



# TOWN OF APPLE VALLEY

## TOWN COUNCIL STAFF REPORT

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**To:** Honorable Mayor and Town Council                      **Date:** February 14, 2012

**From:** Lori Lamson    **Item No:** 7  
Assistant Director of Community Development  
Planning Department

**Subject:** ADOPT ORDINANCE NO. 431

**T.M. Approval:** \_\_\_\_\_    **Budgeted Item:**  Yes  No  N/A

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**RECOMMENDED ACTION:**

That the Town Council adopt Ordinance No. 431.

**SUMMARY:**

Ordinance No. 431 amends Chapter 9.78 "Wind Energy Conversions Systems (WECS)" as it relates to the installation and permitting requirements of roof-mounted wind energy conversion systems located within the Town of Apple Valley

**BACKGROUND:**

At its January 24, 2012 meeting, the Town Council reviewed and introduced Ordinance No. 431 As part of the requirement to adopt any new Ordinance, Ordinance No. 431 has been scheduled for adoption at the February 14, 2012 Town Council meeting.

**FISCAL IMPACT:**

None

**Attachments:**

Ordinance No. 431 (as amended and approved at the January 24, 2012 Town Council meeting.)

**ORDINANCE NO. 431**

**AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF APPLE VALLEY, CALIFORNIA, AMENDING TITLE 9 “DEVELOPMENT CODE” OF THE TOWN OF APPLE VALLEY MUNICIPAL CODE BY AMENDING PARAGRAPH 2 OF SECTION 9.78.020 “APPLICABILITY”, PARAGRAPH 6 OF SECTION 9.78.040 “DEFINITIONS” AND PARAGRAPH 1 THROUGH SUBSECTION G OF SECTION 9.78.050 “PRIVATE, NON-COMMERCIAL, WECS” OF CHAPTER 9.78 “WIND ENERGY CONVERSION SYSTEMS (WECS) AS IT RELATES TO ROOF-MOUNTED WIND ENERGY CONVERSION SYSTEMS.**

The Town Council of the Town of Apple Valley, State of California, does ordain as follows:

**Section 1. Recitals**

- (i) Title 9 “Development Code” of the Municipal Code of the Town of Apple Valley was adopted by the Town Council on April 27, 2010; and
- (ii) Title 9 “Development Code” of the Municipal Code of the Town of Apple Valley has been previously modified by the Town Council on the recommendation of the Planning Commission; and
- (iii) specific changes are proposed to paragraph 2 of Section 9.78.020 “Applicability”, paragraph 6 of Section 9.78.040 “Definitions” and paragraph 1 through subsection G of Section 9.78.050 “Private, Non-commercial, WECS” of chapter 9.78 “Wind Energy Conversion Systems (WECS) as it relates to roof-mounted wind energy conversion systems within the Town of Apple Valley; and
- (iv) On December 30, 2011, Development Code Amendment No. 2011-003 was duly noticed in the Apple Valley News, a newspaper of general circulation within the Town of Apple Valley; and
- (v) The project is not subject to the California Environmental Quality Act (CEQA) pursuant to Section 15061(b)(3) of the State Guidelines to Implement CEQA, which states that the activity is covered by the general rule that CEQA applies only to projects that have the potential for causing a significant effect on the environment. Where it can be seen with certainty that there is no possibility that the activity in question, the proposed Code Amendment, may have a significant effect on the environment, the activity is not subject to CEQA; and
- (vi) On November 2, 2011, the Planning Commission of the Town of Apple Valley conducted a duly noticed and advertised public hearing on Development Code Amendment No. 2011-003, inviting testimony from the public and adopted Planning Commission Resolution No. 2011-006 recommending adoption of this Ordinance; and
- (viii) Development Code Amendment No. 2011-003 is consistent with Title 9 “Development Code” of the Municipal Code of the Town of Apple Valley and shall promote the health, safety, and general welfare of the citizens of the Town of Apple Valley.

## **Section 2. Findings**

(i) Find that the changes proposed by Development Code Amendment No. 2011-003 are consistent with the Goals and Policies of the Town of Apple Valley adopted General Plan.

(ii) Pursuant to the State Guidelines to Implement the California Environmental Quality Act (CEQA), specifically Section 15061(b)(3), the activity is covered by the general rule that CEQA applies only to projects that have the potential for causing a significant effect on the environment. Where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment; the activity is exempt from, and not subject to, CEQA.

## **Section 3.** Amend the second paragraph of Section 9.78.020 "Applicability" as follows:

"Unless otherwise stated within this Chapter, a Development Permit approved by the Planning Commission, as provided in Chapter 9.17 "Development Permits" of this Code shall be required prior to the installation of any and all WECS. The Commission may approve, conditionally approve, modify or deny requests for the installation of WECS. The Commission may establish conditions and limitations necessary to minimize detrimental effects on surrounding property and/or the general public."

## **Section 4.** Amend the sixth paragraph "Wind Energy Conversion System (WECS) of Section 9.78.040 "Definitions" by adding the following:

1. **Freestanding WECS** means the device stands independently or requires attachment to a monopole or other structure intended solely for WECS support.
2. **Roof-mounted WECS** means the device is supported entirely by the roof of an existing structure. Roof-mounted WECS do not require discretionary review unless otherwise noted within this Chapter."

## **Section 5.** Amend the first paragraph and subsections A through G of Section 9.78.050 "Private, Non-commercial, WECS" to read as follows:

### **"9.78.050 PRIVATE, NON-COMMERCIAL, WECS (*Amended Ord. 403*)**

The installation of a private, non-commercial, WECS is permitted as an accessory use within any zoning designation upon approval of a Development Permit by the Planning Commission. The Development Permit review process grants the Planning Commission authority to modify these requirements based upon neighborhood compatibility. Notwithstanding the foregoing, and except as otherwise stated in this Chapter, roof-mounted WECS that conform with the requirements of this Chapter are permitted and do not require issuance of a Development Permit.

#### **A. Lot Size.**

1. Freestanding WECS shall not be installed upon a lot or recorded parcel of less than two (2) net acres in size.
2. Roof-mounted WECS shall not be installed upon a lot or recorded parcel of less than 18,000 square feet in size.

#### **B. Setback Requirements.**

1. Freestanding WECS must be located behind the rear of the primary structure.
2. Freestanding WECS shall be setback a distance equal to the fall zone from any property line, overhead utility lines, utility easement or right-of-way.

#### **C. Height.**

1. Roof-mounted WECS are subject to the maximum height permitted within the applicable zoning designation. Additional height, not to exceed fifty (50) feet, may be permitted with the Planning Commission's review and approval of a Development Permit. Additional height, in excess of fifty (50) feet may be granted with the review and approval of a Conditional Use Permit.
  2. There is no maximum height for a free-standing WECS, provided that the structure meets the minimum setback requirements.
- D. Noise.** No WECS shall generate a sound level in excess of 50 dBA, as measured at the nearest property line, during the hours of 7:00 a.m. to 10:00 p.m., nor a level in excess of 40 dBA during the hours of 10:00 p.m. to 7:00 a.m. except during extreme weather conditions.
- E. Design Standards.**
1. During the Development Permit review process, each WECS shall be reviewed by the Planning Commission to ensure the WECS are installed in a manner that will not significantly detract from existing views.
  2. WECS must consist of non-reflective materials.
  3. Monopole mounted WECS are preferred.
  4. WECS requiring the use of guyed wires are discouraged; however, guyed wires may be permitted based upon neighborhood compatibility.
  5. Roof-mounted WECS located within multi-family projects may be installed on detached garages, community buildings or other non-dwelling structures, and may not be installed upon any dwelling unit.
- F. Net-Metering.** Private, noncommercial WECS may be net-metered with written authorization provided by the utility company.
- G. Multiple WECS Standards**
1. **Freestanding WECS.** Only one (1) unit shall be permitted per developed lot. Any additional WECS, or any WECS located on a vacant parcel, will be considered a "windfarm" and subject to the Planning Commission's review and approval of a Conditional Use Permit.
  2. **Roof-mounted WECS.** One (1) unit is permitted per lot or recorded parcel that is between 0.4 to two (2) acres in size subject to a building permit, except that additional units may be granted with the review and approval of a Conditional Use Permit. Additional units are allowed at a ratio of one (1) roof-mounted WECS per additional acre. Two (2) to five (5) units require Planning Commission review and approval of a Development Permit. Six (6) or more units require the approval of a Conditional Use Permit. "

**Section 6.** Invalidation. The amendment by this Ordinance of Title 9 "Development Code" of the Town of Apple Valley Municipal Code as previously in effect, or of any other prior enactment, shall not be construed to invalidate any entitlement exercised or proceeding taken pursuant to such Title or other enactment while the same was in effect.

**Section 7.** Notice of Adoption. The Town Clerk of the Town of Apple Valley shall certify to the adoption of this ordinance and cause publication to occur in a newspaper of general circulation and published and circulated in the Town in a manner permitted under Section 36933 of the Government Code of the State of California.

**Section 8.** Effective Date. The Ordinance shall become effective thirty (30) days after the date of its adoption.

**Section 9.** Severability. If any provision of this Ordinance, or the application thereof, to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications and, to this end, the provision of the Ordinance is declared to be severable.

Adopted by the Town Council and signed by the Mayor and attested by the Town Clerk this 14<sup>th</sup> day of February, 2012.

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Honorable Barb Stanton, Mayor

ATTEST:

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Ms. La Vonda M-Pearson, Town Clerk

Approved as to form:

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Mr. John Brown, Town Attorney

Approved as to content:

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Mr. Frank Robinson, Town Manager