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M E M O R A N D U M

TO: Susan Sher, Mayor, and the members of the Ukiah City Council
FROM: Darcy Vaughn, City Attorney
DATE: October 7, 2026
SUBJECT: Appeal to City Council of Community Development Directors' Determination re 814 / 816 Jackson Avenue

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I have been asked to: (1) explain the procedures required for conducting the hearing on the appeal of the Community Development Director's determination that the installation of 4 "ship cargo containers" for storage, each measuring 8 feet by 20 feet, at 814/816 Jackson Avenue, is not listed as an allowed or permitted use in the City's R-1 Zoning District and is not an appropriate use for that district; and (2) summarize and analyze the applicable City, state, and federal laws that the Council will consider in making a decision on the appeal, including those legal issues raised by the Appellant.

1. Hearing procedure:

a. Due process requirements. A hearing on an appeal from a decision of the Community Development Director ("Director") rescinding a building permit is a quasi-judicial administrative hearing that must comply with the due process clause in the 14th Amendment to the U.S. Constitution.

Due process includes the right to a hearing before an impartial decision-maker, a

decision based on the information presented during the hearing and findings based exclusively on substantial evidence presented during the hearing or which are contained in the planning file for the project. (See Cal. Code of Civil Procedure § 1094.5 which details the court's review of quasi-judicial administrative decisions.)[1]

To satisfy the requirement of impartiality each councilmember should endeavor to keep an open mind and not make a decision, until after the appellant and those opposing the appeal have presented facts and arguments during the hearing.

In *Petrovich Development Co., LLC v. City of Sacramento* (2020) 48 Cal. App. 5th 963, the court of appeal set aside a City Council decision overturning the planning commission decision, because there were concrete facts in the record showing an unacceptable probability of actual bias of one councilmember who took affirmative steps to assist opponents of the permit and organized the opposition at the hearing, acting as an advocate. The decision would not prevent councilmembers from speaking with the appellant or opponents of the project prior to the hearing, but a councilmember should not make statements prior to the hearing suggesting that they have made a decision prior to the hearing.

b. Procedure for conducting the hearing. Under City Council Meeting Procedures, the Mayor is responsible for conducting the hearing to promote an orderly presentation of the evidence by the parties. The Appellant and those supporting the application present their evidence and argument first. After those opposed to the project present their evidence and argument, the Appellant should be allowed additional time for rebuttal. If the Appellant presents new arguments or

[1] "The inquiry in such a case shall extend to the questions whether the respondent has proceeded without, or in excess of, jurisdiction; whether there was a fair trial; and whether there was any prejudicial abuse of discretion. Abuse of discretion is established if the respondent has not proceeded in the manner required by law, the order or decision is not supported by the findings, or the findings are not supported by the evidence."

evidence during rebuttal, the opponents should be allowed some additional time to rebut the new evidence or argument.

The Mayor can impose time limitations on all those wishing to present evidence or argument and may prevent the presentation of irrelevant, repetitive or cumulative testimony or argument, while preserving the right to a fair hearing. (City Council Meeting Procedure, §§ IV and VI, pp. 10-11, attached as Attachment 1.)

Upon closing the public hearing portion of the meeting, the City Council can deliberate and decide the appeal by a motion and voice vote. The Council must adopt findings to support its decision. If the City Council upholds the Director's decision, it could adopt or modify the Director's findings before adopting them as the City Council's findings. If it were to modify or reverse the Director's decision, the Council would need to adopt its own findings in support of its decision. In that event, it would have the option to direct staff to prepare findings in support of the City Council's decision which the Council could consider for adoption as presented or as revised by the City Council during its next meeting.

2. Summary of Director's Determination Process and Application of Applicable Law.

a. Community Development Director's Determination of Appropriate Use.

This Section will set forth the applicable Ukiah City Code ("UCC") provisions for the Director's Determination of Appropriate Use and summarize how the Director applied these provisions in making his findings regarding the permanent installation of four shipping containers for storage at 814/816 Jackson Avenue.

UCC § 9278.A states:

> Any words or phrases not defined within this article shall be defined as set forth in current dictionaries. If no dictionary defines a particular

> term, the City Community Development Director shall have the authority to define the term or equate it to a defined term that is similar in nature.

Per UCC § 9023, entitled Determination of Appropriate Use:

> Whenever a use is not listed in this article as a use permitted by right or a use subject to a use permit in the R-1 zoning district, the Community Development Director shall determine whether the use is appropriate for the zoning district, either as a right or subject to a use permit. In making this determination, the Community Development Director shall find as follows:

1. The use would not be incompatible with other existing or allowed uses in the R-1 zoning district;

2. The use would not be detrimental to the continuing residential development of the area in which the use would be located; and

3. The use would be in harmony and consistent with the purpose of the R-1 zoning district.

4. In the case of determining that a use not articulated as an allowed or permitted use could be established with the securing of a use permit, the Community Development Director shall find that the proposed use is similar in nature and intensity to the uses listed as permitted uses.

Pursuant to the City's regulations for the Low Density Residential (R-1) District, both Accessory Buildings and "Accessory uses normally incidental to single-family residences" are allowed by right, i.e. without a permit. (UCC § 9016.)

The UCC defines these terms as follows:

> Accessory Building: A building accessory to a primary building on the same parcel.
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> Accessory Uses: Uses which are typically associated with and subordinate to the permitted or conditional permitted principal use. Accessory uses and structures are subject to the same regulations as apply to principal uses in each zoning district, except as may be otherwise provided.
>
> Building: A structure having a roof supported by columns or walls, for the shelter, support, or enclosure of persons or property.

(UCC § 9278.B.)

As stated in Mr. Schlatter's letter to appellant regarding Determination of Appropriate Use ("Director's Letter") the Appellant was granted a building permit on April 14, 2025 to "install (4) ship cargo containers for storage only, 8' x 20' feet each." The permit application stated that the four metal ship cargo containers would be placed five (5) feet from the property line of the adjacent property owner. After issuance of the building permit, the Appellant installed one of the ship cargo containers as per the terms of the permit. In April 2026, Appellant applied for and obtained an extension to the original building permit. In May 2026, the adjacent property owner submitted a complaint to the Director, thus making the Director aware of the issuance of the building permit for the shipping containers. The Director conducted a site visit and reviewed the building permit-associated plan check review for the installation of the ship cargo containers. In that review, a Community Development staff member classified "ship cargo containers" as "accessory buildings incidental to residential use (i.e. storage)" that are allowed by right in the R-1 Zone. The review did not include an analysis how four metal ship cargo containers should be properly classified as accessory buildings incidental to residential use.

The Director concluded that the four shipping containers should not be classified as

accessory buildings incidental to residential use, and that because shipping containers were not listed as an allowed or permitted use in the regulations for the R-1 Zone, it would be necessary for him to make a Determination of Appropriate Use pursuant to UCC § 9023. At the time the Director issued his Determination, two of the four shipping containers had been installed on the Property in the locations indicated on the permit.

In his Determination of Appropriate use, the Director concluded that the permanent installation of four shipping containers in the R-1 Zone would not be appropriate as an allowed or permitted use because that proposed use is not similar in nature and intensity to the uses listed as permitted uses, and accordingly, he could not make the three required findings pursuant to UCC § 9023. Under that Section, the Director would need to find that (1) the installation of the four shipping containers would be compatible with existing and allowed R-1 uses; (2) the installation of the shipping containers would not be detrimental to continuing residential development; and (3) the installation of the shipping containers would be harmonious and consistent with the R-1 Zone's purpose.

First, the Director found that the shipping containers were not compatible with other existing or allowed uses in the R-1 zoning district. He noted that existing uses in the area were single-family homes and the Ukiah Municipal Golf Course, and that an allowed use in R-1 included "accessory uses normally incidental to single-family residences, community gardens, home occupations, and single-family residential dwellings, including manufactured/modular homes." He then concluded that four shipping containers arranged along the neighbor's boundary would create an approximately 80-foot-long, 8-foot-high continuous façade, functioning visually much like a fence. He also noted that in the R-1 Zone, fences are limited to seven feet in height, with a taller fence requiring a variance or use permit.

The Director concluded that the installation of the four shipping containers would be detrimental to continuing residential development, citing concerns about visual blight, diminished property values, maintenance deterioration, hazardous materials, pests, structural condition, and potentially toxic paint.

Finally, the Director found that the installation of the four shipping containers would not be harmonious and consistent with the R-1 Zone's purpose, which is to preserve, enhance, and protect the residential qualities of low-density residential neighborhoods. The Director analogized the installation of the four shipping containers to what he considered the most similar defined use, convenience storage," which the Ukiah City Code permits in commercial zones but prohibits in residential zones. The Director also noted that in a review of regulations and standards set by other California jurisdictions he found no instances of cities allowing by right installation of a permanent shipping container as accessory to the primary use in residential zoning districts. The Director concluded by observing that the building permit approved for the installation of the four shipping containers was the first known building permit issued for such a use in a low-density residential district in the City. As such, he determined that the installation of four shipping containers was not an appropriate use for the R-1 Zone, and that the permit was issued in error and should be rescinded.

b. Legal issues presented in the appeal of the Director's Determination rescinding the building permit for installation of four cargo shipping containers.

This Section will discuss the application of the UCC and state law regarding rights acquired pursuant to a government-issued permit, the City's role in administering its zoning ordinance, and the standards for determining whether a zoning ordinance is void for vagueness. The Council should consider these legal principles in making findings regarding this Appeal.

1. A vested right to construct in compliance with a building permit only arises as of right if the permit complies with the City's Zoning Ordinance.

The Appellant alleges that she acquired vested rights by materially relying on the building permit issued by the City. Specifically, she alleges that Community

Development staff interpreted an existing zoning category, approved an explicitly disclosed use under that category, issued a permit, allowed the property owner to rely upon it, and subsequently extended that permit, and that the Director then retroactively substituted his interpretation for the prior interpretation and characterized the original approval as void, thus rescinding the permit and interfering with the Appellant's vested property right.

Appellant correctly sets forth the applicable law. Where a property owner performs substantial work and incurs substantial liabilities in good-faith reliance on a building permit, the owner acquires a vested right to complete the construction authorized by that permit, and the issuing agency may not extinguish that right by subsequently changing the applicable zoning requirements. (*Avco Community Developers, Inc. v. South Coast Regional Commission* (1976) 17
Cal.3d 785, 791.)

However, the owner may not acquire a vested right under the permit if the permit is issued in violation of the applicable zoning laws. As stated in the *Avco* case:

> [N]either the existence of a particular zoning nor work undertaken pursuant to governmental approvals preparatory to construction of buildings can form the basis of a vested right to build a structure which does not comply with the laws applicable at the time a building permit is issued. By zoning the property or issuing approvals for work preliminary to construction the government makes no representation to a landowner that he will be exempt from the zoning laws in effect at the subsequent time he applies for a building permit or that he may construct particular structures on the property, and thus the government cannot be estopped to enforce the laws in effect when the permit is issued.

Id. at 793.

Expending substantial funds in reliance on a building permit gives the permittee a vested right if the permit was issued in compliance with the applicable City ordinances. (*Pettitt v. City of Fresno*, 34 Cal.App. 3d 813, 821: "In *Markey v. Danville Warehouse & Lbr., Inc.* (1953) 119 Cal.App.2d 1, the defendant erected and commenced use of a concrete plant pursuant to use and building permits granted by appropriate public officials. Subsequently, the defendants' operations were enjoined as being violative of the applicable county zoning ordinance. On appeal, the defendants contended in part that by virtue of the issuance of the land use and building permits they had acquired a vested right to use the property and that the doctrine of estoppel applied so as to preclude interference with their use of the premises. The court disagreed, holding that the use and building permits issued in contravention of the ordinance were of no force or effect and thus the defendants did not acquire a vested right to continue to so use the property."

Under *Pettitt*, even a party who relied on a permit and performed work under the permit did not acquire a vested right if the permit authorization was invalid at issuance. The *Pettitt* court specifically explained that administrative officials' previous knowledge of the proposed use could not negate the effect of the ordinance or create a vested right through an invalid permit.

Two City Code sections specifically apply here that prohibit invalidly authorized buildings and issued permits. UCC §9002 states: "No building or structure shall be erected, reconstructed or structurally altered in any manner, nor shall any building or land be used for any purpose, other than as permitted by and in conformance with this Chapter and all other ordinances, laws and maps applicable thereto." UCC §9351 prohibits the issuance of a "permit or license for uses, buildings, or purposes in conflict with the provisions of [the City's Zoning Code], and any such permit or license issued in conflict with the provisions of [the Code] shall be null and void."

If the Council finds that the Director was correct that the four shipping containers, installed as proposed in the building permit, were not an allowed accessory building, accessory use, or appropriate unlisted use for the R-1 District at the time the permit issued, and thus in violation of UCC §§ 9002 and 9351, the building permit and

extension issued to Appellant did not create a vested right. However, if the Council finds that the permit and extension authorization were issued in compliance with the zoning provisions of the City Code, then Appellant acquired a vested right to use her property as authorized by the permit.

2. Director's and City's role in administratively applying the City's zoning ordinance.

Appellant correctly states that a city is bound by a zoning ordinance as written when administering that ordinance. In his role in interpreting and administering the zoning provisions in the City Code, the Director is authorized to interpret terms, classify a type of structure or use that has not previously been proposed for a particular zoning district, or decide whether a proposed project is compatible with an existing zoning district and the stated purpose and character of that district.

In *Johnston v. Board of Supervisors* (1947) 31 Cal.2d 66 ("*Johnston*"), the court held that when administering its zoning ordinance the legislative body of a public agency must follow the ordinance's required procedures for issuance of a permit. Specifically, the Marin County board of supervisors could not grant a use permit after the planning commission denied it because the County's zoning ordinance required approval by both bodies prior to permit issuance. "When a board of supervisors acts in an administrative capacity, as in granting permits under a zoning ordinance, it is bound by the terms of the ordinance until the ordinance is amended through proper legislative procedure." (*Johnston*, 31 Cal.2d at 74.)

The second case cited by Appellant also involves a public agency issuing a permit in violation of its own zoning ordinance. That case involved the City of American Canyon's approval of a revised application for a proposed retail development without requiring that the project applicant submit a major modification application, when the revised project was sufficiently different from the previously reviewed project as to require the major modification determination. (*Am. Canyon Cmty. United for Responsible Growth v. City of Am. Canyon*, 145 Cal. App. 4th 1062, 1067 (2006) ("*American Canyon*")

The cases do not stand for the proposition that where a zoning ordinance delegates a use compatibility determination for unlisted uses to a city official, and that official makes a case-specific denial based on the provisions of the zoning ordinance, that denial is equivalent to a legislative amendment of the zoning ordinance. In both *Johnson* and *American Canyon*, the court held that public agency officials cannot grant a permit contrary to the procedures and requirements set forth in that agency's zoning ordinance.

Here, the Council should evaluate whether the Director made a project-specific determination based on the number and configuration of cargo shipping containers on the Property (which would be a permitted interpretation of the zoning ordinance) or if the Director has effectively designated cargo shipping containers as a prohibited use in the R-1 Zone (which would be a prohibited amendment of the zoning ordinance).

3. The legal standard for evaluating Fair Notice and Due-Process issues, i.e. Vagueness, as applied to the City's zoning ordinance.

The Appellant sets forth the correct general standard for zoning ordinances to comply with due process requirements. "An ordinance must be clear, precise, definite, and certain in its terms, and an ordinance vague to the extent that its precise meaning cannot be ascertained is invalid, although otherwise it is constitutional and valid. . . . Where the terms of a zoning ordinance are so vague as to not give sufficient notice of what precisely is permitted or prohibited, this vagueness is a violation of due process." (*Zubarau v. City of Palmdale* (2011) 192 Cal. App. 4th 289, 308 (2011), internal citations omitted. "Civil as well as criminal statutes must be sufficiently clear as to give a fair warning of the conduct prohibited, and they must provide a standard or guide against which conduct can be uniformly judged by courts and administrative agencies." (*Morrison v. State Board of Education* (1969) 1 Cal.3d 214, 231.)

As an illustration of an ordinance that does pose notice and due-process concerns, in

Zubarau v. City of Palmdale, the defendant city had rescinded plaintiff's permit to locate a radio antenna on his property due to the height of a horizontal antenna array attached to an extendable vertical antenna tower, which the city alleged violated zoning standards for radio antennae. The court held that the defendant city's zoning ordinance setting development standards for radio antennae was defectively vague because those standards allowed a vertical antenna up to 75 feet yet separately imposed a 30-foot limit on the "active element of the antenna array," without defining those terms, specifying the point of measurement for the array, specifying that the standards also applied to horizontal antenna array, or reconciling the differing 75-foot and 30-foot height limitations for the undefined terms. (*Id.* at 307.)

However, a zoning ordinance will survive a due-process vagueness challenge if it sets forth the conduct permitted or prohibited with reasonable certainty and if it can be given any reasonable and practical construction. (*Id.* at 308.) "[A] specific itemization of proscribed uses within a given zone established by [a zoning] ordinance cannot be said to be mandated by due process, if, from a fair reading of the ordinance, the acts proscribed are reasonably clear. (*Sechrist v. Mun. Court* (1976) 64 Cal. App. 3d 737, 743.) In *Sechrist*, the court upheld provisions of the Los Angeles County zoning code that prohibited uses in an R-1 district except those specifically permitted, stating that this form of ordinance listing *permitted* uses within given zones and prohibiting other uses within those zones does not fail to provide specific guidelines as to prohibited uses. *Id.* The court also stated that the zoning code's limitation on allowed primary, accessory, and conditional uses to those compatible with "residential use" within a single-family residential zone was broad but could be understood through "practical construction of the language based upon 'our common sense, judicial and personal knowledge of what [single-family] dwellings are customarily and ordinarily used for -- what the ordinary man of the street would consider a one-family dwelling to be.'" (*Id.* at 745-746 citing *City of Knoxville* v. *Brown* (1953) 195 Tenn. 501.) "Any residue of uncertainty as to prohibited uses of residential property must be resolved by the common sense of the prospective user of property and the good faith of the officials charged with enforcement of the zoning ordinance. A legislative attempt to comprehensively set forth all 'residential' uses of property would only defeat the fundamental purpose of

this particular zoning ordinance." (*Id.* at 749.) Given that the scope of customer uses of single-family residential property was broad, the scope of such activity is limited only in that permissible uses could not have "commercial or public character, or constitute a health or safety hazard to the neighborhood." (*Id.* at 748.)

The court also held that given the purpose of zoning laws in stabilizing the economic and social aspects and general character of a single-family residential neighborhood, the storage of "inoperable motor vehicles, commercial vehicles, a military generator, vehicle and trailers, and 'junk' [could not] reasonably be deemed to be a 'residential' use of property, or a use which is customarily incidental to the enjoyment of a home." (*Id.* at 749.)

While these cases set forth the legal standard for determining whether a zoning ordinance is void for vagueness, they also stand for the proposition that due process does not require that the City Code zoning provisions for the R-1 Zone list every conceivable type of structure use that is allowed or permitted on a residential lot. The City Code provides definitions and standards for accessory uses, accessory buildings, provides a process for consideration of unlisted uses and structures, and delegates the authority to interpret the Code's zoning provisions to the Director. If the allowed and permitted uses set forth in the City Code for the R-1 Zone can be ascertained with reasonable certainty, then these regulations do not pose a due process or fair notice issue. The Council may look to stated legislative intent in the City Code, case law, and dictionary definitions to interpret these regulations. Council members may also use common sense in determining if the project at issue in this appeal is an appropriate use by right in the R-1 Zone by evaluating what is "typically associated with and subordinate to" and "normally incidental" to a single-family residence.

To give the Council additional context for making their own determination as to the intent of the City's zoning ordinance, note that the Appellant correctly states that some California cities allow shipping containers in specified residential or noncommercial/nonindustrial settings. These cities generally treat containers as a separately regulated category of use, limit the number of shipping containers on a

parcel to one or two, and condition the approval of their placement in residential zones on large parcel size, rear-yard placement, setbacks, screening, neutral painting, and securing a permit for their use. For example, the City of Manteca allows shipping containers in residential districts only in an opaque-fenced side or rear yard and subject to a number of development standards, including obtaining a storage container permit. The City of Jurupa Valley allows up to two containers only, depending on size, on parcels of at least 20,000 square feet and subject to 10-foot setbacks from all property lines. Like Manteca, Jurupa Valley also requires that the shipping container be fully screened by an opaque fence or fast-growing landscaping. All California cities allowing shipping containers on residential properties have specific development standards for shipping containers on residential parcels even in those limited circumstances where they are allowed by right.