one of the nurseries referenced by Commissioner Andre. She explained that she felt the project did not fit within the vision of Wildomar and urged the Commission to deny the project.

Richard Garcia read from a letter he submitted to the Commission in opposition of the proposed project. He concluded his remarks by emphasizing that the access for the project should be from Bundy Canyon Road.

Elisa Sundberg expressed concern with traffic from the proposed project and the crossing of students from the High School.

Lynn Sundberg stated that the community had an excess number of nurseries and that there was already too much traffic in the area. He added that the project would jeopardize the safety of students using Almond Street.

Rosalie Arniso expressed her opposition of the project.

Daniel Segura expressed concerns with traffic in the area and with the conversion of residential properties to commercial.

Applicant Broker Neil Cleveland reminded the commission that the project was consistent with the General Plan. He also reiterated the current economic conditions which made a permanent project at the site impossible. He also explained that the proposed amortization period has been effective in other communities and would be an effective tool to remove the project should it become a nuisance in the future.

Applicant Markham discussed the improvements to Almond Street which would include street lights, sidewalks, curbs and gutters. Mr. Markham responded to comments that the project would adversely affect the safety of students by explaining that the project would bring street improvements to Almond Street which would enhance the safety of

students walking to school. He also stated that they would monitor traffic from the project and if necessary, install traffic control devices, including a traffic light if necessary. Applicant Markham went on to explain that the ultimate project would be able to gain access from Bundy Canyon, however the interim project could not have access to Bundy Canyon because of the improvements the Public Works Department would require were too costly for the proposed project.

Chairman Devine closed the public hearing.

Chairman Devine asked for additional information on the factors preventing access to Bundy Canyon Road.

Applicant Markham discussed the presence of substantial underground infrastructure and the need to acquire right-of-way from adjacent property owners to construct the roadway transitions.

Vice-chairman Dykstra inquired about the approval process for the Conditional Use Permit.

Attorney Jex responded that because the project included a change of zone, the associated applications were elevated to the City Council for a final action and that the Planning Commission's actions were advisory. He then advised that should the Commission not wish to approve the project, their recommendation of denial would need to fail to make certain findings.

Chairman Devine asked for more information on the findings.

Attorney Jex noted that the findings were on page 11 of his report and discussion about how to deny the project ensued.

Commissioner Andre then read a statement about Conditional Use Permits concluding that the proposed project was not in the benefit of the community. He explained that the project had material storage areas and that semi trucks would deliver the materials to the site. He then asked about the size of the material storage bins.

Chairman Devine re-opened the public hearing.

Applicant Markham responded that the bins would be temporary and able to be easily removed from the site. He added that they were setback from the property line and were about seven feet in height.

Commissioner Andre pointed out that next to the material bins was a loading area.

Applicant Markham responded that the loading area was required by the zoning code.

Commissioner Andre again stated that there were too many dumpsters at the site for the stated use.

Applicant Markham responded that they were willing to reduce the size of the dumpsters to the Commission's desire.

Commissioner Andre stated that he also considered the benefits of a project to the community and explained that he did not see the benefits to the community for this project.

Chairman Devine closed the public hearing.

Commissioner Nowak expressed pleasure with the applicant's efforts to work with Staff to develop a time limit for the project but suggested that the time limit on the use was still problematic. He went on to describe displeasure that the current project did not work towards a more permanent use of the site.

Vice-Chairman Dykstra recognized the current economic problems and described the benefits to the community of approving the project. He went on to express his support for the project.

Commissioner Nowak suggested that the applicant develop a project that worked towards a permanent use of the site.

Commissioner Casillas stated that he would prefer having the main access to the project from Bundy Canyon Road.

Chairman Devine expressed reservations about the project's temporary nature and design. He also stated that he felt the project was misrepresented as a wholesale nursery but felt that the traffic concerns were unfounded as the project would not generate a high volume of trips.

Chairman Devine re-opened the public hearing.

Applicant Markham offered to reduce the amortization period for the project to 5 years and post securities for the removal of the proposed project from the site. He also stated that they would work closely with the Public Works Department to monitor and install any traffic control devices at the intersection of Almond Street and Bundy Canyon Road.

Chairman Devine closed the public hearing.

MOTION: Commissioner Andre motioned to continue Conditional Use Permit 09-0265 so that issues about dumpsters and material bins could be addressed.

Chairman Devine stated that there was a potential to expose the City to litigation when the amortization period ends and that changing the term from 7 to 5 years does not correct that problem.

Attorney Jex added that the applicant has also offered to post a bond for the removal of the project at the time of the expiration of the amortization term.

Chairman Devine recognized the motion on the floor and asked if there was a second.

The motion was not seconded and failed.

MOTION: Vice-Chairman Dykstra motioned to recommend approve of Conditional Use Permit 09-0265 to the City Council with the additional conditions that the amortization term of the use be 5 years and that the applicant post a bond for the removal of the site. The motion was seconded by Commissioner Nowak. Motion failed with the following vote:

| | |
|---|---|
| AYES: | Dykstra, and Nowak. |
| NOES: | Andre, Devine, and Casillas. |
| ABSENT: | |
| ABSTAIN: | |

Attorney Jex clarified that the Commission would need to agree on an action for the project.

Chairman Devine expressed a reluctance to complicate the project with an amortization period and again questioned the classification of the use as a wholesale nursery.

Chairman Devine re-opened the public hearing.

Applicant Markham clarified that the site was going to be used as an administrative office and offered to remove all nursery elements from the project.

Chairman Devine stated that traffic appeared to be the community's primary concern with the project and asked what peak commute times and volumes were expected.

Applicant Markham responded that the facility would have 12 employees and that they would arrive between 7 to 9 AM and depart by 5 PM.

Commissioner Andre asked about the proposed foundation system for the project.

Applicant Architect Russell Rumansosf explained that the modular buildings had steel frames which were designed to be on the proposed foundation system.

Chairman Devine closed the public hearing.

Director Hogan suggested that the Commission consider the offer proposed by the applicant, since it appeared to potentially address the concerns of the Commission.

Chairman Devine asked for consensus.

Commissioner Andre asked how the project would be developed as a result of the proposed changes.

Chairman Devine re-opened the public hearing.

Applicant Markham responded that the back half of the site could be landscaped and further discussed about the modifications ensued.

Attorney Jex and Director Hogan advised to re-hear public comments on the project.

Richard Garcia stated that the neighborhood's primary concern was that the project would still gain access from Almond Street and not from Bundy Canyon Road.

Chairman Devine asked why the project could not take access from Bundy Canyon.

Supervising Engineer Crawford responded that the project site was on Almond Street and that if access was gained from Bundy Canyon Road the sidewalks proposed on Almond Street and the additional right-turn lane would be lost because there would no longer be a nexus to require the improvements. He went on to explain that until Bundy Canyon was fully improved, additional access points onto Bundy Canyon were to be avoided.

Chairman Devine asked if it would be possible to gain access from Bundy Canyon Road on a temporary basis.

Engineer Crawford responded that it was the City's preference for the project to provide improvements to Almond Street explaining that it was designated as a collector street and had been designed to accommodate higher volumes of traffic.

Resident Veronica Ruiz expressed her preference for the project to gain access from Bundy Canyon Road and asked about the customer traffic.

Chairman Devine explained that the nursery or customer generating component of the project was now no longer a part of the project.

Ms. Ruiz explained that her preference was for the project to gain access from Bundy Canyon and have a wall along Almond Street.

Gina Castanon recalled that during incorporation there was unhappiness with the General Plan Land Use Map and implied that the proposed project would make the situation worse. She added that the City needed to develop commercial properties so that they could generate sales tax revenue. She then stated that the vote to approve the project did not pass and that the item had thus been denied.

Chairman Devine clarified that while there was a motion to approve the project which failed, there had been no action taken to deny the project.

Daniel Segura expressed his concerns that if approved, the business could expand. He went on to encourage the Commission to deny the project.

Director Hogan clarified that if approved, the project would be limited in scope to the plans and statement of operations currently before the Commission. If the business was to expand significantly, or construct new facilities, an additional approval by the Commission would be required.

Chairman Devine closed the public hearing.

Vice-Chairman Dykstra stated that the City did not have the funds to improve streets and that if improvements were to be made, they would come from developers. He went on to explain that the infrastructural improvements the project would bring to Almond Street would be valuable.

MOTION: Vice-Chairman Dykstra motioned to recommend approve of Conditional Use Permit 09-0265 to the City Council with the additional conditions that the amortization term of the use be 5 years, that the applicant post a bond for the removal of the project and that the nursery elements of the project be removed from the plans. The motion was seconded by Commissioner Nowak.

Commissioner Nowak commented that without the nursery component there would be vacant land which would look much worse than a nursery, but he would accept the proposal from the developer to remove those elements.

Motion failed with the following vote:

AYES: Dykstra, and Nowak.

NOES: Andre, Devine, and Casillas.
ABSENT:
ABSTAIN:

Attorney Jex asked the Commission if there was a motion to deny the project.

MOTION: Commissioner Andre motioned to recommend denial of Conditional Use Permit 09-0265 to the City Council because the proposed project would be detrimental to the health, safety and welfare of the community. The motion was seconded by Commissioner Casillas. Motion carried, the following vote resulted:

AYES: Andre, Devine, and Casillas.
NOES: Dykstra, and Nowak.
ABSENT:
ABSTAIN:

Commissioner Andre excused himself from the meeting and left the chambers.

**5.0 PUBLIC HEARING ITEMS:**

None.

**6.0 GENERAL BUSINESS ITEMS:**

MOTION: Commissioner Nowak motioned to continue items 6.1 and 6.2 to the December 2, 2009 Commission Meeting. The motion was seconded by Vice-Chairman Dykstra. Motion carried, the following vote resulted:

AYES: Devine, Dykstra, Casillas, and Nowak.
NOES:
ABSENT: Andre.
ABSTAIN:

**7.0 ADMINISTRATIVE HEARINGS REPORT:**

None.

**8.0 PLANNING DIRECTOR'S REPORT:**

Director Hogan announced that City Hall was now closed on Fridays. He also noted that it appeared that on December 17th, there would be a joint Commission-Council norming session in the evening.

Engineer Crawford added that the environmental document for the Clinton Keith widening was available at City Hall and that the project included area which could be developed into bicycle lanes.

**9.0 PLANNING COMMISSION COMMENTS:**

Vice-Chairman Dykstra expressed disappointment with the Commission's decision to deny Conditional Use Permit 09-0265.

Commissioner Casillas thanked the Commission and Staff for their support during his tenure as a Commissioner.

Director Hogan added that it had been a pleasure working with Commissioner Casillas and the Commission agreed.

Chairman Devine noted that he was reluctant to approve the project because it would expose the City to litigation, cause traffic problems and could potentially be in existence longer than the amortization period.

**10.0 ADJOURNMENT:**

The November 4th, 2009 regular meeting of the Wildomar Planning Commission adjourned at 9:15 P.M.

Respectfully submitted:

David Hogan
Commission Secretary

**CITY OF WILDOMAR – PLANNING COMMISSION**
**Agenda Item 3.3**
**CONSENT ITEMS**
**Meeting Date: December 2, 2009**

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**TO:** Chairman Devine, Members of the Planning Commission

**FROM:** Alia Kanani, Planner

**SUBJECT:** DLC Almond Office

**Conditional Use Permit 09-0265** – The project proposes to locate a 5,280 square foot modular building and outdoor wholesale nursery on a 1.54 acre site on the northwest corner of Almond Street and Bundy Canyon Road in Wildomar, California.

APN: 366-210-052

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It is recommended that the Planning Commission:

1. Adopt a resolution entitled:

**"A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF WILDOMAR RECOMMENDING THAT THE CITY COUNCIL DENY CONDITIONAL USE PERMIT 09-0265 TO ALLOW FOR THE CONSTRUCTION AND OPERATION OF A 5,280 SQUARE FOOT MODULAR BUILDING AND OUTDOOR WHOLESALE NURSERY ON A 1.54 ACRE SITE LOCATED ON THE NORTHWEST CORNER OF ALMOND STREET AND BUNDY CANYON ROAD AS ASSESSOR'S PARCEL NO. 366-210-052"**

On November 4, 2009, a continued public hearing was held for Conditional Use Permit 09-0265. During the public hearing residents adjacent to the project site expressed concern for the additional traffic impacts to Almond Street and the surrounding residential neighborhood that would result from implementation of the proposed project. The residents were also concerned that the additional traffic would present safety issues for students that walk to and from Elsinore High School. The Planning Commission discussed the traffic and safety concerns brought forth by the residents. The Planning Commission also discussed the proposed amortization period for the interim operational use of an office/nursery on the site. After a lengthy discussion, the Planning Commission made a motion to recommend denial of Conditional Use Permit

09-0265 to the City Council. The vote on this item was three in favor denial resolution and two opposed to the denial resolution.

The purpose of this item is to finalize the finding associated with the Commission's recommendation to deny the Conditional Use Permit. Staff recommends that the Commission approve the resolution formalizing the denial. Approving the attached resolution does not alter your original vote on the project (which is documented in the final Whereas in the resolution).

Approved by:

_____
David Hogan
Planning Director

**RESOLUTION NO. 09-____**

**A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF WILDOMAR RECOMMENDING THAT THE CITY COUNCIL DENY CONDITIONAL USE PERMIT 09-0265 TO ALLOW FOR THE CONSTRUCTION AND OPERATION OF A 5,280 SQUARE FOOT MODULAR BUILDING AND OUTDOOR WHOLESALE NURSERY ON A 1.54 ACRE SITE LOCATED ON THE NORTHWEST CORNER OF ALMOND STREET AND BUNDY CANYON ROAD AS ASSESSOR'S PARCEL NO. 366-210-052**

**WHEREAS**, an application for a conditional use permit to allow the implementation of a 5,280 square foot modular building and outdoor wholesale nursery on a 1.54 acre site northwest corner of Almond Street and Bundy Canyon Road has been filed by:

Applicant/Owner: Moralez Enterprises

Authorized Agent: Markham Development Management Group, Inc.

Project Location: Northwest Corner of Almond Street and Bundy Canyon Road

APN Number: 366-210-052, 366-210-053 and 366-210-054

**WHEREAS,** the Planning Commission has the authority per Chapter 17.200 of the Wildomar Municipal Code to review and make recommendations to the City Council on Conditional Use Permit 09-0265; and

**WHEREAS,** on September 16, 2009 the City gave public notice by mailing to adjacent property owners and by placing an advertisement in a newspaper local circulation of the holding of a public hearing at which the project would be considered; and

**WHEREAS,** on October 7, 2009 the Planning Commission held the noticed public hearing at which interested persons had an opportunity to testify in support of, or opposition to, the Conditional Use Permit 09-0265 and at which the Planning Commission considered Conditional Use Permit 09-0265; and

**WHEREAS,** at this public hearing on October 7, 2009 the Planning Commission considered, heard public comments on, and recommended approval a of a Mitigated Negative Declaration and Mitigation Monitoring Program for the project by Resolution No. PC09-025; and

**WHEREAS**, following the public hearing the Planning Commission recommended approval of the Mitigated Negative Declaration and Change of Zone 09-0265, and continued the public hearing for Conditional Use Permit 09-0265 to November 4, 2009; and

**WHEREAS,** the Planning Commission conducted a continued public hearing on November 4, 2009, for Conditional Use Permit 09-0265 (a component of Project 09-0265) at which it received public testimony concerning the project; and

**WHEREAS,** at the continued public hearing on November 4, 2009 the Planning Commission considered, heard public comments on, and recommended denial of Conditional

Use Permit 09-0265 (a component of Project 09-0265) with Commissoners Andre, Casillas and Devine voting to recommend denial to the City Council; and Commissioners Dykstra and Nowak voting against the denial resolution.

**NOW THEREFORE,** the Planning Commission of the City of Wildomar does Resolve, Determine, Find and Order as follows:

SECTION 1. ENVIRONMENTAL FINDINGS

The Planning Commission, in light of the whole record before it, including but not limited to, the City's Local CEQA Guidelines and Thresholds of Significance, the recommendation of the Planning Director as provided in the Staff Report dated October 7, 2009 and documents incorporated therein by reference, and any other evidence (within the meaning of Public Resources Code §21080(e) and §21082.2) within the record or provided at the public hearing of this matter, hereby finds and determines as follows:

A. CEQA: The review of this Conditional Use Permit is in compliance with requirements of the California Environmental Quality Act ("CEQA"), in that on October 7, 2009 at a duly noticed public hearing, the Planning Commission recommended approval to the City Council adoption of a Mitigated Negative Declaration reflecting its independent judgment and analysis and documenting that there was not substantial evidence, in light of the whole record, from which it could be fairly argued that the project may have a significant effect on the environment. The documents comprising the City's environmental review for the project are on file and available for public review at Wildomar City Hall, 23873 Clinton Keith Rd., Suite 201, Wildomar, CA 92595.

B. Multiple Species Habitat Conservation Plan (MSHCP). The project is found to be consistent with the MSHCP. The project is located outside of any MSHCP criteria area and mitigation is provided through payment of the MSHCP Mitigation Fee.

SECTION 2. CONDITIONAL USE PERMIT FINDINGS**.**

Pursuant to Wildomar Municipal Code Chapter 17.200 and in light of the record before it including the staff report dated October 7, 2009 and November 4, 2009 and all evidence and testimony heard at the public hearings of this item, the Planning Commission hereby finds as follows:

B. The proposed use will be detrimental to the health, safety, and general welfare of the community.

*The proposed use of the site as a landscape nursery business and office building will exacerbate already poor traffic conditions along Almond Street which will create a health and safety problem for local residents and the children attending the nearby school as well as the school buses which use Almond Street to access Elsinore High School. Almond Street is a designated collector street with a 60 foot right-of-way. Students and school traffic routinely use Almond Street to access Elsinore High School from Waite Street. In addition, Almond Street is utilized by parents as a pick-up and drop-off location for students. The area along Almond Street is primarily a residential area and increased office traffic and truck traffic in connection with the proposed commercial project will be detrimental to the health, safety and welfare of the community because the residents will be subject to increased noise and traffic congestion on residential streets.*

*Furthermore, the landscape nursery business and office building is proposed as a temporary use for the area until the site can be developed with a permanent retail commercial project. Proposing a temporary use is not in the City's best interest and would be detrimental to the general welfare of the community. The temporary use could turn into a permanent use if the future economic climate does not encourage a retail commercial project to be developed on the site in its place. In addition, requiring the applicant to vacate the premises after a certain number of years may create a situation where the City is forced to incur significant expenses in order to enforce that requirement.*

SECTION 3. PLANNING COMMISSION ACTION.

The Planning Commission hereby takes the following actions:

A. Recommend denial to the City Council of Conditional Use Permit 09-0265 for the construction and operation of a 5,280 square foot modular building and outdoor wholesale nursery on a 1.54 acre site northwest corner of Almond Street and Bundy Canyon Road.

Robert Devine
Chairman

**APPROVED AS TO FORM:**

Thomas Jex
Assistant City Attorney

**ATTEST:**

David Hogan
Planning Commission Secretary

**CITY OF WILDOMAR – PLANNING COMMISSION**
**Agenda Item 6.1**
**GENERAL BUSINESS**
**Meeting Date: December 2, 2009**

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**TO:** Members of the Planning Commission

**FROM:** David Hogan, Planning Director

**SUBJECT:** Zoning Ordinance Modification – Second Dwelling Units

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**RECOMMENDATION:**

The Planning Department requests that the Planning Commission provide direction to staff on modifications to the zoning ordinance related to second dwelling units.

**BACKGROUND:**

During the start up process period for the City, staff has identified a number of potential zoning ordinance amendments to make them more appropriate to local conditions. These various suggestions related to streamlining the application completion process, modifying some of the requirements for second dwelling units, clarifying the processing of public use permits, establishing standards for trash enclosures, restricting the use of certain fencing materials, and restricting the use of compact parking spaces. These items were initially discussed by the Planning Commission on August 5, 2009. At that time the Commission made a recommendation on all of the proposed topics except the Second Dwelling Units. The subject of second units was continued to a future meeting.

The Planning Commission's discussion on second dwelling units expressed a wide range of concerns and issues, and included some confusion on the differences between second dwelling units and "granny flats". The concerns and issues focused on the following items: *Property Rights* – the right of reasonable use by the owner; *Density* – density increases and the potential for increases in traffic impacts; *Who Occupies* - the ability for non-family members to occupy the second dwelling unit; and *Unit Size* - that only smaller-sized second dwelling units are appropriate (and a concern that a single wide mobile home should not be useable as a second dwelling unit).

The purpose of this staff report is to provide additional information on second dwelling units to solicit additional guidance from the Commission on this topic. Staff is concerned that requiring one acre may not be reasonable for lots between half an acre and one acre in size. For example, at this time the City has received an application for a second dwelling unit on a lot that is 0.55 acres in size; though staff has concerns about limiting second dwelling units to lots that over three-quarters of an acre and under one acre. Consequently, staff is requesting guidance from the Planning Commission and City Council on this matter. This item was continued from the November 4, 2009 Commission meeting.

While the definitions in state law for a second dwelling unit and granny flat are synonymous, the zoning ordinance does differentiate between the two (though the granny flat option is combined with a special hardship provision). The definitions are as follows.

Second Dwelling Units is defined as a fully functional second house on the same residential lot as the primary residential unit that may be occupied (rented) by anyone.

Senior Citizen ("granny flat") and Hardship Second Units are defined as a second dwelling unit which is intended for the sole occupancy of one or two adults who are sixty (60) years of age or over, or family members, or those persons with special disabilities or handicaps.

**REQUIREMENTS OF STATE LAW:**

A second dwelling unit is defined as a second house on the same residential lot. Section 65852.2 of the State Planning and Zoning Law establish the basic standards by which local governments may regulate second dwelling units in the following areas:

- The City may designate areas where second dwelling units may be permitted [Section 65852.2(a)(1)(A)].
- The City may establish design standards for second dwelling units addressing parking, height, setback, lot coverage, architectural review, and the maximum size of a unit [Section 65852.2(a)(1)(B)].
- The City may provide that the second dwelling units not exceed allowable General Plan density [Section 65852.2(a)(1)(C)].
- The City may **not** create or utilize a discretionary permit process when reviewing second dwelling units [Section 65852.2(a)(3)]. (A discretionary permit routinely requires a public hearing and routinely involves compliance with non-codified requirements or design criteria.)

To further understand the State's expectations about second dwelling units, Section 65852.2 contains second unit requirements for local governments that do not have their own ordinances. While this language does not apply to the city of Wildomar since we have our own adopted ordinance, it does provide insight into the intent of the legislature and how the courts may respond to a lawsuit concerning the City's requirements. According to Subsection (b)(1), a second dwelling unit request (within a jurisdiction that does not have its own ordinance) must be approved if the following criteria are met.

- The second unit is not intended for sale and may be rented.
- The lot must be zoned for single-family or multifamily use.
- The lot must contain an existing single-family dwelling.
- The second unit may be either attached to the existing dwelling and located within the living area of the existing dwelling or detached from the existing dwelling and located on the same lot as the existing dwelling.

- The increased floor area of an attached second unit shall not exceed 30 percent of the existing living area. The total area of floorspace for a detached second unit shall not exceed 1,200 square feet.
- Requirements relating to height, setbacks, lot coverage, architectural review, site plan review, processing fees and charges, and other zoning requirements generally applicable to residential construction in the zone in which the property is located.
- The second unit must comply with local building code requirements which apply to other detached dwellings, as appropriate.
- Approval by the local health officer where a private sewage disposal system is being used, if required.

The City Attorney has provided a memo on the City's ability to regulate second dwelling units. This memo is contained in Attachment A. The text of Government Code Section 656852.2 is contained in Attachment B. An evaluation of the minimum lot sizes and densities through the use of the density information contained in the General Plan is contained in Attachment E.

**CURRENT ORDINANCE REQUIREMENTS:**

Section 17.204.040 establishes the requirements for the standard second unit permits. The full text of this requirements associated with Standard Second Units are contained in Attachment C. The lot and second unit size information for the standard second units from the Zoning Ordinance is provided below.

| **Standard Second Unit Requirements** | | | |
|---|---|---|---|
| **Residential Zones** | **Minimum Lot Size for the Zone** | **Minimum Lot Size for a Second Unit** | **Size Range of Allowable Second Units** |
| R-R Rural Residential | 0.50 acre (≈ 21,780 sq. ft.) | 1 acre | 750 – 1,500 sq. ft. |
| R-A Residential Agricultural | 20,000 sq. ft. | | |
| A-1 Light Agriculture | | | |
| A-2 Heavy Agriculture | | | |
| R-1 One-Family Dwelling | 7,200 sq. ft. | 14,400 sq.ft. | 750 – 1,200 sq. ft |
| R-2 Multiple-Family Dwelling | | | |
| R-3 General Residential | | | |
| R-4 Planned Residential | 6,000 sq. ft. | | |
| R-6 Residential Incentive | 5,000 sq. ft. | | |

The current code does require the provision of additional parking for the second unit and requires that the second unit comply with the other development standards that are applicable to all development in the zone district where the second unit is to be located. There are no substantial residential design standards that would realistically prevent a standard second dwelling unit from being placed on a residentially zoned property.

The current code does require the provision of additional parking for the second unit and requires that the second unit comply with the other development standards that are applicable to all development in the zone district where the second unit is to be located. There are no substantial residential design standards that would realistically prevent a senior citizen/hardship second dwelling unit.

Section 17.204.050 establishes the requirements for the standard second unit permits. The full text of this requirements associated with Standard Second Units are contained in Attachment D. Because this section was deleted by the County in October 2008 and staff believes that these requirements are not really implementable since it allows permanent second units with reduced requirements.

To provide an additional comparison, staff has provided the comparable ordinances for the Cities of Lake Elsinore, Murrieta, and Temecula. As indicated below, the other jurisdictions in the area generally on require that the minimum lot size for the zone be maintained. The minimum lot size and unit sizes are contained in Attachment E and summarized below.

<u>City of Lake Elsinore</u>

| | |
|---|---|
| Minimum Lot Size: | No requirement, lot must be zoning ordinance minimum requirements. |
| Maximum Unit Size: | Detached – 50% of primary unit or 1,200 sq. ft, whichever is less |
| | Attached - 30% of primary unit or 1,000 sq. ft, whichever is less |
| Minimum Unit Size: | 550 sq. ft for one or two bedroom (400 sq. ft for efficiency unit) |

<u>City of Murrieta</u>

| | |
|---|---|
| Minimum Lot Size: | No requirement, lot must be zoning ordinance minimum requirements. |
| Maximum Unit Size: | Detached – Not permitted. |
| | Attached - 30% of primary unit or 1,000 sq. ft, whichever is less |
| Minimum Unit Size: | No requirement |

<u>City of Temecula</u>

| | |
|---|---|
| Minimum Lot Size: | No requirement, lot must be zoning ordinance minimum requirements. |
| Maximum Unit Size: | 1,200 sq. ft. |
| Minimum Unit Size: | 400 sq. ft. |

**CONCLUSION:**

Based upon the information provided, staff is requesting that the Planning Commission provide direction to staff on whether or not any changes should be made to the existing ordinance. However, during the process of the Commission providing to direction on the scope and nature any amendments to the current code, there is two aspects of second units that the Planning Commission can not include into the ordinance. These are (1) any limitations on who can occupy or rent a second unit (i.e. limiting future occupants of the second unit to family members or relatives), and (2) adding a requirement for a public hearing or conditional use permit.

Subject to these limitations, staff would like to receive direction from the Planning Commission on the following subjects. Based upon the Commission's direction staff will prepare an ordinance for Planning Commission's consideration at an upcoming meeting.

1. Minimum Lot Size – The code currently requires twice the allowable lot size for a second dwelling unit. This provision ensures that the underlying General Plan density is maintained. Does the Commission want to allow any variations from this requirement? If so, when should smaller lots (i.e. a increased density) be allowed and how much of an increase or reduced lot size should be allowed?

2. Maximum Unit Sizes – The code currently restricts the maximum size of a second dwelling unit depending on the minimum lot size of the zone. Does the Commission want to reduce or expand the maximum allowable size?

3. Other Design requirements – The code currently requires that second units meet the underlying requirements of the zoning district. Does the Commission want to apply other design standard to second dwelling units?

**ALTERNATIVES:**

1. Deny the project.
2. Provide direction to staff.

**ATTACHMENTS:**

A. Memorandum from the City Attorney
B. Government Code Section 65852.2
C Zoning Ordinance Provisions on Standard Second Units
D. Zoning Ordinance Provisions on Senior Citizen and Hardship Second Units
E. Other City Requirements
F. General Plan Land Use Designation Densities

# ATTACHMENT A

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# M E M O R A N D U M

**TO:** Planning Commissioners

**CC:** Dave Hogan, Planning Director

**FROM:** Office of City Attorney

**DATE:** August 19, 2009

**RE:** Scope of Ability to Regulate Second Units

---

At the August 5, 2009, Planning Commission meeting, a discussion began regarding amendments to the City's existing regulations on second dwelling units on residentially-zoned property. State law provides certain limits on a City's ability to regulate second units, and this memorandum gives a brief synopsis of those limits.

## QUESTION PRESENTED

To what extent may the City regulate second units?

## SHORT ANSWER

The City may designate the areas within the City where second units may be allowed and may adopt development standards for second units. The development standards must be reasonable and not unduly obstruct a homeowner's ability to construct a second unit. At a minimum, the City must allow efficiency units to be built as a second unit. The City can only require one additional parking space per second unit or bedroom and must allow parking in the setbacks and/or tandem parking. All applications for second unit permits must be considered ministerially, meaning that there shall be no discretionary review or hearing on the application. Also, the City may not limit who may live in a second unit to relatives of the property owners. Such restrictions have been held to infringe on the right to privacy protected in the California Constitution.

## DISCUSSION

Finding that second units are a valuable form of housing in California, the Legislature has limited local government's ability to regulate and restrict the construction of second units through what is commonly called the "granny flat statute".[1] The terms "second unit" and "granny flat" are synonymous. A local agency may adopt an

[1] Cal. Gov't Code § 65852.150. All further statutory references are to the Government Code.

ordinance providing for the creation of second units in single-family an multi-family zones.[2] A second unit is defined as "an attached or detached residential dwelling unit which provides complete independent living facilities for one or more persons. It shall include permanent provisions for living, sleeping, eating, cooking, and sanitation on the same parcel as the single-family dwelling unit is situated."[3] A local agency may, but is not required, to allow second units on parcels with multi-family dwelling units.[4] If a local agency does adopt such an ordinance, the consideration of applications for second units is a ministerial act, and the approval or denial of an application shall not be subject to the discretion of the approving officer or a public hearing.[5] The City needs to amend their current second unit ordinance to reflect this. The Riverside County Zoning Code, as it was adopted by the City upon incorporation, allowed for a discretionary hearing to be held on second unit applications.[6] The County subsequently fixed this error in their Zoning Code in October of 2008, but the City has not adopted a similar ordinance amending its Zoning Code to provide for ministerial review of second unit permit applications.

The Planning Commission has inquired whether it could limit the occupancy of second units to individuals who are related to the property owners. However, the California Supreme Court has resoundingly rejected local ordinances that limit occupancy of residential dwelling units to individuals who are related by blood, marriage, or legal adoption.[7] Such restrictions infringe upon the privacy rights protected by the California Constitution. Therefore, the City may not include such a restriction in any second unit ordinance it adopts.

The Legislature has largely left it to the discretion of the local agency to determine the appropriate regulations for second units. However, regulations cannot be "so arbitrary, excessive, or burdensome so as to unreasonably restrict the ability of homeowners to create second units in zones in which they are authorized by local ordinance."[8] Furthermore, the Legislature has provided some parameters and guidance that a local agency should use in drafting its second unit regulations. The following discussion lists the types of regulations that the law expressly allows a local government to adopt in regards to second units. A chart summarizing what regulations are and are not allowed is attached as Exhibit A to this memorandum.

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[2] § 65852.2(a)(1).
[3] § 65852.2(i)(4).
[4] See Id., § 65852.2(b)(1)(C), (g).
[5] § 65852.2(a)(3).
[6] Riverside County Code § 17.204.030 (former).
[7] *City of Santa Barbara v. Adamson* (1980) 27 Cal.3d 123.
[8] § 65852.150.

### *1. Designate Areas Where Second Units Are Allowed.*

A local ordinance may designate the areas within the jurisdiction where second units are allowed. Nothing in the law requires second units to be allowed in all residential zones. Factors such as the adequacy of water and sewer services and traffic impacts may be considered in determining which areas within the jurisdiction second units may locate.[9]

### *2. Development Standards for Second Units.*

A local government may impose development standards on second units including, but not limited to, parking, height, setback, lot coverage, architectural review, minimum and maximum size of unit, and prevention of adverse impacts on historical places.[10] In addition, a local agency can "[p]rovide that second units do not exceed the allowable density for the lot upon which the second unit is located."[11] A local government can require that a second unit be compatible with its surrounding areas and not be materially detrimental to surrounding properties or the public health, safety and welfare generally.[12] However, there are specific provisions that govern local regulations on minimum and maximum unit size and parking.

#### *a. Minimum and Maximum Size of Second Unit.*

Regulations on the minimum and maximum size for second units may have different standards depending on whether the second unit is attached or detached from the principal dwelling unit. However, these standards must allow for at least an "efficiency unit" to be built as a second unit on the property.[13] An efficiency units are units designed for occupancy by no more than two people with a minimum floor area of 150 square feet, and that have at least partial bathroom and kitchen facilities.[14]

#### *b. Parking.*

A local government cannot require a second unit to have more than one parking space per second unit or per bedroom. However, more parking can be required if the

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[9] § 65852.2(a)(1)(A).
[10] § 65852.2(a)(1)(B).
[11] § 65852.2(a)(1)(C).
[12] See *Harris v. City of Costa Mesa* (1994) 25 Cal.App.4th 963; *Desmond v. County of Contra Costa* (1993) 21 Cal.App.4th 330.
[13] § 65852.2(d).
[14] § 65852.2(i)((4)(A); Health & Safety Code § 17958.1.

local government finds that the additional parking is directly related to the use of the second unit and is consistent with existing neighborhood standards applicable to existing dwellings.[15] In other words, a local government can require more parking only if more parking would be required of the unit if it were the only dwelling unit on the lot. Additional parking cannot be required of a second dwelling unit to ameliorate existing parking problems.

In addition, a local government must allow off-street parking in the second unit's setback areas or by tandem parking unless specific findings are made that parking in setbacks or tandem parking is not feasible due to "specific site or regional topographical or fire and life safety conditions" or that setback or tandem parking is not permitted anywhere else in the jurisdiction.[16]

## CONCLUSION

The City may regulate the areas where second units are allowed and impose development standards on second units. However, the development standards cannot be overly burdensome. Additional parking may be required, but the City must allow this to be satisfied by setback or tandem parking unless specific findings are made.

[15] § 65852.2(e).
[16] Id.

**EXHIBIT A**

| **Regulation of Second Units** | |
|---|---|
| **Permissible Regulation** | **Impermissible Regulations** |
| Designating in what zones second units are allowed. | Regulations that are "so arbitrary, excessive, or burdensome so as to unreasonably restrict the ability of homeowners to create second units in zones in which they are authorized by local ordinance." |
| Development standards such as: parking, height, setback, lot coverage, minimum and maximum size of unit. | Regulations on the minimum and maximum size of a second unit that do not allow for at least an efficiency unit to be built. |
| Requiring design review | Regulations that require more than one parking space per second unit or per bedroom. |
| Provision that deems a second unit to not exceed the applicable density standard for the lot on which it is located. (i.e. a second unit on a lot zoned for a single-family residence is okay, even though now there are two residences on a lot zoned for one) | Regulations that do not allow the parking requirements to be satisfied by parking in setback areas or tandem parking. |
| Provision that deems a second unit to be consistent with the applicable General Plan designation and zoning for the lot on which it is located. | Regulations that allow a property owner to rent their second unit to relatives only. |
| | Regulations that require a public hearing for or discretionary review of a second unit permit application. |

# ATTACHMENT B

**Section 65852.2.**

(a) (1) Any local agency may, by ordinance, provide for the creation of second-units in single-family and multifamily residential zones. The ordinance may do any of the following:

(A) Designate areas within the jurisdiction of the local agency where second units may be permitted. The designation of areas may be based on criteria, that may include, but are not limited to, the adequacy of water and sewer services and the impact of second units on traffic flow.

(B) Impose standards on second units that include, but are not limited to, parking, height, setback, lot coverage, architectural review, maximum size of a unit, and standards that prevent adverse impacts on any real property that is listed in the California Register of Historic Places.

(C) Provide that second units do not exceed the allowable density for the lot upon which the second unit is located, and that second units are a residential use that is consistent with the existing general plan and zoning designation for the lot.

(2) The ordinance shall not be considered in the application of any local ordinance, policy, or program to limit residential growth.

(3) When a local agency receives its first application on or after July 1, 2003, for a permit pursuant to this subdivision, the application shall be considered ministerially without discretionary review or a hearing, notwithstanding Section 65901 or 65906 or any local ordinance regulating the issuance of variances or special use permits. Nothing in this paragraph may be construed to require a local government to adopt or amend an ordinance for the creation of second units. A local agency may charge a fee to reimburse it for costs that it incurs as a result of amendments to this paragraph enacted during the 2001-02 Regular Session of the Legislature, including the costs of adopting or amending any ordinance that provides for the creation of second units.

(b) (1) When a local agency which has not adopted an ordinance governing second units in accordance with subdivision (a) or (c) receives its first application on or after July 1, 1983, for a permit pursuant to this subdivision, the local agency shall accept the application and approve or disapprove the application ministerially without discretionary review pursuant to this subdivision unless it adopts an ordinance in accordance with subdivision (a) or (c) within 120 days after receiving the application. Notwithstanding Section 65901 or 65906, every local agency shall grant a variance or special use permit for the creation of a second unit if the second unit complies with all of the following:

(A) The unit is not intended for sale and may be rented.

(B) The lot is zoned for single-family or multifamily use.

(C) The lot contains an existing single-family dwelling.

(D) The second unit is either attached to the existing dwelling and located within the living area of the existing dwelling or detached from the existing dwelling and located on the same lot as the existing dwelling.

(E) The increased floor area of an attached second unit shall not exceed 30 percent of the existing living area.

(F) The total area of floorspace for a detached second unit shall not exceed 1,200 square feet.

(G) Requirements relating to height, setback, lot coverage, architectural review, site plan review, fees, charges, and other zoning requirements generally applicable to residential construction in the zone in which the property is located.

(H) Local building code requirements which apply to detached dwellings, as appropriate.

(I) Approval by the local health officer where a private sewage disposal system is being used, if required.

(2) No other local ordinance, policy, or regulation shall be the basis for the denial of a building permit or a use permit under this subdivision.

(3) This subdivision establishes the maximum standards that local agencies shall use to evaluate proposed second units on lots zoned for residential use which contain an existing single-family dwelling.

No additional standards, other than those provided in this subdivision or subdivision (a), shall be utilized or imposed, except that a local agency may require an applicant for a permit issued pursuant to this subdivision to be an owner-occupant.

(4) No changes in zoning ordinances or other ordinances or any changes in the general plan shall be required to implement this subdivision. Any local agency may amend its zoning ordinance or general plan to incorporate the policies, procedures, or other provisions applicable to the creation of second units if these provisions are consistent with the limitations of this subdivision.

(5) A second unit which conforms to the requirements of this subdivision shall not be considered to exceed the allowable density for the lot upon which it is located, and shall be deemed to be a residential use which is consistent with the existing general plan and zoning designations for the lot. The second units shall not be considered in the application of any local ordinance, policy, or program to limit residential growth.

(c) No local agency shall adopt an ordinance which totally precludes second units within singlefamily or multifamily zoned areas unless the ordinance contains findings acknowledging that the ordinance may limit housing opportunities of the region and further contains findings that specific adverse impacts on the public health, safety, and welfare that would result from allowing second units within single-family and multifamily zoned areas justify adopting the ordinance.

(d) A local agency may establish minimum and maximum unit size requirements for both attached and detached second units. No minimum or maximum size for a second unit, or size based upon a percentage of the existing dwelling, shall be established by ordinance for either attached or detached dwellings which does not permit at least an efficiency unit to be constructed in compliance with local development standards.

(e) Parking requirements for second units shall not exceed one parking space per unit or per bedroom. Additional parking may be required provided that a finding is made that the additional parking requirements are directly related to the use of the second unit and are consistent with existing neighborhood standards applicable to existing dwellings. Off-street parking shall be permitted in setback areas in locations determined by the local agency or through tandem parking, unless specific findings are made that parking in setback areas or tandem parking is not feasible based upon specific site or regional topographical or fire and life safety conditions, or that it is not permitted anywhere else in the jurisdiction.

(f) Fees charged for the construction of second units shall be determined in accordance with Chapter 5 (commencing with Section 66000).

(g) This section does not limit the authority of local agencies to adopt less restrictive requirements for the creation of second units.

(h) Local agencies shall submit a copy of the ordinances adopted pursuant to subdivision (a) or (c) to the Department of Housing and Community Development within 60 days after adoption.

(i) As used in this section, the following terms mean:

(1) "Living area," means the interior habitable area of a dwelling unit including basements and attics but does not include a garage or any accessory structure.

(2) "Local agency" means a city, county, or city and county, whether general law or chartered.

(3) For purposes of this section, "neighborhood" has the same meaning as set forth in Section 65589.5.

(4) "Second unit" means an attached or a detached residential dwelling unit which provides complete independent living facilities for one or more persons. It shall include permanent provisions for living, sleeping, eating, cooking, and

sanitation on the same parcel as the singlefamily dwelling is situated. A second unit also includes the following:

(A) An efficiency unit, as defined in Section 17958.1 of Health and Safety Code.

(B) A manufactured home, as defined in Section 18007 of the Health and Safety Code.

(j) Nothing in this section shall be construed to supersede or in any way alter or lessen the effect or application of the California Coastal Act (Division 20 (commencing with Section 30000) of the Public Resources Code), except that the local government shall not be required to hold public hearings for coastal development permit applications for second units.

# ATTACHMENT C

**17.204.040 STANDARD SECOND UNIT PERMITS.**

A. Standards for Approval. No standard second unit permit shall be approved unless it complies with the following standards:

1. The proposed second unit must conform to all the requirements of the general plan for Riverside County.

2. The lot is zoned for a one-family dwelling as a permitted use; provided, however, that the lot must be fourteen thousand four hundred (14,400) square feet or greater in area and may not be part of a planned residential development (PRD) or the R-6 zone.

3. The lot contains an existing one-family detached unit, and either the existing unit or the proposed additional unit is, and will be, the dwelling unit of the owner-occupant.

4. The proposed second unit meets the following zoning, lot size and unit size standards:

| Minimum Lot Size per Zoning* | Standard Second Unit Permit** |
|---|---|
| 7,200 sq. ft. to 19,999 sq. ft. | Maximum Lot Size: 14,440 sq. ft.<br>Minimum Unit Size: 750 square feet<br>Maximum Unit Size: 1,200 square feet |
| 20,000 sq. ft. to 1.99 acre | Maximum Lot Size: 1 acre<br>Minimum Unit Size: 750 square feet<br>Maximum Unit Size: 1,500 square feet |
| 2 acres and larger | Maximum Lot Size: 2 acres<br>Minimum Unit Size: 750 square feet<br>Maximum Unit Size: 1,800 square feet” |
| * “Minimum lot size per zoning” refers to the minimum lot size required by the zoning designation for the parcel in question<br>** “Standard” second unit permit refers to a second unit which is attached to or detached from the principal dwelling unit, It can be occupied by family members or rented to anyone for residential use. | |

5. Off-street parking spaces shall be required for the second unit in addition to any off-street parking requirements for the principal unit.

6. The second unit shall be used as a dwelling unit only, and no businesses or home occupations of any kind may be conducted from or in the second unit.

7. Second units shall be located at the rear or in the side portions of the lot and shall comply with all setbacks applicable to the lot. A second unit may be located in front of the principal unit only where the placement of the second unit at the rear or side portion of the lot would be impractical due to the location of the principle unit. In addition, approval shall require a specific finding that the placement of the second unit in the front of the lot is compatible with the neighborhood.

8. All of the development standards of the zone in which the lot is located, including but not limited to, parking, height, setbacks, lot coverage, architectural review and health requirements for water and sewerage shall be applicable to the second unit. An applicant shall also be required to provide verification from the appropriate water and sewerage district of available capacity.

9. Any second unit placed more than one hundred fifty (150) feet from a public right-of-way shall be required to provide all-weather access for emergency vehicles.

10. Findings are made by the planning director that there is no adverse impact on the public health, safety or welfare.

B. Conditions. Any standard second unit permit granted shall be subject to such conditions as are necessary to protect the health, safety and general welfare of the public. In addition, a permit shall be subject to the following conditions:

1. The second unit shall be used for family members or rental purposes only and may not be sold as a separate unit unless the lot is subdivided pursuant to all applicable laws and local ordinances.

2. The life of the permit shall be unlimited provided the second unit is being used in compliance with the provisions of this chapter, as well as any conditions of approval imposed in connection with the permit, and that all construction permits and inspections which may be required pursuant to the provisions of Ordinance No. 457 have been obtained.

**17.204.060 PROHIBITED AREAS.**

Second units shall not be permitted in those areas of the county which have significant problems with regard to water availability or quality, sewage disposal or other public health or safety concerns. The prohibited areas include, but are not limited to, those areas where a development moratorium has been imposed, including a moratorium for water or sewer, whether imposed by the county or another public agency with the authority to impose a development moratorium.

# ATTACHMENT D

**17.204.050 SENIOR CITIZEN AND HARDSHIP SECOND UNIT PERMITS. [Deleted in October 2008]**

A. Standard of Approval. No senior citizen/hardship exemption second unit permit shall be approved unless it complies with the following standards:

1. The proposed second unit must conform to all the requirements of the general plan for Riverside County.

2. The lot is zoned for a one-family dwelling as a permitted use; provided, however, that the lot must be seven thousand two hundred (7,200) square feet or greater in area and may not be part of a planned residential development (PRD) on the R-6 zone.

3. The second unit shall be used as a dwelling unit only and shall be intended for the sole occupancy of one or two adult persons who are sixty (60) years of age or over, or family members, or those persons with special disabilities or handicaps.

4. The proposed second unit meets the following zoning, lot size and unit size requirements:

| Minimum Lot Size per Zoning* | Senior/Hardship Second Unit Permits** |
|---|---|
| 7,200 sq. ft. to 19,999 sq. ft. | Maximum Lot Size: 7,200 sq. ft.<br>Minimum Unit Size: 750 square feet<br>Maximum Unit Size: 1,200 square feet |
| 20,000 sq. ft. to 1.99 acre | Maximum Lot Size: 20,000 sq. ft.<br>Minimum Unit Size: 750 square feet<br>Maximum Unit Size: 1,200 square feet |
| 2 acres and larger | See requirements for "standard" second unit permit. |

* "Minimum lot size per zoning" refers to the minimum lot size required by the zoning designation for the parcel in question

** "Senior citizen hardship" second unit permits must specify that the second unit is to be used as a dwelling unit for the sole occupancy of one or two adult persons who are 60 years of age or over, or immediate family members, or those persons with special disabilities or handicaps. They cannot be rented out to others.

5. Off-street parking requirements, location of second units, development standards, access for emergency vehicles, necessary findings and the requirements that there be an existing one-family detached unit and that either the existing unit or the proposed additional unit is and will be the dwelling unit of the owner-occupant, shall be the same as for the standard second unit permit.

B. Conditions.

1. The second unit may not be sold as a separate unit unless the lot is subdivided pursuant to all applicable laws and local ordinances.

2. The life of the permit shall be unlimited provided the second unit is being used in compliance with the provisions of this chapter, as well as any conditions of approval imposed in connection with the permit, and that all construction permits and inspections which may be required pursuant to the provisions of Ordinance No. 457 have been obtained. Noncompliance with the conditions of approval and/or construction permits may result in the revocation of the second unit permit in accordance with Section 17.204.060.

**17.204.060 PROHIBITED AREAS.**

Second units shall not be permitted in those areas of the county which have significant problems with regard to water availability or quality, sewage disposal or other public health or safety concerns. The prohibited areas include, but are not limited to, those areas where a development moratorium has been imposed, including a moratorium for water or sewer, whether imposed by the county or another public agency with the authority to impose a development moratorium.

# EXHIBIT E

## 16.44.160 Secondary Dwelling Units.

This section provides standards for the establishment of secondary dwelling units.

**A. Conditional Use Permit Required Before July 1, 2003.** Secondary dwelling units may be allowed in the zoning districts specified, subject to the approval of a conditional use permit and in compliance with this section provided that the application for the conditional use permit was received prior to July 1, 2003. For applications received on or after July 1, 2003, the application for a secondary dwelling unit shall be considered a ministerial action without discretionary review or a public hearing, notwithstanding any other requirements of state law or this development code. The permit applicant shall be the owner and resident of the main dwelling.

**B. Number of Secondary Units Allowed.** Only one secondary dwelling unit shall be allowed on a single-family parcel.

**C. Site Requirements.** A parcel proposed for a secondary dwelling unit shall comply with all the following requirements:

1. The parcel shall have a minimum area of the underlying zoning district;

2. The parcel shall be developed with only one existing owner occupied single-family detached main dwelling unit; and

3. Either the principal or secondary living unit shall be the primary residence of the record owner of the property.

**D. Location of Secondary Unit.** A secondary dwelling unit shall be within or attached to the existing main dwelling unit.

**E. Design Standards.** A secondary dwelling unit shall:

1. Have a floor area not exceeding thirty (30) percent of the existing living area of the main dwelling;

2. Be architecturally compatible with the main dwelling unit. The second unit shall share a common wall with the main structure or be separated by a breezeway not to exceed five feet in width;

3. Comply with height and setback requirements for the main dwelling; and

4. Contain separate kitchen and bathroom facilities and have a separate entrance from the main dwelling.

**F.** **Parking.** The secondary dwelling unit shall be provided one covered off-street parking space, in addition to that required for the main dwelling unit, in compliance with Chapter 16.34 (Off-Street Parking and Loading Standards).

**G.** **Required Findings for Approval.** The following findings shall be made, in addition to those in Section 16.56.040 (Findings and Decision), to approve a development plan permit:

1. The secondary dwelling unit is compatible with the design of the main dwelling unit and the surrounding neighborhood in terms of scale, exterior treatment, height, setbacks and landscaping, and will not cause excessive noise, traffic, or other disturbances or result in adverse effects on public services and re-sources; and

2. The secondary dwelling unit will not contribute to a high concentration of these units sufficient to change the character of the surrounding neighborhood.

**17.56.010 Purpose.**

The intent of this chapter is to expand the mix of housing opportunities within the City by permitting the development of second units as an accessory use to existing single-family detached dwellings while providing criteria to assure they are maintained as a harmonious and integral aspect of the single-family neighborhood.

**17.56.020 Definition.**

For the purposes of this chapter, "second unit" means an attached or detached residential dwelling unit which provides complete independent living facilities for one or more persons. A second unit shall include permanent provisions for living, sleeping, eating, cooking, and sanitation, on the same parcel as the single-family dwelling is situated. A second unit also includes an efficiency unit, as defined in Section 17958.1 of the California Health and Safety Code.

**17.56.030 General provisions.**

A single second unit shall be permitted subject to issuance of a permit pursuant to the provisions of this chapter on any residentially zoned parcel which meets the following standards:

A. The lot is an existing legal subdivided lot which complies with the current minimum lot requirements for the zoning district.

B. The lot contains only one existing single-family detached dwelling which complies with the current development standards for the zoning district or is found legally nonconforming.

C. The lot contains no other second unit.

D. The lot provides for sufficient parking to meet the current parking requirements for the existing single-family detached unit on the lot.

E. The existing single-family unit shall be occupied by the record owner of the parcel.

**17.56.040 Preinspection.**

Prior to application for a second unit permit, an applicant shall request an inspection of the property by representatives of the Department of Community Development to determine the property's compliance with the City's building and zoning codes. The inspectors shall file a written report indicating compliance or, if the property and structures are not in compliance, the nature of any violations. The application for a permit for a second unit shall include a final report of the inspector stating that corrections have been completed prior to issuance of a permit for the second unit.

**17.56.050 Application.**

Following the required preinspection, the applicant shall submit a permit application for a second unit in accordance with submittal requirements on file with the Planning Division which shall include, but not be limited to, the following:

A. Name and address of the applicant.

B. Statement that the applicant is the owner and occupant of the property on which the second unit is proposed to be located.

C. Address and legal description of the property (assessor's parcel number).

D. Floor plans and a site plan, fully dimensioned, indicating the type, use and location of all rooms, buildings, structures, parking, and landscape areas of the existing single-family unit and the proposed second unit.

E. Building elevation plans of sufficient detail to indicate the architectural style, type and color of materials of the existing single-family unit and type and color of materials to be employed for the proposed second unit.

F. A restrictive covenant in such form as may be required by the City, signed by the record owner, which will be recorded against the property. The restrictive covenant shall require that at all times either the single-family unit or the second unit be owner-occupied and shall prohibit rental of both units at the same time. It shall further provide that the second unit shall not be sold, or title thereto transferred, separate and apart from the entire parcel. The restrictive covenant shall further require that the City be notified of the sale or transfer of the property upon the close of escrow or on or prior to the effective date of transfer if no escrow is used.

G. A copy of the written report detailing the results of the preinspection.

H. Payment of all applicable permit, development impact and other fees applicable to the construction and occupancy of the second unit.

**17.56.060 Fee.**

The request for preinspection and the application for a second unit permit shall be accompanied by a fee established by resolution of the City Council to cover all costs to the City.

**17.56.070 Standards.**

In determining whether or not a permit to construct a second dwelling unit should be issued, the Director of Community Development or his or her designee shall make the following findings:

A. The permit application is complete and complies with the requirements of LEMC 17.56.050.

B. Except as provided elsewhere in this chapter, the proposed second unit shall comply with all of the development standards for new single-family detached dwelling units as specified for the base zoning district in which it is located, including, but not limited to, setbacks, height limitations, and maximum lot coverage.

C. The requirements of LEMC 17.56.030 shall be met.

D. The requirements for a preinspection report pursuant to LEMC 17.56.040 shall be met.

E. The following standards shall also apply:

1. The total floor area of the second unit shall comply with the following:

a. The minimum total floor area shall be 400 square feet for an efficiency unit and 550 square feet for a one-bedroom or two-bedroom unit.

b. The maximum total floor area shall be as follows:

(1) Attached second units shall not exceed 30 percent of the main dwelling unit living area or 1,000 square feet, whichever is less; provided, that if the main dwelling unit is 1,334 square feet or less in size, one 400 square foot efficiency unit shall be permitted.

(2) Detached second units shall not exceed 50 percent of the existing main dwelling unit living area or 1,200 square feet, whichever is less.

c. The second unit shall contain no more than two bedrooms.

2. The second unit shall conform to the following design standards:

a. The design, color, material, and texture of the roof shall be the same as the main dwelling unit;

b. The color, material and texture of all building walls shall be the same as the main dwelling unit; and

c. The architectural style of the second unit shall be the same as the main dwelling unit.

3. One off-street enclosed parking space per bedroom in the second unit shall be provided in addition to that required for the existing single-family unit. This space shall not be located within the required setbacks or through tandem parking.

4. There shall not be more than one exterior entrance on the front or on any street side of the building and no exterior stairway shall be located on the front of the building.

5. The main dwelling unit shall continue to comply with the minimum standards applicable to a single-family detached dwelling unit in the zoning district even with the development of a second unit, including but not limited to maximum lot coverage and minimum floor area criteria.

**17.56.080 Compliance with General Plan.**

A second unit which conforms to the standards of this chapter shall not be considered to exceed the allowable density for the lot upon which it is located and shall be deemed to be a residential use which is consistent with the existing General Plan and zoning designation for the lot.

**17.56.090 Filing of annual statement.**

On or before April 1st of each year after a second unit permit is issued pursuant to this chapter, the owner of the property shall file with the City a certificate of owner occupancy and compliance with covenants, in such form as is prescribed by the City.

**Section 17.06.050.L**

Secondary Dwelling Units. Secondary dwelling units are permitted in all residential zoning districts where there is an existing owner-occupied single-family detached dwelling. In accordance with state law, a secondary unit shall be considered a residential use and shall not be considered to exceed the allowable density for the lot upon which it is permitted. Secondary dwelling units shall comply with the following requirements:

1. A secondary dwelling unit shall have a floor area between four hundred and one thousand two hundred square feet.

2. The secondary dwelling shall be compatible with the design of the primary dwelling and the surrounding neighborhood in terms of height, bulk and mass, landscaping, and architectural materials.

3. The secondary dwelling unit shall be provided with off-street parking in accordance with the off-street parking standards in Chapter 17.24.

4. The application for the second unit permit must be signed by the owner of the parcel of land and the primary dwelling.

5. A secondary dwelling unit shall not be sold, but may be rented. A covenant shall be recorded in the Riverside County clerk's office against the title declaring that the property owner must occupy either the primary residence or the secondary dwelling unit.

# EXHIBIT F

| GENERAL PLAN SECOND DWELLING UNIT & LOT SIZE EVALUATIONS | | |
|---|---|---|
| **General Plan Residential Land Use Designation** | **Expected Lot Sizes[1]** | **Minimum Lot Size Required for a Second Unit[2]** |
| Estate Density Residential (0.5 dwellings per acre) | 2.0 ac. | 4.00 |
| Very Low Density Residential (1.0 dwellings per acre) | 1.0 ac. | 2.00 |
| Low Density Residential (2.0 dwellings per acre) | 0.5 ac. | 1.00 |
| Medium Density Residential (2 to 5 dwellings per acre) | 7,200 sq. ft. [3] | 14,400 sq. ft. |
| Medium-High Density Res. (5 to 8 dwellings per acre) | 4,350 sq. ft. | 8,700 sq.ft. |

Assumptions:

1. Typical units per acre is translated into an equivalent minimum lot size.
2. The primary and second dwelling units combined do not exceed the General Plan density.
3. The standard minimum single family lot size is the expected net lot size (with street and other public area dedications).

**CITY OF WILDOMAR – PLANNING COMMISSION**
**Agenda Item 6.2**
**GENERAL BUSINESS**
**Meeting Date: December 2, 2009**

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**TO:** Members of the Planning Commission

**FROM:** David Hogan, Planning Director

**SUBJECT:** Zoning Ordinance Modification – Trailer and Boat Storage, Mini Warehouses

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**RECOMMENDATION:**

The Planning Department requests that the Planning Commission provide direction to staff on modifications to the zoning ordinance related to mini and recreational vehicle storage facilities.

**BACKGROUND:**

At the October 21, 2009 Planning Commission meeting members of the Commission expressed a concern about the number of mini storage and recreational vehicle being in located within the limited commercial and industrial areas of the City. This item was continued from the November 4, 2009 Commission meeting. The purpose of this staff report is to present information to the Planning Commission on the how recreational vehicle and mini storage facilities are addressed in the Zoning Ordinance.

The current zoning ordinance describes these types of uses as either trailer and boat storage or mini warehouse (or mini warehouse structures). Both land use types are allowed in the most common commercial and industrial zones, as well as the Rural Residential Zone (the countywide "holding zone"). To simplify the information, whether the use is permitted outright, permitted with a plot plan, or permitted with a conditional use permit is omitted from the following table since it is not relevant to the issue of prohibiting these uses. The approval mechanisms are summarized in Attachment A.

| Zones | | Trailer and Boat Storage | Mini Warehouse |
|---|---|---|---|
| Rural Residential | R-R | ✓ | - |
| General Commercial | C-1/C-P | ✓ | ✓ |
| Scenic Highway Commercial | C-P-S | ✓ | - |
| Manufacturing Service Commercial | M-SC | ✓ | ✓ |
| Industrial Park | I-P | - | ✓ |
| Manufacturing – Medium | M-M | ✓ | ✓ |
| Manufacturing – Heavy | M-H | ✓ | ✓ |

In the process of preparing this staff report for the Commission, has staff discussed possible approaches with the City Attorney. Based upon these discussions, there appear to be two different approaches to addressing the immediate issue of too many recreational vehicle and mini-storage facilities.

Approach 1 – Prohibit new recreational vehicle and mini-storage businesses for an intermediate period. Staff believes that a period of two years would allow the City Council and Planning Commission an opportunity to better understand how future commercial and industrial development patterns will be affected by these uses.

Advantages - Temporarily restricts the establishment of addition recreational vehicle and mini-storage facilities while allowing the existing facilities to remain as allowable uses. A temporary prohibition of new uses allows the City time to better understand future commercial and industrial development needs.

Disadvantages - None.

Approach 2 – Amend the zoning ordinance to prohibit these land uses from some or all of the effected commercial and industrial zones.

Advantages - Does not require that this issue be re-examined in the future (though future planning commissions and city councils may choose to re-evaluate any prohibition action in the future).

Disadvantages - Would make all of the existing recreational vehicle and mini-storage businesses non-conforming uses which could adversely affect their ability to get financing, upgrade their facilities, and to expand or reconstruct their facilities.

There is one final issue related to any prohibition of these uses that would like the Commission to consider. This remaining is whether or not a future prohibition should apply to previously approved and unconstructed projects? It is possible that a future moratorium could prevent the City from approving any extensions of time. The practical effect of this would be that the project would expire at the end of the automatic two year period. Staff is aware of several approved recreational vehicle and mini-storage facilities that have not yet been constructed and concerned that this unintended consequence of the moratorium might be contrary to the intent of the Planning Commission. As a result, staff recommends that any future moratorium/prohibition not apply to the grading or building permits, and extensions of time, for previously approved but unconstructed projects since it does not seem fair to property owners who could not construct their projects because of problems within the current banking system. The exception would not prevent the Planning Commission from denying a request for an extension of time if local circumstances changed and the use was no longer appropriate. This exemption would not apply if an approved project has already been allowed to expire (by not filing a request for an extension of time).

Staff is also concerned that there may be recreational vehicle and mini-storage facilities that were established prior to incorporation without a permit. When these unpermitted businesses are identified and contacted by code enforcement, the current policy is to try to work with the owner/operator to bring these unpermitted activities into compliance with zoning requirements. A prohibition on new applications would mean that these facilities would have no option but to cease operation because there would be no way for the City to approve a permit to operate. Having reviewed the situation, there appear to be two options for addressing this potential concern. The first is to not allow these businesses to come into compliance with the code during the moratorium period, requiring them to cease operation.

The second option would be to exempt unpermitted recreational vehicle and mini-storage facilities (that were in full operation prior to incorporation) from the moratorium provisions. If the Planning Commission prefers the second option, staff would suggest that the exemption provision be conditional in that the owner/operator would be required to provide a full application to the City for processing within 60 to 90 days of the citation. A full application is defined as all of the required site, grading, and landscape plans, City-required technical studies, any off-site work permissions, and all application processing fees. In this way the City would be assured that the project owner/operator is serious about bringing their business into compliance.

If the Planning Commission is interested in prohibiting either permanently or temporarily these types of uses, staff recommends that the Commission provide the appropriate direction on the following questions:

1. Should the City prohibit the approval of new recreational vehicle and mini-storage facilities?

2. If these types of uses are prohibited, should the prohibition apply to all zones? Or only in commercial or residential zones?

3. Should any prohibition be temporary or permanent?

4. Should any future prohibition of these uses apply to previously approved, but un-constructed facilities (and potentially effect the City's ability to approve an extension of time)?

5. For un-permitted recreational vehicle and mini-storage facilities established prior to incorporation, should they uses be subject to this moratorium? This situation could apply when an unpermitted business is identified and code enforcement action is initiated against the property owner for a long-standing unpermitted facility.

**ATTACHMENTS:**

A. Entitlement Process for Mini- and Recreational Vehicle Storage Facilities

# ATTACHMENT A

**Attachment A**

**ENTITLEMENT PROCESSES**

| Zones | | Trailer and Boat Storage | Mini Warehouse |
|---|---|---|---|
| Rural Residential | R-R | CUP | - |
| General Commercial | C-1/C-P | PP | CUP |
| Scenic Highway Commercial | C-P-S | CUP | - |
| Manufacturing - Service Commercial | M-SC | P | P |
| Industrial Park | I-P | - | P |
| Manufacturing - Medium | M-M | P | P |
| Manufacturing - Heavy | M-H | P | P |

- Not permitted (Not listed)

P Permitted by right

PP Permitted with a Plot Plan

CUP Permitted with a Conditional Use Permit