



TOWN OF APPLE VALLEY

TOWN COUNCIL STAFF REPORT

To: Honorable Mayor and Town Council **Date:** August 26, 2014

From: Jim Andersen **Item No:** 6
Code Enforcement Manager
Code Enforcement Department

Subject: ORDINANCE NO. 464 – AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF APPLE VALLEY AMENDING APPLE VALLEY MUNICIPAL CODE SECTION 6.30.030(F)(1) REGARDING UNLAWFUL NUISANCES AND THE BOARDING UP OF PROPERTY

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

RECOMMENDED ACTION:

1. Move to waive the reading of Ordinance No. 464 in its entirety and read by title only.
2. Move to introduce Ordinance No. 464, an Ordinance of the Town Council of the Town of Apple Valley amending Apple Valley Municipal Code Section 6.30.030(F)(1) regarding unlawful nuisances and the boarding up of property.

DISCUSSION:

Background

It has recently come to the attention of Town staff that it has insufficient discretion under the Town's Municipal Code to enter into agreements with the owners and operators of boarded up properties in the Town to permit the boarding up to continue beyond thirty days where special circumstances exist.

The Town's Current Code

Section 6.30.030(F)(1) of the Town's Municipal Code makes it a public nuisance for a person owning, leasing, occupying or having charge of any premises in this Town to maintain or to allow to be maintained buildings, which are abandoned, boarded up, partially destroyed or left in a state of partial construction for a period of more than thirty days. However, there is an exception where "special circumstances are present".

While the planned demolition or rehabilitation of a structure is considered to be a special circumstance, little additional guidance is given. Particularly, it is not clear that the determination that a special circumstance exists is subject to the Town's discretion. This section does not permit the Town to enter into an agreement with a property owner to establish rules and conditions for maintaining a property in a boarded up state for a period greater than thirty days.

The Proposed Changes

The proposed ordinance would do the following:

1. Permit the Town Manager (or designee), at his discretion, to enter into an agreement with an owner to permit the property to remain boarded up beyond thirty days.
2. Require that special circumstances be present, but give discretion to the Town Manager (or designee) to make that determination. However, the planned demolition or rehabilitation of the building remains as an example of such special circumstance.

These changes would give Town staff the flexibility to work with the owners and operators of certain problem properties. For example, the Town might enter into an agreement that extends the period of time during which the property may be boarded up. In exchange, the Town might, among other things, require: (1) insurance be carried by the owner covering the Town as an additional insured; (2) the painting of boards to match the existing structure; (3) fencing; or (4) additional signage. However, as written, the proposed ordinance would give Town staff the flexibility and discretion to draft the agreement to suit the circumstances.

FISCAL IMPACT:

None

ATTACHMENTS

1. Ordinance No. 464
2. Legislative Version of AVMC, § 6.30.03(F)(1)

ORDINANCE NO. 464

ORDINANCE OF THE TOWN COUNCIL AMENDING APPLE VALLEY MUNICIPAL CODE SECTION 6.30.030(F)(1) REGARDING UNLAWFUL NUISANCES AND THE BOARDING UP OF PROPERTY

WHEREAS, the Town of Apple Valley's Municipal Code currently makes it a nuisance for any building to be abandoned, boarded up, partially destroyed or left in a state of partial construction for a period of more than thirty days; and

WHEREAS, at present, an exception to this requirement applies only where "special circumstances are present"; and

WHEREAS, this exception provides insufficient guidance as to what situations justify an exception and offers too little protection for the Town and its residents from the dangers of buildings that are abandoned, boarded up, partially destroyed or left in a state of partial construction; and

WHEREAS, the Town Council desires to require persons owning, leasing, occupying, or having charge of a building that is abandoned, boarded up, partially destroyed, or left in a state of partial construction to enter into an agreement with the Town before the property may be left in such state for more than thirty days; and

WHEREAS, the ability to enter into such agreements will enable Town staff to better protect both the Town and its residents from the dangers associated with abandoned, boarded up, and partially destroyed or constructed buildings.

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

SECTION 1. Section 6.30.030(F)(1) of the Apple Valley Municipal Code is hereby amended to read as follows:

"6.30.030 Unlawful Nuisances

...
F. Maintenance of Property. It is declared a public nuisance for any person owning, leasing, occupying or having charge of any premises in this Town to maintain or to allow to be maintained such property in such manner that any of the following conditions are found to exist thereon;

1. Buildings, which are abandoned, boarded up, partially destroyed or left in a state of partial construction for a period of more than thirty days.

a. A building may be abandoned, boarded up, partially destroyed or left in a state of partial construction for a longer period if the person owning, leasing, occupying or having charge of the property has entered an agreement permitting the same with the Town. The Town may enter into such an agreement only where special circumstances are present, which shall be determined at the discretion of the Town Manager or his or her designee. Without limiting the foregoing, the planned demolition or rehabilitation of a structure may constitute special circumstances. Whether to enter such an agreement and the terms thereof shall be at the sole discretion of the Town Manager or his or her designee. . . .”

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 to by the Town Clerk this 23rd day of September, 2014.

Art Bishop, Mayor

ATTEST:

La Vonda M-Pearson, CMC, Town Clerk

APPROVED AS TO FORM:

APPROVED AS TO CONTENT:

John E. Brown, Town Attorney

Frank Robinson, Town Manager

Legislative Version of Apple Valley Municipal Code Section 6.30.030(F)(1)

F. Maintenance of Property. It is declared a public nuisance for any person owning, leasing, occupying or having charge of any premises in this Town to maintain or to allow to be maintained such property in such manner that any of the following conditions are found to exist thereon;

1. Buildings, which are abandoned, boarded up, partially destroyed or left in a state of partial construction for a period of more than thirty days.

a. A building may be abandoned, boarded up when, partially destroyed or left in a state of partial construction for a longer period if the person owning, leasing, occupying or having charge of the property has entered an agreement permitting the same with the Town. The Town may enter into such an agreement only where special circumstances are present. This could include, which shall be determined at the discretion of the Town Manager or his or her designee. Without limiting the foregoing, the planned demolition of the structure or rehabilitation. This provision shall only apply when the boards have been painted to match the existing structure. If at any time the boards are removed or the paint is not maintained (fades, chips, peels . . .) this provision may be revoked. of a structure may constitute special circumstances. Whether to enter such an agreement and the terms thereof shall be at the sole discretion of the Town Manager or his or her designee.