

ZONING

APPENDIX 1

ORDINANCE NO. 5 OF THE AGUA CALIENTE BAND OF CAHUILLA INDIANS

I. INTRODUCTION AND SCOPE.

A. TITLE.

This ordinance shall be titled, and quoted as the “Tribal Land Use Appeal Ordinance.”

B. PURPOSE.

It is the purpose of this Ordinance to establish and define procedures whereby the Tribal Council of the Agua Caliente Band of Cahuilla Indians will receive and consider the appeal of an Appellant, as such party is hereinafter defined, who is aggrieved by a decision of the City Council of the City of Palm Springs which affects the planning, zoning, development, or use of Indian trust land within the exterior boundaries of the Agua Caliente Indian Reservation, and, after consideration of said appeal, will affirm, modify, or reverse the decision of said City Council which is the subject of the appeal, all pursuant to Agreement No. 1324 (in said City’s records), between the Tribal Council and City Council, first executed on August 2, 1977, and as subsequently amended.

C. DEFINITIONS.

For the purpose of carrying out the intent of this Ordinance, words, phrases, and terms shall be deemed to have the meaning ascribed to them in the following paragraphs covering definitions.

When not inconsistent with the context, words used in the present tense include the future; words in the singular include the plural; and those in the plural number include the singular; words in the masculine gender include the feminine; and those in the feminine gender include the masculine; “or” includes “and” and “and” includes “or.” The word “shall” is mandatory; the word “may” is permissive.

1. APPELLANT shall include any individual(s) or entity aggrieved by a decision of the City Council of Palm Springs affecting the planning, zoning, or development of trust land located within the Agua Caliente Indian Reservation who is:
 - (1) A member of the Agua Caliente Band of Cahuilla Indians;
 - (2) A member of a current Tribal Council of the Agua Caliente Band of Cahuilla Indians;
 - (3) A holder of a beneficial or possessory interest in Indian trust land within the boundaries of the Agua Caliente Indian Reservation, including but not limited to heirs, or successors in interest to original allottees; or
 - (4) The lessee or authorized agent of an individual(s) described in (1), (2), or (3) above.
2. CITY COUNCIL shall mean the City Council of the City of Palm Springs.
3. CITY PLANNING COMMISSION shall mean the City Planning Commission of the City of Palm Springs.

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4. INDIAN PLANNING COMMISSION shall mean the Planning Commission appointed by the Tribal Council, Agua Caliente Band of Cahuilla Indians.
5. INDIAN TRUST LAND shall mean any real property, including water rights, belonging to the Agua Caliente Band of Cahuilla Indians, or to any member of said Band, that is held in trust by the United States or is subject to a restriction against alienation imposed by the United States, as well as any structures or improvements erected or maintained on such realty.
6. TRIBAL COUNCIL shall mean the Tribal Council of the Agua Caliente Band of Cahuilla Indians.

II. APPEALS.

A. APPEALABLE MATTERS.

Notwithstanding any provision of the Palm Springs Zoning Ordinance to the contrary, the Tribal Council on appeal may affirm, modify, or reverse any decision of the City Council in the following matters relating to the use, proposed use, or development of Indian trust land:

1. Building and utility permits,
2. Changes of zone,
3. Variances for applicable zoning requirements,
4. Conditional use permits,
5. Planned Development District permits,
6. Tentative and final Tract and Parcel Maps,
9. Interpretation of State and Federal environmental regulations, and
10. Related matters to the above.

B. FORM, AND PERIOD FOR FILING APPEALS.

1. Appeals from a decision of the City Council must be initiated by an Appellant by his filing in triplicate a Notice of Appeal form, as prescribed by the Tribal Council, which is completely filled out.
2. The Notice of Appeal must be filed in the office of the Tribal Council within a period of ten (10) days front the date of receipt by an appellant of the written decision of the City Council being appealed, and said Notice being accompanied by a filing fee of Two Hundred Fifty (250.00) Dollars, in cash, personal check, cashiers or certified check, money order, or bank draft, payable to said Tribal Council. Unless the appellant can demonstrate to the contrary to the satisfaction of the Tribal Council, receipt of such a written decision by an appellant shall be deemed to have occurred 3 days after the date appearing on the face of said written decision.
3. The notice of Appeal shall clearly identify the facts and circumstances which, in the opinion of the Appellant, indicate error or abuse of discretion by the City Council in the matter on appeal, and wherein the modification or reversal of the City Council decision would conform to acceptable planning and zoning standards, and assist in promoting public health, safety, convenience and general welfare.

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4. Within a period of thirty (30) days of the date of filing a Notice of Appeal, the Appellant of record thereon shall file, in the office of Tribal Council, the following informational documents:
 - a. A complete duplicate copy of the record and material previously considered by the City Council, including maps, exhibits, photographs, reports, etc.
 - b. Transcripts of any and all proceedings before the City Council, including study sessions, at which the subject matter on appeal was considered or discussed.

A certified copy of City Council minutes will be acceptable, in lieu of stenographic and, provided that such minutes are in sufficient detail to demonstrate that all points raised by the Appellant were thoroughly understood by said City Council.
 - c. A written statement by the Appellant indicating where, in his or her opinion, the material required in a., and b., above, support the modification or reversal of the decision of the City Council. This written statement may be of any length the appellant desires, but shall be accompanied by a 1-page summary thereof if the length of the principal statement exceeds 3 pages.
5. Any Notice of Appeal, or duplicate copies of the record, transcripts or minutes, and the statement by Appellant, not filed within the time limits specified in Paragraphs 2. and 4. above, shall be dismissed by the Tribal Council with notice being sent to the appellant and the City Council of such action and the reason therefor. The time in which any act provided by this ordinance is to be done shall be computed by excluding the first day and including the last day, unless that last day falls on a day on which the offices of the Tribal Council and Bureau of Indian Affairs, now located at 441 S. Calle Encilia, Suite #8, Palm Springs, California, are not open for regular business, in which case the last day for performing such an act shall be the first day after that last day when the offices of the Tribal Council and the Bureau of Indian Affairs, are open for regular business.

III. TRIBAL, COUNCIL ACTION ON APPEALS.

A. REFERRAL AND STUDY.

When an Appeal is complete and filed in full compliance with the provisions of Section II., B., above, the Tribal Council may refer to the Indian Planning Commission for report or comment, except as follows:

1. When the Tribal Council determines that additional specialized studios are desirable to resolve the issues of an appeal, said Tribal Council may direct the Appellant to provide additional data and conclusions from qualified experts in particular fields, and within a period of sixty (60) days of the date of such direction, with said Appellant bearing the full and total cost of such additional data and conclusions.
2. The Tribal Planning Consultant and the Indian Planning Commission shall have the benefit of review of additional specialized studies, prior to submitting final reports or comments to the Tribal Council.

B. FORMAL CONSIDERATION.

The Tribal Council is not a public agency or a quasi-public agency. However, for purposes of this ordinance, after receipt of the final report and comment of the Tribal Planning

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Consultant and the Indian Planning Commission, said Tribal Council shall schedule and attend at least one joint public meeting with the City Council, at which time the Appellant, his Counsel, or his representative may be heard, and where comments of the general public on the issues may also be heard, provided that such public comment supplies new and pertinent information not previously included in the City record. Comments of the general public shall be subject to reasonable restrictions which might be imposed by the Tribal Council to limit the length of the meeting and to avoid repetition of information already in the record.

1. The City Council shall cause to be published the date, time, place, and purpose of the joint public meeting with the Tribal Council, at least one time in a newspaper of general circulation in the City of Palm Springs, and at least ten (10) days prior to the date of said meeting.

C. DECISION OF TRIBAL COUNCIL.

The Tribal Council shall make a decision, either affirming, modifying, or reversing the prior decision of the City Council on appeal, at the required joint public meeting with the City Council, or within a period of thirty (30) days thereafter.

1. The decision of Tribal Council shall be in writing, and effective on the date thereof, with copies being mailed to the Appellant, and to the City Council.
2. Any decision of the Tribal Council which modify or reverses the previous decision of the City Council on appeal, shall specify wherein there was error, or abuse of discretion on the part of said City Council, and wherein such modification or reversal will conform to acceptable planning and zoning standards, and promote public health, safety, convenience and general welfare through productive use of Indian trust land.
3. In proper cases, the Tribal Council decision on an appeal may include conditions affecting use, and development of the Indian trust land involved.
4. The decision of the Tribal Council shall be final on any appeal from a decision of the City Council.

Thereafter, any permits necessary to the use of the land in accordance with the decision of the Tribal Council shall be issued by the City of Palm Springs.

D. EFFECTIVE DATE.

This ordinance shall take effect immediately upon its adoption by the Tribal Council in order to promote and assist the expeditious, timely, and orderly use and development of Indian trust lands located on the Agua Caliente Indian Reservation within the City of Palm Springs, and shall remain in full force and effect except as may be amended or repealed by the Tribal Council. This ordinance shall be published once in a newspaper of general circulation in the City of Palm Springs within 5 days of the adoption of this ordinance by the Tribal Council.

BE IT ENACTED by the Tribal Council of the Agua Caliente Band of Cahuilla Indians, this 12th day of December, 1978.

Chairman, Tribal Council
Vice-Chairman, Tribal Council
Secretary, Tribal Council
Member, Tribal Council
PROXY Member, Tribal Council