



SHAUN M. MURPHY, ESQ.  
PARTNER  
ADMITTED IN CA, MI, TX, NY  
AND THE U.S. SUPREME COURT

REPLY TO:  
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April 4, 2024

**VIA HAND DELIVERY**

Anthony Mejia  
City Clerk  
City of Palm Desert  
73-510 Fred Waring Drive  
Palm Desert, California 92260

2024 APR -4 AM 10:45  
RECEIVED  
CITY CLERK'S OFFICE  
PALM DESERT, CA

**RE: Keith Kropfl and Carrie Kropfl appeal of decision from building official related to short-term rental regulations**

Dear Mr. Mejia:

We represent Keith Kropfl and Carrie Kropfl who own the real property within the Monterey Country Club at 239 Serena Drive, Palm Desert (the "**Property**"). Mr. and Mrs. Kropfl (pronounced Cropful) recently received an adverse decision from Mr. Jason Finley, the City's Building Official (the "**CBO**"). The CBO made three determinations. Under Section 2.72.010, the Kropfl's appeal the decision on the first and second issues only. A copy of the decision is attached as Exhibit A.

**ISSUE NO. 1: Whether the Kropfl's may continue to use the third bedroom for short-term rentals.**

The reasons from the CBO for the denial are in Exhibit A. The Kropfl's intentionally bought a property in an area that allowed short-term rentals. They checked with the city, with the homeowner's association of the Monterey Country Club, and did their own due diligence before purchasing. The sellers had purchased the property in 2016 as a three-bedroom condo. The sellers listed the property in 2021 as a three-bedroom condo, the Monterey Country Club property management/sales office provided sales and marketing information showing their floorplan as a three-bedroom condo. The Monterey Country Club homeowner's association provided a floorplan also showing the Property as a three-bedroom condo (with the original builder's, Sunrise Division, logo on it). Their realtor also identified the Property as a three-bedroom condo. The Property has been classified as a

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three-bedroom condo for decades, and the County of Riverside Assessor's Office recognizes it as a three-bedroom condo.

After they bought the Property, they applied to the city and the city issued a short-term rental permit for 2022, and again for 2023, for a three-bedroom condo. By issuing the permits, the city recognized the Property as a three-bedroom condo. The Kropfl's recently applied to renew their permits for 2024, and were told – for the first time – that the permit could not be renewed as a three-bedroom rental and could be used only as a two bedroom.

The Kropfl's made the City aware that currently, the Monterey Country Club's onsite property management/sales office was continuing to sell and lease their exact floor plan as a three-bedroom condo, the homeowner's association was continuing to pass out floor plans showing it as a three-bedroom condo, and sellers/realtor's within the Monterey Country Club were continuing to list and sell it as a three-bedroom condo. The city responded by saying, "the City does not regulate advertising or private transactions." With actual knowledge, the city is allowing the very same floorplan at issue here to be advertised, leased long-term, and sold as three-bedroom condos.

The city's sudden change in position has and will continue to have a significant financial impact on the Kropfl's. The change causes an income loss of at least 30% based on the amount of rent. The change will likely cause greater losses because fewer people will rent the Property if it accommodates only four people instead of six. A 30% reduction in revenue would be between \$30,000 to \$50,000 yearly.

The Property is a principal source of income for the Kropfl's. It is how they support their family. Their Property is highly rated, they make sure their guests follow the rules, and they have received no complaints from either the City or the Association. Their Property combined with other similarly situated properties provide a significant economic benefit to the City. They employ a cleaning staff, gardeners, pest control, handymen, plumbers, and more. They send customers to Monterey Country Club for golf. Past guests have bought property in Monterey Country Club after staying at their property. Each transaction contributes to the Palm Desert economy in addition to the 12% tax they pay to the city.

In addition to a loss in revenue, the city's change of position has impaired the Property's value. The change is estimated to cause a loss of value between 20% and 30%. Nothing has changed during the decades where the Property was classified as a three-bedroom condo. The city should continue to recognize the Property as a three-bedroom condo and allow the Kropfl's to market and rent it as a three-bedroom.

**ISSUE NO. 2: Whether the Kropfl's may use their code compliant living room as an additional sleeping room to accommodate two more guests.**

The CBO determined they could not use the living room as a bedroom. The basis for the denial is set forth under Issue 2 in Exhibit A.

The CBO admits that the term "bedroom" is not defined in Chapter 5.10 regulating short-term rentals. The CBO interpreted bedroom to mean:

a private room intended for sleeping that is separate from other rooms by a door, having a least one window that meets the Emergency Escape and Rescue Opening requirements of the California Building code, has a closet/storage area, and is accessible to a bathroom without crossing into another bedroom.

The CBO based his interpretation "in part on the city's ordinance differentiating between on-site and off-site owners. Specifically, §5.10.090(G)..." The CBO also based his decision on definitions in the American Planning Association, Planners Dictionary, and his profession experience. He did not, however, provide any information from those resources to justify or explain his interpretation.

First, the CBO's reliance on § 5.10.090(G) is puzzling because it is irrelevant to defining the term "bedroom." That section merely states the obvious presumption that an on-site owner will be deemed to occupy at least one bedroom. The presumption makes one less bedroom available for rent, but it does not aid the effort to define a "bedroom."

Since we have no information about what the Planners Dictionary provides or the CBO's professional experience, there is no basis to evaluate the information on which he purportedly relied. The Kropfl's dispute the CBO's definition of bedroom; particularly, the requirement that it have a door. The CBO cites no provision in the city's Code of Ordinances requiring a bedroom to have a door.<sup>1</sup>

There are many sources other than the Planners Dictionary that define bedroom with no reference to a door. For example, Merriam-Webster defines bedroom to mean, "a room furnished with a bed and intended primarily for sleeping." (<https://www.merriam-webster.com/dictionary/bedroom#dictionary-entry-1>). No mention of a door. The Cambridge Dictionary defines bedroom to mean, "a room used for sleeping in." (<https://dictionary.cambridge.org/us/dictionary/english/bedroom>). No mention of a door. Dictionary.com defines bedroom to mean, "a room furnished and used for sleeping." (<https://www.dictionary.com/browse/bedroom>). No mention of a door. And The Britannica Dictionary defines bedroom to mean, "a room used for sleeping." (<https://www.britannica.com/dictionary/bedroom>). No mention of a door. It is apparent that the CBO selected a source to use that would support the conclusion he wanted to reach.

In an earlier communication dated February 27, 2024, to Mrs. Kropfl, the CBO explained his interpretation of an acceptable sleeping room. He said, "As I stated at our counter, a front room or living room *meets the building code definition of a habitable space*. If emergency egress and rescue requirements are achieved, the *building code is*

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<sup>1</sup> I wonder how parents would react after learning that removing the door to their teenager's bedroom for whatever reason means that the room is no longer a bedroom as determined by the CBO.

Anthony Mejia  
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*silent* on whether you can sleep there or not. I did say this would come to a Short-Term Rental Program policy decision if these areas (front rooms, living rooms, and similar spaces) would be allowed. That discussion resulted in researching *other programs* that conclusively excluded front rooms, living rooms, and similar spaces. *The City decided to align with other jurisdictions' definitions* and not allow it to be counted toward the program." (Emphasis added.)

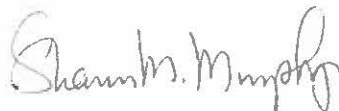
The CBO admits that the city's Code of Ordinances have no provisions defining an acceptable sleeping room. He also admits "If emergency egress and rescue requirements are achieved, the *building code is silent* on whether you can sleep [in a living room] or not." He referred to other jurisdictions who specifically adopted regulations governing the use. Rather than amend the Code of Ordinances to conform to what other jurisdictions have done – to specifically address the issue – the city adopted a policy based on what other jurisdictions had implemented. The city is applying a shadow regulation – one that has not gone through the formal procedures to amend the Code of Ordinances – including providing notice to residents.

The room that the Kopfl's want to use for more guests is a "room furnished and used for sleeping," or "a room used for sleeping." It has windows that comply with the Emergency Escape and Rescue Opening requirements of the California Building code, has a closet/storage area, and is accessible to a bathroom without crossing into another bedroom. There is nothing in the California Building Code nor is there any provision in the city's Code of Ordinances prohibiting them from using the room as an acceptable sleeping room.

The CBO's determination that a door is required for a room to be classified as a bedroom is arbitrary. It should be reversed and the Kopfl's should be allowed to advertise and rent the space as an additional sleeping room.

Sincerely,

**SBEMP LLP**



BY: Shaun M. Murphy

SMM: sv

Encl.: Exhibit A  
Fee Payment

**EXHIBIT A**



# CITY OF PALM DESERT

73-510 FRED WARING DRIVE  
PALM DESERT, CALIFORNIA 92260-2578  
TEL: 760-346-0611  
INFO@PALMDESERT.GOV

March 25, 2024

VIA US MAIL AND EMAIL

Ms. Carrie Kropfl  
246 West Escalones  
San Clemente, CA 92672

Subject: Monterey Country Club - Den and Bedroom Interpretation

Dear Ms. Kropfl:

I wanted to provide a formal response to the three questions below that you have raised in connection with using your property in Monterey Country Club and the ability to appeal the determinations we have provided you.

**Question 1: Can you continue to use the third bedroom, based on the floor plans provided (attached)?**

No, the third bedroom you reference is considered a den and cannot be used as a bedroom. Mr. Jason Finley, CBO the City's Building Official responded on February 27, 2024 that the information you provided is not the construction plans, but rather marketing materials. Mr. Finley then provided you with a copy of the approved floor plan (attached) that was permitted for your unit from our permitting archives, and the room in question was labeled as a den. Mr. Finley also provide you with a letter dated September 28, 1981 (attached) from the Sunrise Company, the developer to our former Chief Building Official clarifying that "the den is not intended to be used for sleeping purposes."

Furthermore, Mr. Finley reviewed and concurred with the 2022 California Residential Code (§R310.1 - Emergency Escape and Rescue Opening Required<sup>1</sup>) which states: Every sleeping room shall have not less than one operable emergency escape and rescue opening. Emergency escape and rescue openings shall open directly into a public way (§R310.1). In applying this life, health, and safety requirement for "Den" space(s) adjacent to the atriums of the Monterey Country Club floor layout, it is determined these atriums do not meet the minimum code requirements for a bedroom or sleeping room. They lack direct access to a public way and cannot be used as such. This determination was also based upon documentation from the original developer acknowledging that these areas could only serve as a den. An outside independent building official was also used and concurred (attached) in 1979.

<sup>1</sup> Cited California Residential Code Definitions (Section §202):

**EMERGENCY ESCAPE AND RESCUE OPENING.** An operable exterior window, door, or other similar device that provides a means of escape and access for rescue in the event of an emergency.

**PUBLIC WAY.** Any street, alley, or other parcel of land open to the outside air leading to a public street, that has been deeded, dedicated, or otherwise permanently appropriated to the public for public use and that has a clear width and height of not less than 10 feet (3048 mm).

**Appeal of Building Official's Interpretation**

Pursuant to Palm Desert Municipal Code (PDMC) Chapter 2.18, the Building Board of Appeals, a letter of appeal must be submitted requesting an appeal of the Building Official's interpretation. Once the letter is received a hearing will be scheduled with the Building Board of Appeals. If you wish to appeal against Mr. Finley's interpretation, submit to the City Clerk a letter requesting the appeal along with a check in the amount of \$276.00. A hearing will be scheduled no sooner than ten days after receiving your request.

**Question 2: Can you use your living room as a bedroom to sleep two additional guests for a Short-Term Rental?**

No, the living room cannot be used as a bedroom. Chapter 5.10 of the PDMC includes the regulations for operating a Short-Term Rental Unit with the City of Palm Desert. §5.10.090(G) establishes that the maximum number of overnight guests shall not exceed two persons per bedroom. §5.10.030 includes definitions, however a definition of "bedroom" is not included.

Chapter 2.12 of the PDMC establishes that the Community Development (Development Services) Director shall enforce the standards of the PDMC pertaining to the use of land, the erection, construction, reconstruction, moving, conversion, alteration, or addition to any building or structure, which involves the interpretation of those standards. For purposes of the short-term rental regulations, I have interpreted bedroom to mean:

a private room intended for sleeping that is separated from other rooms by a door, having at least one window that meets the Emergency Escape and Rescue Opening requirements of the California Building code, has a closet/storage area, and is accessible to a bathroom without crossing into another bedroom.

This interpretation is based in part on the city's ordinance differentiating between on-site and off-site owners. Specifically, §5.10.090(G) establishes that on-site owners shall be deemed to occupy at least one bedroom, which shall diminish the number of bedrooms for overnight guests accordingly. In other words, a one-bedroom unit CANNOT be issued an On-Site Short Term Rental Permit, because the On-Site Owner must be present and must stay at the property in a bedroom. The interpretation was also based in part on definitions of bedrooms and sleeping rooms contained in the American Planning Association, Planners Dictionary, and my professional experience.

**Appeal of Director's Interpretation**

Chapter 2.72 establishes procedures for appeals to City Council that requires an appellant file a written notice of appeal specifying the specific decision from which the appeal is taken, the specific grounds for the appeal, and the relief or action requested from the City Council. This notice must be submitted to the City Clerk within ten (10) days after receiving this written letter along with a check in the amount of \$276.00. Once deemed sufficient, the City Clerk will schedule the appeal for a hearing by the City Council at a regular meeting, but not later than forty-five days after receipt of the notice of appeal. The City Clerk will cause the notice of hearing to be given to the appellant not less than ten days prior to the hearing unless that notice is waived in writing by the appellant.

**Question 3: Can up to four overnight guests per bedroom be permitted for a Short-Term Rental?**

No, only two overnight guests are permitted per bedroom. As stated above, PDMC §5.10.090(G) explicitly states that the maximum number of overnight guests shall not exceed two persons per bedroom. This is not a matter of interpretation, but a strict code requirement. As such, there is no right to appeal the decision is ministerial and does not involve the exercise of administrative discretion or personal judgment (see PDMC §2.72.010(B))

Sincerely,



**RICHARD D. CANNONE, AICP  
DIRECTOR OF DEVELOPMENT SERVICES**

**Attachments**

cc. Todd L. Hileman, City Manager  
Isra Shah, City Attorney  
Jason Finley, CBO Building Official

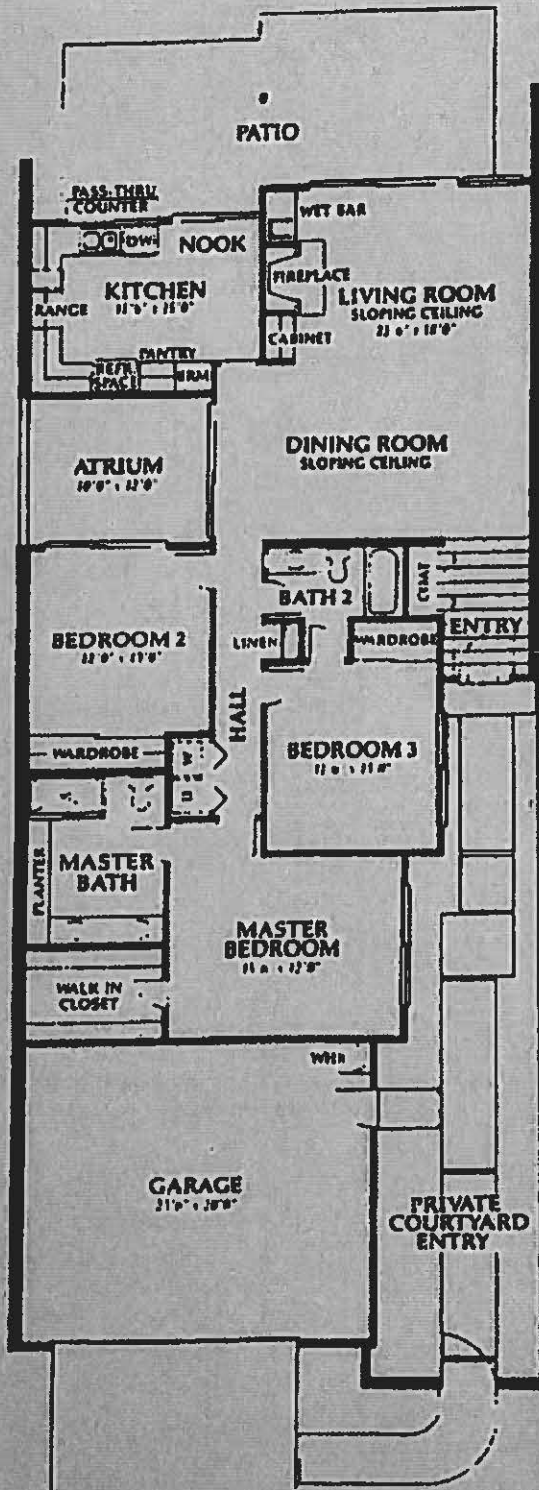


# ALHAMBRA

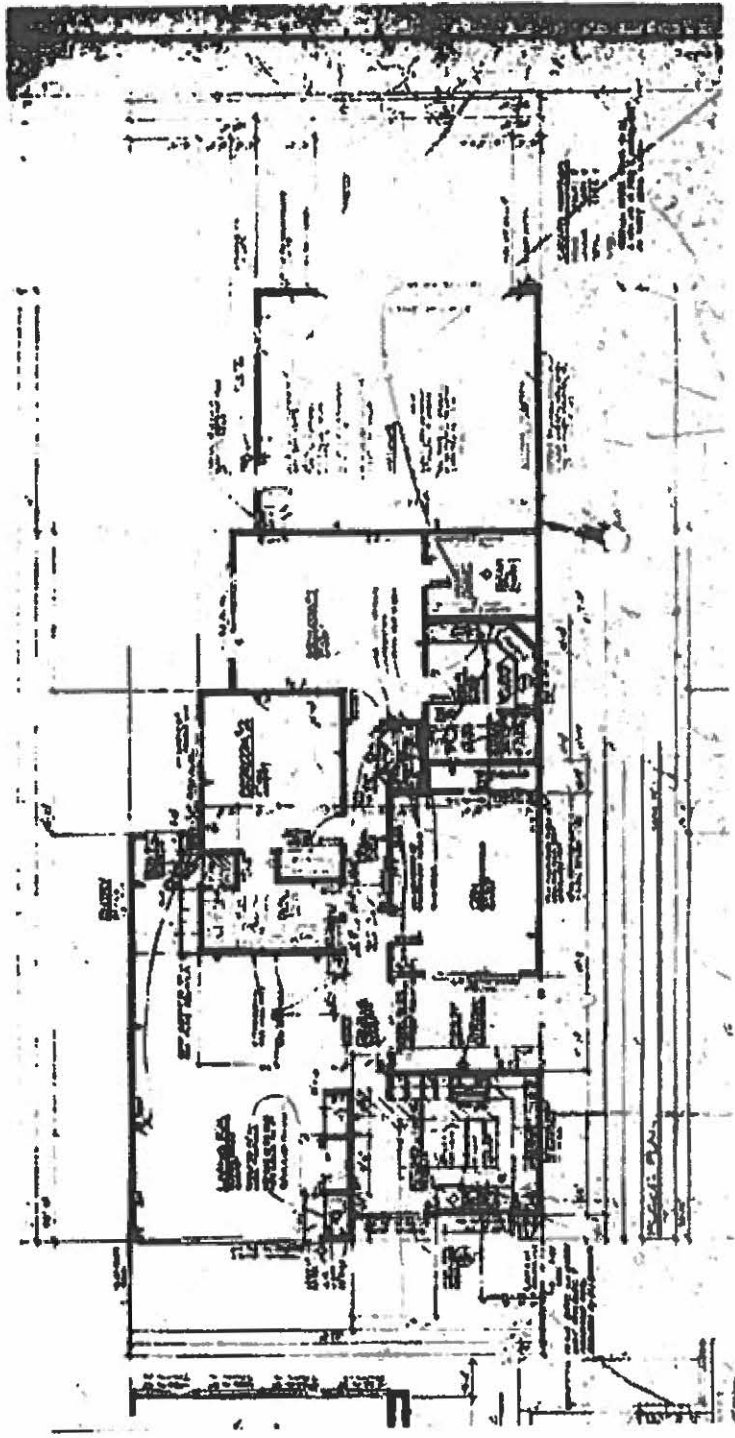
PLAN 300 SQUARE FOOTAGE 1634  
Three Bedroom, Two Bath



MONTEREY  
COUNTRY CLUB



SUNRISE  
COMPANY  
RESALE DIVISION



1304  
1404

**RECEIVED**

February 7, 1979

AUG 29 1979

**BUILDING & SAFETY DIVISION  
CITY OF PALM DESERT**

Daryl Willey  
Chief Building Official  
City of Modesto  
Building Inspection  
City Hall, 801 - 11th Street  
P. O. Box 642  
Modesto, California 95353

**Subject: Emergency Egress and Rescue Windows,  
Sections 1304 and 1404, 1976 Uniform Building Code**

**Dear Mr. Willey:**

You asked the question in your letter of January 30, 1979, ". . . are the egress or rescue windows required by Sections 1304 and 1404 also required exits as defined in Chapter 33?" The answer to this question is "no", as the emergency egress and rescue windows do not comply with the requirements in Chapter 33. However, the design examples which you enclosed with your letter have problems which are not solved by the answer to your question.

The intent of the code is that windows required by Sections 1304 and 1404 be available so that rescue can be effected from the exterior, or in the alternative, one may escape from that window to the exterior of the building without having to travel through the building itself. If these emergency windows open onto an interior court or a so-called atrium, they do not meet the intent of the code.

We note from your letter that you indicated Section 1304 was referred to by Section 1406. Actually, the reference in Section 1406 is to Section 1306 for yards and courts having required windows opening therein.

It is our opinion that the windows required by Sections 1304 and 1404 for emergency egress and rescue should open to the exterior of the building and not into courts or atriums. As

# SUNRISE COMPANY

September 25, 1981

City of Palm Desert  
45-275 Prickly Pear Lane  
Palm Desert 92260

Attn: Mr. James L. Hill, Director of Building & Safety

Re: Monterey Country Club - 212 - 220 Calle Del Marano

Gentlemen:

This is in response to Item No. 1 of your Plan Check notes relating to our condominiums to be constructed at the above addresses.

Some of those units include a den, which is served by a separate bathroom. The room is clearly identified as a "Den" on the plans.

The den is not intended to be used for sleeping purposes. Similar rooms in our Monterey Country Club complex are furnished and shown as dens. All of our sales brochures and advertising materials describe the room as a den.

We are familiar with the provisions of Section 17922 of the California Health and Safety Code and CBC Section 1204. We have absolutely no intent to violate these sections.

Please contact us if you have any further questions.

Very truly yours,

SUNRISE COMPANY

*Phillip K. Smith, Jr.*  
Phillip K. Smith, Jr.  
Vice President  
Assistant to the President

PHK:j