



# TOWN OF APPLE VALLEY

## TOWN COUNCIL STAFF REPORT

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**To:** Honorable Mayor and Town Council                      **Date:** June 26, 2012  
**From:** Pariss Knox, Deputy Town Attorney                      **Item No:** 9  
**Subject:** **ADOPTION OF URGENCY ORDINANCE REGARDING REASONABLE  
ACCOMMODATION IN COMPLIANCE WITH FEDERAL AND STATE  
FAIR HOUSING LAWS**

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

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### RECOMMENDED ACTION:

That the Town Council approve an Urgency Ordinance adopting the Town's Reasonable Accommodation Policy.

### SUMMARY:

The federal Fair Housing Amendments Act of 1988 and the California Fair Employment and Housing Act ("Acts") prohibit discrimination in housing against individuals with disabilities and require that cities take affirmative action to eliminate regulations, policies, practices, and procedures that deny housing opportunities to individuals with disabilities. (42 U.S.C. § 3604; California Gov. Code §§ 12927 and 12955.) The Acts require that cities provide individuals with disabilities, their representatives, or developers of housing for people with disabilities flexibility in the application of land use and zoning regulations, policies, practices, and procedures. Additionally, in 2001, the California Attorney General recommended that cities adopt procedures for handling requests for reasonable accommodation made pursuant to these fair housing laws.

Although the Town has provided reasonable accommodations for persons with disabilities in the past, it was usually done informally and without a written policy accessible to the public. In addition to establishing a standard process for addressing reasonable accommodation requests, the adoption of a reasonable accommodation ordinance helps to protect the Town from legal challenges and ensure that existing and potential residents of the Town know how to request a reasonable accommodation.

A reasonable accommodation ordinance will acknowledge that where local land use and zoning regulations, policies, practices, and procedures may impose significant barriers to developing or maintaining much needed housing for individuals with disabilities, the

Town has established a procedure for removal of those constraints through a process of reviewing reasonable accommodation requests. Codification of a clear process for reviewing reasonable accommodation requests would ensure that all requests are handled in a fair and consistent manner and ensure the request process is well-defined for both Town staff members and the public.

In researching the matter, we have found that many cities throughout the state have adopted reasonable accommodation ordinances in recognition of their obligations under federal and state fair housing laws and as a way to strengthen the cities' commitment to removal of land use and zoning constraints in the development and providing of housing for individuals with disabilities. In addition to reviewing several cities' reasonable accommodation ordinances, we also reviewed a model ordinance specifically prepared by Mental Health Advocacy Services, Inc. to provide cities with a process for making reasonable accommodations.

#### **A. Required Findings**

A reasonable accommodation request must be approved, conditionally approved, or denied based on five (5) required findings:

1. Whether the housing, which is the subject of the request for reasonable accommodation, will be used by an individual with disabilities protected under the Acts; and
2. Whether the request for reasonable accommodation is necessary to make housing available to an individual with disabilities protected under the Acts; and
3. Whether the request for reasonable accommodation would impose an undue financial or administrative burden on the Town;
4. Whether the request for accommodation would require a fundamental alteration in the nature of the Town's land use and zoning program; and
5. The requested accommodation will not, under the specific facts of the case, result in a direct and significant threat to the health or safety of other individuals or substantial physical damage to the property of others.

Once an applicant establishes that the accommodation is necessary to overcome barriers related to the disability, the request should be granted unless the Town can demonstrate that the accommodation will impose an undue financial or administrative burden on the Town or that the accommodation will result in a fundamental alteration of the local land use zoning program.

## **B. Options in Drafting a Reasonable Accommodation Ordinance**

Though the Town must reasonably accommodate individuals with disabilities, the Town has several options in determining the process of evaluating reasonable accommodation requests. Some options include:

1. The Town may create a form for applicants to fill out and submit when requesting reasonable accommodation or applicants may just submit their requests in writing to the Town.
2. The Town may decide whether a reasonable fee for processing the application will be required when submitting a reasonable accommodation request.
3. The Town may decide to require documentation that the applicant is: (a) an individual with a disability; (b) applying on behalf of one or more individuals with a disability; or (c) a developer or provider of housing for one or more individuals with a disability. The Town may not, however, require an applicant to identify the nature or severity of a disability. (24 C.F.R. § 100.202; California Gov. Code § 12955(b).)
4. The Town may decide to require documentation that the requested accommodation is necessary to provide one or more individuals with a disability an equal opportunity to use and enjoy the residence.
5. The Town may decide to request any other information the Town reasonably concludes is necessary to determine whether the required findings can be made, so long as any request for information regarding the disability of the individual(s) benefitted complies with fair housing law protections and the privacy rights of the individual(s) affected.
6. The Town may decide if requests for reasonable accommodation filed in conjunction with another discretionary permit may be filed and processed concurrently. A request for reasonable accommodation may take place at any time, but the Town may decide if a reasonable accommodation applicant may request to have the application be processed together with any other related discretionary permits.

## **C. “Direct Threat” Exception**

There is an important caveat to the general requirement that individuals are provided with necessary and reasonable accommodations for their disabilities. The federal Fair Housing Amendments Act affords no protections to individuals, with or without disabilities, who present a “direct threat” to the health and safety of persons or the property of others. (42 U.S.C. § 3604(f)(9).) Determining whether someone poses such a direct threat must be made on an individualized basis with objective medical testimony or an objective analysis of the individual’s behavior; it cannot be based on general assumptions or speculation about the nature of a disability. Only if the Town is able to

prove that no reasonable accommodation could acceptably minimize the risks posed by an individual will an individual be excluded from the protections of the Fair Housing Amendments Act.

## ORDINANCE NO. 436

### **AN URGENCY ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF APPLE VALLEY, CALIFORNIA AMENDING THE APPLE VALLEY MUNICIPAL CODE AND PROVIDING A PROCEDURE FOR REASONABLE ACCOMMODATION FOR PERSONS WITH DISABILITIES**

**WHEREAS**, the federal Fair Housing Amendments Act of 1988 and the California Fair Employment and Housing Act (“Acts”) prohibit discrimination in housing against individuals with disabilities and require that cities take affirmative action to eliminate regulations, policies, practices, and procedures that deny housing opportunities to individuals with disabilities; and

**WHEREAS**, the Acts require that cities provide individuals with disabilities, their representatives, or developers of housing for people with disabilities flexibility in the application of land use and zoning regulations, policies, practices, and procedures; and

**WHEREAS**, the Attorney General of the State of California has recommended that cities adopt reasonable accommodation ordinances to provide flexibility in the application of zoning and land use regulations, policies, practices, and procedures; and

**WHEREAS**, the following provisions of the Housing Element of the Town of Apple Valley General Plan reflect the Town’s intention to encourage fair housing:

- Policy 4.2: Prohibit practices that restrict housing choice by arbitrarily directing prospective buyers and renters to certain neighborhoods or types of housing.
- Policy 4.3: Provide fair housing information at Town Hall, to inform both landlords and tenants of their rights and responsibilities; and

**WHEREAS**, the proposed ordinance is exempt from the California Environmental Quality Act (CEQA) under California Code of Regulations, title 14, section 15061(b)(3) because it does not have the potential for causing a significant effect on the environment; and

**WHEREAS**, the Town Council finds that this urgency ordinance, and the regulations set forth herein, are necessary for the immediate preservation of the public peace, health and safety in order to set forth in writing the process by which handicapped or disabled persons can take advantage of the Town’s reasonable accommodation process; and

**WHEREAS**, such an urgency measure requires a four-fifths vote of the legislative body; and

**NOW, THEREFORE**, the Town Council of the Town of Apple Valley does ordain as follows:

**SECTION 1.** Findings. The adoption of this Urgency Ordinance is necessary for the immediate protection of the public peace, health and safety. In accordance with California Government Code Section 36937 and in order to protect the public peace, health and safety, the Town Council of the Town of Apple Valley further finds that prior to the effective date of this ordinance, the Town will be not have set forth in writing the process by which handicapped or disabled persons can take advantage of the Town's reasonable accommodation process.

**SECTION 2.** Section 9.29.190 "Photovoltaic Solar Farms" is hereby renumbered to 9.29.200 and Section 9.29.190 of the Apple Valley Municipal Code is hereby amended to read as follows:

### **Section 9.29.190 - REASONABLE ACCOMMODATION**

#### **A. PURPOSE**

In accordance with the federal Fair Housing Amendments Act of 1988 and the California Fair Employment and Housing Act ("Acts"), it is the purpose of this Section to provide individuals with disabilities reasonable accommodation in the application of the Town of Apple Valley's regulations, policies, practices, and procedures, as necessary to allow disabled persons to use and enjoy a dwelling. This Section provides a process for individuals with disabilities to make requests for, and to be provided, reasonable accommodation from the various Town regulations, policies, practices, and procedures, including zoning and land use regulations, when reasonable accommodation is warranted based upon sufficient evidence.

#### **B. APPLICABILITY**

##### **1. Eligible applicants.**

A request for reasonable accommodation may be made by any person with a disability, a representative of a person with a disability, or a developer or provider of housing for one or more people with a disability, when the application of a land use or zoning regulation, policy, practice, or procedure acts as a barrier to fair housing opportunities.

A person with a disability includes: individuals with a physical or mental impairment that substantially limits

one or more major life activities; individuals who are regarded as having such an impairment; and individuals with a record of such an impairment.

This Section is intended to apply to those people who are defined as disabled under the Acts.

The federal Fair Housing Amendments Act of 1988 affords no protections to individuals with or without disabilities who present a direct threat to the persons or property of others. Determining whether someone poses such a direct threat must be made on an individualized basis, and cannot be based on general assumptions or speculation about the nature of a disability.

2. Eligible requests.

A request for reasonable accommodation may include a modification or exception to the regulations, policies, practices, and procedures for the siting, development, and use of housing or housing-related facilities that would eliminate regulatory barriers and provide a person with a disability equal opportunity to housing of their choice.

A request for reasonable accommodation shall comply with subsection D. (Application), below.

**C. NOTICE TO THE PUBLIC OF AVAILABILITY OF ACCOMMODATION PROCESS**

Notice of the availability of reasonable accommodation shall be prominently displayed in the public areas of the Planning and Building and Safety Divisions of the Town Development Services Building, advising the public of the availability of the procedure for eligible individuals. Town employees shall direct individuals to the display whenever they are requested to do so or reasonably believe that individuals with disabilities or their representatives may be entitled to a reasonable accommodation.

**D. APPLICATION**

1. In order to make specific housing available to an individual with a disability, a disabled person or representative may request reasonable

accommodation, pursuant to this Section, relating to the application of various land use or zoning regulations, policies, practices, or procedures.

2. Requests for reasonable accommodation shall be made in writing on a form provided by the Planning Division and provide the following information:

- Name and address of the individual(s) requesting reasonable accommodation;
- Documentation that the applicant is: (a) an individual with a disability; (b) applying on behalf of one or more individuals with a disability; or (c) a developer or provider of housing for one or more individuals with a disability;
- Name and address of the property owner(s);
- Address of the property for which accommodation is requested;
- Description of the requested accommodation and the regulation, policy, practice, or procedure for which accommodation is sought; and
- Reason that the requested accommodation may be necessary for the individual(s) with the disability to use and enjoy the housing.

3. No fee shall be required for a request for reasonable accommodation, but if the project requires another discretionary permit, then the prescribed fee shall be paid for all other discretionary permits.

4. A request for reasonable accommodation in regulations, policies, practices, or procedures may be filed at any time that the accommodation may be necessary to ensure equal access to housing. If the project for which the request for reasonable accommodation is made requires another discretionary permit or approval, then the applicant may file the request for reasonable accommodation together with the application for the other discretionary permit or approval. The processing procedures of the discretionary permit shall govern

the joint processing of both the reasonable accommodation and the discretionary permit.

5. Any information identified by an applicant as confidential shall be retained in a manner so as to respect the privacy rights of the applicant and shall not be made available for public inspection except as required by law.

6. If an individual needs assistance in making the request for reasonable accommodation, the jurisdiction will provide assistance to ensure that the process is accessible.

## **E. FINDINGS**

The written decision to approve, conditionally approve or deny a request for reasonable accommodation shall be based upon the following findings, all of which are required for approval:

1. Whether the housing, which is the subject of the request for reasonable accommodation, will be used by an individual with disabilities protected under the Acts; and

2. Whether the request for reasonable accommodation is necessary to make housing available to an individual with disabilities protected under the Acts; and

3. Whether the request for reasonable accommodation would impose an undue financial or administrative burden on the Town; and

4. Whether the request for accommodation would require a fundamental alteration in the nature of the Town's land use and zoning program; and

5. The requested accommodation will not, under the specific facts of the case, result in a direct and significant threat to the health or safety of other individuals or substantial physical damage to the property of others.

## F. DECISION

1. The request for reasonable accommodation will be considered by the Town's Director of Community Development ("Director"), who may approve, conditionally approve, or deny the request. The Director may also refer the request to the Town Council, and the request shall be placed on the next regularly scheduled meeting agenda for the Town Council. The Town Council shall act in the capacity of the Director in such cases.
2. Within thirty (30) days after acceptance of a complete application by the Planning Division for administrative review by the Director or, if referred to the Town Council, the Planning Division shall provide the applicant with written notice of the decision regarding the request for reasonable accommodation based on the required findings set forth in subsection E, above. The notice of decision shall be sent to the applicant by certified mail.
3. If necessary to reach a determination on the request for reasonable accommodation, the Director or Town Council may request further information from the applicant consistent with the Acts, and specifying in detail the information that is required. In the event that a request for additional information is made, the thirty (30) day period to issue a decision is stayed until the applicant responds to the request.
4. All written decisions shall give notice of the applicant's right to appeal and to request reasonable accommodation in the appeals process as set forth in subsection G.
5. Except as set forth above in paragraph (F3) above, if the Director or Town Council fails to render a written decision on the request for reasonable accommodation within the thirty (30) day time period, then the request shall be deemed granted.
6. While a request for reasonable accommodation is pending, all laws and regulations otherwise applicable to the property that are the subject of the request shall remain in full force and effect.

## **G. APPEALS**

1. Within thirty (30) days of the date of a written decision by the Director or Town Council, an applicant may appeal an adverse decision to the Town Council. Appeals from the adverse decision shall be made in writing.
2. If an individual needs assistance in filing an appeal on an adverse decision, the Town will provide assistance to ensure that the appeals process is accessible.
3. All appeals shall contain a statement of the grounds for the appeal. Any information identified by an applicant as confidential shall be retained in a manner so as to respect the privacy rights of the applicant and shall not be made available for public inspection except as required by law.
4. If a decision denying a reasonable accommodation appeal is reversed or a decision granting a reasonable accommodation appeal is modified, the Town Council shall make the required findings as prescribed in subsection E.
5. Nothing in this procedure shall preclude an aggrieved individual from seeking any other state or federal remedy available.

**SECTION 3.** CEQA. The Town Council finds, under Title 14 of the California Code of Regulations, Section 15061(b)(3), that this Urgency Ordinance is exempt from the requirements of the California Environmental Quality Act (“CEQA”) in that the activity is covered by the general rule that CEQA applies only to projects which 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 not subject to CEQA. The Town Council, therefore, directs that a Notice of Exemption be filed with the County Clerk of the County of San Bernardino in accordance with CEQA Guidelines.

**SECTION 4.** Custodian of Records. The documents and materials that constitute the record of proceedings on which these findings are based are located at the Town Clerk’s office located at 14955 Dale Evans Parkway, Apple Valley, CA 92307. The custodian for these records is the Town Clerk.

**SECTION 5.** Severability. If any provision of this Urgency Ordinance or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of this Urgency Ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this Urgency Ordinance are severable. The Town Council hereby declares that it would have adopted this Ordinance irrespective of the invalidity of any particular portion thereof.

**SECTION 6.** Effective Date. This Urgency Ordinance shall become effective immediately upon its adoption.

**SECTION 7.** Publication. The Town Clerk shall certify to the adoption of this Urgency Ordinance and cause it, or a summary of it, to be published once within 15 days of adoption in a newspaper of general circulation printed and published within the Town of Apple Valley, and shall post a certified copy of this Urgency Ordinance, including the vote for and against the same, in the Office of the Town Clerk in accordance with Government Code § 36933.

**ADOPTED** by the Town Council and signed by the Mayor and attested by the Town Clerk this 26<sup>th</sup> day of June 2012.

\_\_\_\_\_  
Barb Stanton, Mayor

ATTEST:

\_\_\_\_\_  
La Vonda M-Pearson, Town Clerk

Approved as to form:

Approved as to content:

\_\_\_\_\_  
John Brown, Town Attorney

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Frank Robinson, Town Manager