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TOWN OF APPLE VALLEY TOWN COUNCIL STAFF REPORT

To: Honorable Town Council **Date:** August 27, 2013

From: Pariss Knox, Deputy Town Attorney **Item No:** 9
Best Best & Krieger

Subject: **ORDINANCE NO. 451 AN ORDINANCE OF THE TOWN COUNCIL AMENDING DEVELOPMENT CODE SECTION 9.29.160 FOR COMPLIANCE WITH FEDERAL AND STATE FAIR HOUSING LAWS**

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

RECOMMENDATION:

That the Town Council approve an ordinance amending Development Code Section 9.29.160 for compliance with Federal and State Fair Housing laws (Development Code Amendment No. 2013-004).

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.

This Ordinance seeks to bring Development Code § 9.29.160 into compliance with state and federal fair housing laws by making it explicitly clear that any persons with disabilities are eligible to apply for a reasonable accommodation under Development Code § 9.29.190.

DISCUSSION:

Over the years, the Town adopted a series of ordinances targeted at residential facilities and parolee group homes. Under the Town's prior Development Code § 9.29.160, the Town had defined "group homes" as any residential structure or unit, whether operated by an individual for profit or by a non-profit entity, which is not licensed by the State of California. As a result, this definition of group homes by default included all persons with disabilities.

This Ordinance revises this definition of group home to make it clear that any individuals with disabilities are specifically entitled to seek a reasonable accommodation from any of the requirements and obligations contained in Development Code § 9.29.160.

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 persons with disability, when the application of a particular land use or zoning regulation, policy, practice, or procedure acts a barrier to fair housing opportunities. The reasonable accommodation process is set forth in Development Code § 9.29.190. This Ordinance also makes one additional minor clean up change to Development Code § 9.29.160 D (2).

On July 27, 2013, the Planning Commission considered the proposed amendment for Development Code Amendment No. 2013-004 and approved Planning Commission Resolution No. 2013-006 recommending that the Town Council approve the proposed amendment.

ENVIRONMENTAL ANALYSIS:

The Town is the lead agency concerning the Ordinance pursuant to the California Environmental Quality Act (codified as Public Resources Code Sections 21000 *et seq.*) ("CEQA") and the State CEQA Guidelines. Town staff has determined that the Ordinance is exempt from CEQA, pursuant to CEQA Guidelines Section 15061(b)(3), 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 Ordinance, may have a significant effect on the environment, the activity is not subject to CEQA.

FISCAL IMPACT:

No financial impact is projected.

ATTACHMENTS:

1. Ordinance No. 451
2. Planning Commission Resolution 2013-006

ORDINANCE NO. 451

**ORDINANCE OF THE TOWN COUNCIL AMENDING
DEVELOPMENT CODE SECTION 9.29.160 FOR COMPLIANCE
WITH FEDERAL AND STATE FAIR HOUSING LAWS**

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 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 has previously adopted a reasonable accommodation ordinance as set forth in Development Code Section 9.29.190; and

WHEREAS, the Town of Apple Valley Planning Commission conducted a duly noticed public hearing for Development Code Amendment No. 2013-004 and adopted Planning Commission Resolution No. 2013-006 recommending that the Town Council adopt the proposed Code Amendment.

NOW, THEREFORE, the Town Council of the Town of Apple Valley hereby recommends as follows:

SECTION 1. The definition of “group home” in Development Code § 9.29.160 B of the Apple Valley Development Code is hereby amended to read as follows:

Group Homes – means any residential structure or unit, whether operated by an individual for profit or by a nonprofit entity, which is not licensed by the State of California. This definition shall not include any person with a disability, a representative of any person with a disability, or a developer

or provider of housing for one or more people with a disability that is eligible to receive and has requested a reasonable accommodation as set forth in Development Code § 9.29.190.

SECTION 2. Section 9.29.160 D. of the Apple Valley Development Code is hereby amended to read as follows:

A Conditional Use Permit shall be required for the new establishment of any type of land use permitted below:

- (1) Group homes licensed by the State of California that were established without local permit approval prior to the effective date of this Ordinance (May 8, 2007).
- (2) Group homes licensed by the State of California that were established without local permit approval upon or after the effective date of this Ordinance (May 8, 2007).
- (3) Any change in the operating conditions or facility type of existing Group Homes lawfully established prior to, or after, the effective date of this Ordinance.
- (4) Sale, transfer, or new lease agreement of a Group Home to another individual, entity, and the like.
- (5) An existing Group Home discontinued for a consecutive period of thirty (30) days is deemed abandoned and shall be required to obtain a new Conditional Use Permit.
- (6) The new construction or remodel of a Group Home to expand the square footage of a residential structure or unit.
- (7) The Conditional Use Permit granted and permitted by this section for a Group Home is non-transferable and terminates if the structure is devoted to any use other than as a residential facility for the elderly or if the structures fails to comply with the applicable health, safety, zoning and building codes.

SECTION 3. The Town Council finds, under Title 14 of the California Code of Regulations, Section 15061(b)(3), that this 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.

SECTION 4. 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 5. Effective Date. This ordinance shall become effective thirty (30) days after the date of its adoption.

SECTION 6. 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 provisions of this ordinance are declared to be severable.

APPROVED and **ADOPTED** by the Town Council and signed by the Mayor and attested by the Town Clerk this 27th day of August, 2013.

Curt Emick, Mayor

ATTEST:

La Vonda M-Pearson, CMC, Town Clerk

APPROVED AS TO FORM:

John E. Brown, Town Attorney

APPROVED AS TO CONTENT:

Frank Robinson, Town Manager

CERTIFICATION

STATE OF CALIFORNIA)

COUNTY OF SAN BERNARDINO) ss

TOWN OF APPLE VALLEY)

I, LaVonda Pearson, Town Clerk, hereby certify that the attached is a true copy of Ordinance No. 451, introduced by the Town Council of the Town of Apple Valley, California, at regular Town Council meeting held the 27th day of August, 2013. Ordinance No. 451 was approved, passed and adopted at a regular meeting held at the 10th day of September, 2013.

WITNESS my hand and official seal of the Town of Apple Valley this 10th day of September 2013.

LaVonda Pearson, Town Clerk

RESOLUTION NO. 2013-006

**RESOLUTION OF THE PLANNING COMMISSION
RECOMMENDING THE TOWN COUNCIL AMEND
DEVELOPMENT CODE SECTION 9.29.160 FOR
COMPLIANCE WITH FEDERAL AND STATE
FAIR HOUSING LAWS**

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 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 has previously adopted a reasonable accommodation ordinance as set forth in Development Code Section 9.29.190.

NOW, THEREFORE, the Planning Commission of the Town of Apple Valley hereby recommends as follows:

SECTION 1. The definition of "group home" in Development Code § 9.29.160 B. of the Apple Valley Development Code is hereby amended to read as follows:

Group Homes – means any residential structure or unit, whether operated by an individual for profit or by a nonprofit entity, which is not licensed by the State of California. This definition shall not include any person with a disability, a representative of a disability, or a developer or provider of housing for one or more people with a disability that is eligible to receive and has requested a reasonable accommodation as set forth in Development Code § 9.29.190.

SECTION 2. Section 9.29.160 D. of the Apple Valley Development Code is hereby amended to read as follows:

A Conditional Use Permit shall be required for the new establishment of any type of land use permitted below:

- (1) Group homes licensed by the State of California that were established without local permit approval prior to the effective date of this Ordinance (May 8, 2007).
- (2) Group homes licensed by the State of California that were established without local permit approval upon or after the effective date of this Ordinance (May 8, 2007).
- (3) Any change in the operating conditions or facility type of existing Group Homes lawfully established prior to, or after, the effective date of this Ordinance.
- (4) Sale, transfer, or new lease agreement of a Group Home to another individual, entity, and the like.
- (5) An existing Group Home discontinued for a consecutive period of thirty (30) days is deemed abandoned and shall be required to obtain a new Conditional Use Permit.
- (6) The new construction or remodel of a Group Home to expand the square footage of a residential structure or unit.
- (7) The Conditional Use Permit granted and permitted by this section for a Group Home is non-transferable and terminates if the structure is devoted to any use other than as a residential facility for the elderly or if the structures fails to comply with the applicable health, safety, zoning and building codes.

SECTION 3. CEQA. The Town Council finds, under Title 14 of the California Code of Regulations, Section 15061(b)(3), that this Resolution 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.

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

SECTION 6. Effective Date. This Resolution shall become effective immediately upon its adoption.

MOVED, PASSED, AND ADOPTED at a regular meeting of the Town Planning Commission on the 17th day of July, 2013, by the following vote:

AYES: COMMISSIONERS QUALLS, SHoup + TINSLEY, VICE-CHAIRMAN KALLEN & CHAIRMAN LAMOREAUX

NAYS: NONE.

ABSENT: NONE.

ABSTAIN: NONE.

Town of Apple Valley:



Jason Lamoreaux, Chairman

ATTEST:



Debra Thomas, Planning Commission Secretary