Agenda Item No: 12.a.

MEETING DATE/TIME: 11/18/2026

ITEM NO: 2026-1726

City of Ukiah

AGENDA SUMMARY REPORT

SUBJECT: Appeal of Community Development Director Determination of Appropriate Use for Installation of Four "Ship Cargo Containers" at 814/816 Jackson Avenue, APN 001-06-002.

DEPARTMENT: Community Development

PREPARED BY: Craig Schlatter, Community Development Director

PRESENTER: Craig Schlatter, Community Development Director

ATTACHMENTS:

1. Building Permit 25-000077
2. Correspondence- Vau and Dayton July 2026
3. Photo - 2nd Shipping Container 11-2-26
4. Director Determination of Appropriate Use- shipping containers- 814.816 Jackson 8-6-26
5. Appeal by Vau- Determation of Appropriatate Use 8-17-26
6. City Attorney Memo- 814.816 Jackson Procedure and Law Analysis- Dir Det Appeal
7. CDD Memo- Zoning Interpretations 12-17-24
8. Correspondence received 10.26.26 Dayton - Petition

Summary: The City Council will conduct a public hearing to consider an appeal of the Community Development Director's Determination of Appropriate Use for Installation of Four "Ship Cargo Containers" at 814/816 Jackson Avenue, APN 001-06-002.

Background: In March 2025, Ms. Kerri Vau applied for a building permit through the Building Division of the City of Ukiah Community Development Department to "install four (4) ship cargo containers for storage only, 8' x 20' feet each." The Building Division approved issuance of the permit on April 14, 2025, through permit #R25-000077 (File No. 25-000364). According to Ms. Vau's application, the four shipping containers would be placed five (5) feet from the property line of the adjacent property owner, Mr. Jim Dayton. See Attachment 1 for a copy of the building permit application from Ms. Vau, as well as the approved permit and an illustration of where the four shipping containers would be placed on the 814/816 Jackson Avenue property.

Mr. Dayton submitted an email to the Community Development Director on May 11, 2026, with concerns about the placement of the first of the four shipping containers in proximity to his home. The Community Development Director conducted a site visit on May 13, 2026, confirming the reported placement of the first shipping container.

In following up on the complaint from Mr. Dayton, the Community Development Director reviewed the building permit-associated plan check completed by the Planning Manager on April 10, 2025. The Community Development Director found that the Planning Manager had not completed an analysis of the use – four "ship cargo containers" – within her review, nor had direction been provided by the Planning Manager to Ms. Vau that a Determination of Appropriate Use, completed by the Community Development Director, must first be secured to determine if the use was appropriate as an allowed or permitted use in the low density residential (R-1) zoning district.

On July 22, 2026, the Community Development Director sent written correspondence via email and U.S. mail

to the property owner, Kerri Vau, and the complainant, Jim Dayton, noting: 1) that the building permit should not have been issued until a Director's Determination was completed and that the Director was now undertaking this determination process; and 2) that comments were invited from both parties by August 3, 2026. Copies of this correspondence and comments received from Vau and Dayton are included in Attachment 2.

On August 5, 2026, the Community Development Director was notified of a second shipping container installed at the property (see Attachment 3 for a photo taken of the second shipping container on 11/2/26).

On August 6, 2026, the Community Development Director completed a Determination of Appropriate Use (Attachment 4) for installation of the four shipping containers at 814/816 Jackson Avenue, sending this determination to both Vau and Dayton. The Director determined the installation of multiple shipping containers was not appropriate as an allowed or permitted use in the low-density residential (R-1) zoning district, primarily because the four required findings in Ukiah City Code Section (§) 9023 could not be made.

In issuing the Determination, the Community Development Director directed Building Permit #25-00007 be rescinded and that the owner of the property and shipping containers, Ms. Vau, remove the existing shipping containers already installed. The Community Development Director directed the Building Division to refund the cost of the building permit to Ms. Vau, since the permit was issued by the Community Development Department in error. The Community Development Director also listed an appeal procedure per Ukiah City Code § 9266, with the appeal deadline as August 17, 2026, by 5:00 pm, or no later than 10 days after the date the determination was issued.

Discussion: Specifically, in issuing the Determination of Appropriate Use, the Community Development Director determined that the permanent installation of four cargo shipping containers in the low density residential (R-1) zoning district 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 allowed or permitted uses, and accordingly, he could not make the required findings pursuant to UCC § 9023. Under UCC § 9023, 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 zoning district. If the Director is able to make those three required findings and concludes that shipping containers could be established with the securing of a use permit, the Director must also find that the shipping containers in the R-1 zoning district are similar in nature and intensity to the uses listed as permitted uses in the R-1 zoning district.

An appeal was received from Brian Momsen of Vannucci/Momsen/Morrow, Attorneys at Law, on behalf of Kerri Vau, on August 17, 2026, at 3:09 p.m. (Attachment 5). Below, Staff has responded to each of the points made in Vau's appeal. The City Attorney has additionally provided a legal analysis and guidance to the Council (Attachment 6).

Vau Point #1 — Factual and Procedural Background establishes that Vau's records reflect approximately $5,930 in expenditures associated with the acquisition, transportation, loading, placement, leveling and installation of the first two containers.

Staff response: within Building Permit #R25-000077, the Value of Work listed by Vau for all four shipping containers is "$0 (we own)."
Value of Work includes costs associated with the acquisition, transportation, loading, placement, leveling and installation of the containers.

The value of work listed on the issued Building Permit, #R25-000077, is $2,000. In discussing the difference between Vau's reported value of work of $0 and the value of work listed on the issued permit of $2,000 with the Chief Building Official, the Chief Building Official noted that sometimes applicants underestimate the value of work. In those cases, the Chief Building Official has authority within the building code to adjust the value of work to a number that is more realistic. That was the case in this instance.

Still, neither the increased value of work from the Building Official ($2,000) nor the original value of work listed by the applicant ($0) are consistent with the reported expenditures in Vau's Point #1.

Vau Point #2 — Vau acquired vested rights by materially relying upon the building permit issued by the City. Staff response: As noted above in #1, Vau listed the value of work as $0, implying the property owner would not perform substantial work or incur substantial liabilities.

Cited case law within the City Attorney's analysis additionally proves statement #2 as incomplete. "In *Markey v. Danville Warehouse & Lbr., Inc.*, the appeals court held 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." The City Attorney additionally notes that, under *Pettitt v. City of Fresno*, "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."

Vau Point #3 — The City cannot characterize its own interpretation of its zoning code as an "error" more than a year later and thereby defeat Vau's reliance.

Staff response: as noted within UCC § 9278, "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." In addition to the zoning code not defining shipping containers as an accessory structure or use, the placement and massing of four shipping containers functionally creates a fence. Fences greater than seven (7) feet in height require a use permit.

Additionally, pursuant to UCC § 9023, only the Community Development Director, not subordinate planning staff unless designated by the Director in writing, can make determinations of appropriate use or other determinations and interpretations related to the zoning code. The Community Development Director issued a Planning Division Memorandum (Attachment 7) to planning staff on December 17, 2024, clarifying this section of the Code.

Therefore, per UCC § 9023: "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." The Planning Manager was not authorized per the Code to make a determination of appropriate use nor interpret the zoning code.

The Planning Manager's determination was also erroneous. As described in cited case law by the City Attorney: "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."

Vau Point # 4 — The shipping containers reasonably fall within the legally recognized definition of an accessory structure.

Staff response: Nothing in Vau's appeal supports the statement made in #4. As noted previously in this report, whenever a use or structure is not recognized within the zoning code, the Community Development Director must make a determination of appropriate use, and in so doing, must prove, based upon evidence within the record, the required findings. The analysis and requisite findings are prepared only for the specific use/structure at the specific location.

Vau Point #5 — The determination's analogy between the containers and a fence is legally and factually unsound.

Staff response: Staff agrees with Vau that a row of four garden sheds might create a continuous visual barrier, potentially also operating like a fence. However, in making his determination of appropriate use, the Community Development Director determined that, as proposed, the shipping containers would not be compatible with other existing or allowed uses in the R-1 zoning district. In describing the proposed massing of the shipping containers, the Director provided one example of why the shipping containers at 814/816 Jackson would not be compatible with other existing or allowed uses in R-1.

Vau Point #6 — The determination improperly creates a new land use prohibition through an ad hoc administrative decision.

Staff response: As noted in this analysis, the Community Development Director must make findings supporting his determination based upon evidence in the record, similar to how the Planning Commission or other quasi-judicial bodies appointed by the City Council make decisions. Each of the parties, Vau and Dayton, were given the opportunity to make comments prior to the Director issuing his determination, and the decision is subject to appeal. This is not an ad hoc administrative decision.

Further, a determination of appropriate use requires analysis based upon the site conditions and zoning code specific to that property. If a shipping container were proposed on another property elsewhere in Ukiah, the Director would have to analyze the container given the zoning code and site conditions at that specific property. The Community Development Director's determination is in no way precedent-setting because, as Vau correctly points out in the appeal, the Director cannot amend the Code.

Vau Point #7 — Other California municipalities expressly recognize shipping containers as accessory residential uses.

Staff response: As noted within the City Attorney's legal analysis, "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.

"All California cities," [however] "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."

Vau Point # 8 — The determination's reliance upon convenience storage is misplaced.

Staff response: As currently proposed, the placement and massing of the four shipping containers functionally operates as a fence. The Director has determined the containers are not principally operating as personal storage, and as such, the only such use similar to what is proposed is convenience storage, which involves multiple storage units contained within a storage facility.

Vau Point #9 — The alleged aesthetic impact upon the adjoining property owner does not justify rescission of a validly issued building permit.

Staff response: The neighboring property owner's complaint related to aesthetic impact has not been used by the Community Development Director to justify rescission of the building permit. Rather, the Director states: "It is my opinion that the containers would create a visual blight for the surrounding neighborhood." As a result, the Director was unable to make the required finding per the Code that the four cargo shipping containers, arranged in a row as proposed, would not be detrimental to the continuing residential development of the area in which the use would be located.

Vau Point #10 — Speculative health and safety concerns do not support the determination.

Health and safety concerns for unregulated shipping containers are well-documented in other California municipalities and, as such, germane to this analysis. As noted in #9 above, because of these documented concerns and the placement of the shipping containers as proposed, the Director was unable to make the required finding that the four cargo shipping containers, arranged in a row as proposed, would not be detrimental to the continuing residential development of the area in which the use would be located.

Vau Point #11 — The Director's Determination also raises serious fair-notice and due-process concerns.

Staff response: See #3 above. Under the Ukiah City Code, neither the Planning Manager nor other City of Ukiah employees, unless designated by the Community Development Director, can make interpretations or determinations related to the zoning code. The points made by Vau within this section are thus inconsistent with Code.

One final note, related to correspondence. On October 26, 2026, Jim Dayton submitted correspondence to the Community Development Director that includes a petition signed by Ukiah residents (Attachment 8). Any future correspondence received after publication of this agenda item will be uploaded and made available online, on the Department's CEQA webpage at https://cityofukiah.com/ceqa-review/ and on the City's meetings page: https://cityofukiah.com/meetings. Correspondence will also be printed and added to the public viewing binder available at the Community Development Department public counter.

Staff recommends the City Council conducts a public hearing and rejects the appeal, upholding the Community Development Director's determination that the placement and massing of the four cargo shipping containers, as proposed, are not appropriate as a permitted or allowed use in the R-1 zoning code.

Recommended Action: 1) Conduct a public hearing to consider the appeal request in accordance with Ukiah City Code (UCC) Section 9266; and 2) Reject the appeal, upholding the Community Development Director's Determination and corresponding conclusions.

BUDGET AMENDMENT REQUIRED: N/A

CURRENT BUDGET AMOUNT: N/A

PROPOSED BUDGET AMOUNT: N/A

FINANCING SOURCE: N/A

REVENUE: Yes / No GRANT: Yes / No N/A

PREVIOUS CONTRACT/PURCHASE ORDER NO.: N/A

COORDINATED WITH: Darcy Vaughn, City Attorney

STRATEGIC PLAN (SP): N/A

GENERAL PLAN ELEMENTS (GP): N/A

Approved: Sage Sangiacomo, City Manager