



TOWN OF APPLE VALLEY

TOWN COUNCIL STAFF REPORT

To: Honorable Mayor and Town Council **Date:** June 5, 2014

From: John Brown **Item No:** 1
Town Attorney

Subject: ORDINANCE NO. 463 – AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF APPLE VALLEY REPEALING CHAPTER 11.54 OF THE APPLE VALLEY MUNICIPAL CODE REGARDING LOITERING BY REGISTERED SEX OFFENDERS

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

RECOMMENDED ACTION

1. Move to waive the reading of Ordinance No. 463 in its entirety and read by title only.
2. Move to introduce Ordinance No. 463, An Ordinance of the Town Council of the Town of Apple Valley repealing Chapter 11.54 of the Apple Valley Municipal Code regarding Loitering by Registered Sex Offenders.

DISCUSSION

Summary

As a result of a recent decision of a California Court of Appeal, and the denial of review by the California Supreme Court, a portion of the Apple Valley Municipal Code is now in violation of state law. To bring the Town's code into compliance with controlling authority, and to reduce the risk of civil lawsuits, it is recommended that the Town repeal portions of its Code.

The Town's Sex Offender Regulations

In 2006, the Town Council adopted Ordinance No. 328, which added Chapter 11.54 to the Apple Valley Municipal Code pertaining to registered sex offender loitering within the Town. Chapter 11.54 of the Town's Municipal Code prohibits registered sex offenders from loitering on or within five hundred feet of a public or private school for children, a center or facility that provides day care or children's services, a video arcade, a playground, park, amusement center, library or museum.

Recent Legal Decisions

This January, a California Court of Appeal held that the California Legislature had established a comprehensive scheme for regulating the daily lives of sex offenders thereby prohibiting local

legislation on the subject unless it is expressly permitted by a statute. The decision, *People v. Nguyen*, undermines the ability of municipalities to restrict where a sex offender may go and what a sex offender may do. This April, the California Supreme Court declined to review the ruling in *Nguyen*, leaving the decision intact.

Under the holding in *Nguyen*, Chapter 11.54 of the Apple Valley Municipal Code violates current California law and could subject the Town to civil suit. The Town has already been identified by a sex offender advocacy group which has been extremely active in suing cities over this and similar issues. For this reason, the Town Attorney's office has strongly recommended the adoption of the attached Ordinance.

Existing Sex Offender Regulation Under State Law

Registration Requirements

Under State law, individuals who have been convicted of the perpetration or attempt of rape or other specified sex crimes are required to register with a local law enforcement agency for the rest of their lives. The Sex Offender Tracking Program at the California Department of Justice (DOJ) maintains the registered sex offender database. Prior to release from prison, jail, a mental hospital, or on probation, sex offenders are notified in writing of their duty to register, and the releasing agency forwards the offender's registration information to the DOJ.

Registered sex offenders are often referred to as "290 registrants" because Penal Code Section 290 sets forth the registration requirements. Section 290 requires sex offenders to register within five working days of coming into, or changing their residence within, a city or county. Most registrants must update their information annually, but some registrants have a duty to update more frequently as transients or sexually violent predators.

Within five days of changing their address or becoming homeless, registrants are required to update their registration information, which is forwarded to the DOJ. The DOJ updates the registered sex offender database with information received on a daily basis. The DOJ also updates the registered sex offender information on the Megan's Law website daily.

Registered sex offenders are not permitted to reside within 2,000 feet of any public or private school or park where children regularly gather. (Pen. Code, § 3003.5 (b).) The Town may establish and enforce more restrictive residency restrictions than the State, so long as the Town does not banish sex offenders from the community altogether. (Pen. Code, § 3003.5 (c).)

Travel and Geographic Restrictions

In light of the decision in *People v. Nguyen*, and the denial of review by the California Supreme Court, local legislation regarding where a sex offender may go or be is preempted. Only state law may restrict a sex offender's geographic travel. California law provides the following travel and geographic restrictions for sex offenders:

- Penal Code section 3053.8(a) prohibits a paroled offender from "enter[ing] any park where children regularly gather without the express permission of his or her parole agent" if a victim of the underlying sex offense was under 14 years of age.
- Penal Code section 626.81(a) prohibits an offender from entering any school building or school ground without "lawful business" and written permission from the school.

- Penal Code section 653b provides enhanced penalties for an offender who remains at or returns to “any school or public place at or near which children attend or normally congregate” after a school or law enforcement official has asked the offender to leave.
- Penal Code section 653c prohibits an offender from entering or remaining at a day care or residential facility for elder or dependent adults without registering with the facility if the victim of the underlying sex offense was an elder or dependent adult.

The Town may continue to enforce these provisions of state law.

FISCAL IMPACT

None

ATTACHMENT

Ordinance No. 463

ORDINANCE NO. 463

**ORDINANCE OF THE TOWN COUNCIL REPEALING CHAPTER
11.54 OF THE APPLE VALLEY MUNICIPAL CODE
REGARDING LOITERING BY REGISTERED SEX OFFENDERS**

WHEREAS, the Town Council of the Town of Apple Valley ("Town Council") has adopted Ordinance No. 328 in 2006 adding Chapter 11.54 to the Apple Valley Municipal Code pertaining to registered sex offender loitering within the Town of Apple Valley ("Town"); and

WHEREAS, Chapter 11.54 of the Town's Municipal Code prohibits registered sex offenders from loitering on or within five hundred feet of a public or private school for children, a center or facility that provides day care or children's services, a video arcade, a playground, park, amusement center, library or museum; and

WHEREAS, this January, a California Court of Appeal held that the California Legislature had established a comprehensive scheme for regulating the daily lives of sex offenders thereby prohibiting local legislation on the subject unless it is expressly permitted by a statute. The decision, *People v. Nguyen*, undermines the ability of municipalities to restrict where a sex offender may go and what a sex offender may do; and

WHEREAS, this April, the California Supreme Court declined to review the ruling in *Nguyen*, leaving the decision intact; and

WHEREAS, as a result, provisions of the Town's Municipal Code purporting to regulate where a registered sex offender may go are in violation of current law; and

WHEREAS, in order to remove the risk of civil suit, the Town now wishes to repeal Chapter 11.54 in its entirety because it may subject the Town to civil suit.

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

SECTION 1. Chapter 11.54 of the Town's Municipal Code is hereby repealed in its entirety.

SECTION 2. 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 3. 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 4. Effective Date. This ordinance shall become effective thirty (30) days after the date of its adoption.

SECTION 5. 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 ____ day of June.

Art Bishop, Mayor

ATTEST:

La Vonda M-Pearson, Town Clerk

APPROVED AS TO FORM:

John E. Brown, Town Attorney

APPROVED AS TO CONTENT:

Frank Robinson, Town Manager