



TOWN OF APPLE VALLEY

TOWN COUNCIL STAFF REPORT

To: Honorable Mayor and Town Council **Date:** September 13, 2016

From: Carol Miller, Principal Planner **Item No:** 16
Planning Department

Subject: AN AMENDMENT TO TITLE 9 "DEVELOPMENT CODE" OF THE TOWN OF APPLE VALLEY MUNICIPAL CODE REPEALING PROVISIONS REGULATING SEX OFFENDER RESIDENCY

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

RECOMMENDED ACTION:

Move to open the public hearing and take testimony. Close the public hearing. Then:

1. **Determine** that, pursuant to Section 15061(b)(3) of the State Guidelines to Implement the California Environmental Quality Act (CEQA), the project is exempt from environmental review because 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.
2. **Find** the facts presented within the staff report support the required Findings for approval of an amendment to the Development Code and adopt the Findings.
3. **Find** that the proposed Town Council Ordinance is consistent with the Goals and Objectives of the adopted Town of Apple Valley General Plan and that it is necessary to preserve the health, safety and general welfare of the citizens of Apple Valley.
4. **Move** to waive the reading of Ordinance No. 488 in its entirety and read by title only.

5. **Introduce** Ordinance No. 488, revising Title 9 "Development Code" of the Town of Apple Valley Municipal Code by repealing provisions regulating sex offender residency.
6. Direct staff to file a Notice of Exemption.

BACKGROUND:

Under current California law, it is unlawful for any registered sex offender to reside within 2,000 feet of any public or private school, or park where children regularly gather. Pursuant to Penal Code Section 3003.5(c), cities in California, including the Town of Apple Valley, are authorized to enact local ordinances that restrict the residency of registered sex offenders beyond the limits established under California law.

In accordance with Penal Code Section 3003.5(c), the Town currently regulates the residency of registered sex offenders through several sections of Title 9 of the Apple Valley Municipal Code. For example, Section 9.29.170 of the Apple Valley Municipal Code presently prohibits registered sex offenders from residing within 4,000 feet of the following sensitive uses: schools (public and private); parks (public and private); libraries; day care facilities (including family home day care); foster or juvenile residential care facilities or group homes; video arcades; movie theaters; religious institutions; museums; hospitals; private and public clubs and lodges; youth centers; places of assembly; dance/martial art studios; amusement parks; children play grounds; and educational/tutorial learning centers.

In 2014, in response to several decisions of the California Court of Appeal including *People v. Nguyen*, the Town Council adopted Ordinance No. 463 to repeal Chapter 11.54 of the Apple Valley Municipal Code to remove regulations restricting where sex offenders may travel or loiter.

In March 2015, the California Supreme Court, in *In re Taylor*, held that a blanket 2,000 foot residency restriction imposed on sex offenders in San Diego County was unconstitutional as applied in San Diego County because the restrictions essentially meant sex offenders could not live anywhere in the County.

Despite the explicit authorization provided by Penal Code Section 3003.5(c), several cities have been subjected to challenge on the basis that their residency restrictions violate the United States and California Constitutions.

On August 3, 2016 the Planning Commission adopted Planning Commission Resolution No. 2016-007 recommending an amendment to the Development Code as it pertains to this issue.

DISCUSSION:

In light of the recent case law regarding residency restrictions, the Town Attorney's office recommended that the Town repeal its residency restrictions and instead rely on state law. The proposed Ordinance, as recommended, repeals the residency restriction (section 9.29.170) in its entirety. The Ordinance further removes reference to sex offenders contained in Chapter 9.08 and Chapter 9.29 (including sections 9.29.140, 9.29.150, 9.29.160 and 9.29.180) of the Apple Valley Municipal Code.

If the Town repeals its residency restrictions, sex offenders will remain subject to all state laws affecting sex offenders including, but not limited to, the following:

- Penal Code Section 290 et seq., which requires lifetime registration of sex offenders with law enforcement in the jurisdiction in which they reside;
- Penal Code Section 3003.5 (b), which prohibits sex offenders from residing within 2,000 feet of any public or private school or park where children regularly gather;
- Penal Code Section 3053.8 (a), which prohibits a paroled sex 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), which prohibits sex offenders from entering any school building or school ground without "lawful business" and written permission from the school;
- Penal Code Section 653b, which provides enhanced penalties for any sex 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; and
- Penal Code Section 653c, which prohibits a sex 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.

FINDINGS:

Prior to the approval of any Amendment to the Development Code, the Council, based upon the advice of the Planning Commission, must make specific "Findings" as listed within the Code. Code Section 9.06.060 "Required Findings" of Chapter 9.06 Amendments to Zoning Provisions" specifies that two (2) Findings must be made in a positive manner to approve an Amendment. These Findings, along with a comment to address each, are presented below

A. The proposed amendment is consistent with the General Plan; and

Comment: The proposed amendments are consistent with the General Plan, as they implement General Plan objectives and policies that promote safe residential neighborhoods (Policy 4.C). The proposed

amendments eliminate the provisions of the Town's Municipal Code that relate to registered sex offenders. Recent case law has illustrated that strict sex offender ordinances can result in registered sex offenders becoming transient and, as a result, more difficult to track. This creates a less safe situation than would exist with slightly more relaxed regulations. If the proposed amendments are adopted, registered sex offenders will remain subject to the limits prescribed by state law, including Jessica's Law. Town staff believes these laws are sufficient to protect the public without the additional risk of driving sex offenders underground.

- B. The proposed amendment will not be detrimental to the public health, safety or welfare of the Town or its residents.

Comment: The proposed amendments will not adversely impact the public health, safety and welfare, since they remove strict sex offender residency restrictions which reportedly result in sex offenders becoming more difficult to track. By relying on State law, the Town will ensure appropriate monitoring of sex offender residency while avoiding overly strict regulations which can drive sex offenders underground.

NOTICING:

Development Code Amendment No. 2016-003 was advertised as a public hearing in Apple Valley News newspaper on September 1, 2016.

ENVIRONMENTAL REVIEW:

Staff has determined that 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.

FISCAL IMPACT:

Not Applicable

ATTACHMENTS:

1. Ordinance No. 488
2. Planning Commission draft minutes for August 3, 2016
3. Planning Commission Staff Report, including Planning Commission Resolution No. 2016-007

ORDINANCE NO. 488

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF APPLE VALLEY AMENDING VARIOUS SECTIONS OF TITLE 9 OF THE APPLE VALLEY MUNICIPAL CODE TO REPEAL PROVISIONS REGULATING SEX OFFENDER RESIDENCY

WHEREAS, under current state law, it is unlawful for any registered sex offender to reside within 2,000 feet of any public or private school, or park where children regularly gather; and

WHEREAS, the Town of Apple Valley is authorized, as recognized by Penal Code Section 3003.5(c), to enact local ordinances that restrict the residency of registered sex offenders beyond the limits established under California law; and

WHEREAS, in accordance with Penal Code Section 3003.5(c), the Town of Apple Valley currently regulates the residency of registered sex offenders through several sections of Title 9 of the Apple Valley Municipal Code; and

WHEREAS, notwithstanding Penal Code Section 3003.5(c), several cities have been subjected to challenge on the basis that certain residency restrictions violate the United States and California Constitutions; and

WHEREAS, the Town Council determines that state law restrictions protect children from registered sex offenders; and

WHEREAS, the Town Council desires to amend the Apple Valley Municipal Code to repeal the residency restriction for sex offenders listed in section 9.29.170 of the in its entirety and to remove references to sex offenders from Chapter 9.08 and Chapter 9.29 (including sections 9.29.140, 9.29.150, 9.29.160 and 9.29.180) while preserving the remaining terms of those provisions; and

WHEREAS, any sex offenders within the Town shall remain subject to state law restrictions on their residency.

NOW, THEREFORE, THE TOWN COUNCIL OF THE TOWN OF APPLE VALLEY, CALIFORNIA, DOES ORDAIN AS FOLLOWS:

SECTION 1. Incorporation of Recitals. The Town Council hereby finds that all of the foregoing recitals and the staff report presented herewith are true and correct and are hereby incorporated and adopted as findings of the Town Council as if fully set forth herein.

SECTION 2. Apple Valley Municipal Code Amendments.

A. The definition of “transitional housing” listed in Chapter 9.08 is amended to remove the reference to “sex offenders.”

B. Subdivision B of Section 9.29.140 of the Apple Valley Municipal Code is hereby amended to remove the definition of “sex offender.”

C. Subdivision C.2. of Section 9.29.140 of the Apple Valley Municipal Code is hereby amended to read as follows:

“2. Group Homes of two (2) or more individuals on probation are prohibited.”

D. Subdivision C.3. of Section 9.29.140 of the Apple Valley Municipal Code is hereby amended to read as follows:

“3. Reserved.”

E. Subdivision F.5. of Section 9.29.140 of the Apple Valley Municipal Code is hereby amended to read as follows:

“5. The property owner or designated on-site manager, that is not on parole/probation, must live on the site of the Residential Care Facility for the Elderly. The name and a copy of legal identification of the property owner/on-site manager shall be provided to the Town of Apple Valley with the business license.”

F. Subdivision B of Section 9.29.150 of the Apple Valley Municipal Code is hereby amended to remove the definition of “sex offender.”

G. Subdivision C.2. of Section 9.29.150 of the Apple Valley Municipal Code is hereby amended to read as follows:

“2. Group Homes of two (2) or more individuals on probation are prohibited.”

H. Subdivision C.3. of Section 9.29.150 of the Apple Valley Municipal Code is hereby amended to read as follows:

“3. Reserved.”

I. Subdivision F.5. of Section 9.29.150 of the Apple Valley Municipal Code is hereby amended to read as follows:

“5. The property owner or designated on-site manager, that is not on parole/probation, must live on the site of the Large Residential Care Facility. The name and a copy of legal identification of the property owner/on-site manager shall be provided to the Town of Apple Valley with the business license.”

J. Subdivision B of Section 9.29.160 of the Apple Valley Municipal Code is hereby amended to remove the definition of “sex offender.”

K. Subdivision C.2. of Section 9.29.160 of the Apple Valley Municipal Code is hereby amended to read as follows:

“2. Group Homes of two (2) or more individuals on probation are prohibited.”

L. Subdivision C.3. of Section 9.29.160 of the Apple Valley Municipal Code is hereby amended to read as follows:

“3. Reserved.”

M. Subdivision F.5. of Section 9.29.160 of the Apple Valley Municipal Code is hereby amended to read as follows:

“5. The property owner or designated on-site manager, that is not on parole/probation, must live on the site of the Group Home. The name and a copy of legal identification of the property owner/on-site manager shall be provided to the Town of Apple Valley with the business license.”

N. Section 9.29.170 of the Apple Valley Municipal Code is hereby deleted in its entirety.

O. Subdivision B of Section 9.29.180 of the Apple Valley Municipal Code is hereby amended to remove the definition of “sex offender.”

P. Subdivision C.2. of Section 9.29.180 of the Apple Valley Municipal Code is hereby amended to read as follows:

“2. Group Homes of two (2) or more individuals on probation are prohibited.”

Q. Subdivision C.3. of Section 9.29.180 of the Apple Valley Municipal Code is hereby amended to read as follows:

“3. Reserved.”

R. Subdivision F.5. of Section 9.29.180 of the Apple Valley Municipal Code is hereby amended to read as follows:

“5. The property owner or designated on-site manager, that is not on parole/probation, must live on the site of the Transitional Housing Facility or Supportive Housing Facility. The name and a copy of legal identification of the property owner/on-site manager shall be provided to the Town of Apple Valley with the business license.”

SECTION 3. CEQA. The Town Council finds that this Ordinance is not subject to the California Environmental Quality Act (“CEQA”) pursuant to CEQA Guidelines Sections 15060(c)(3) because this activity is not a project as defined by Section 15378 of the CEQA Guidelines, California Code of Regulations, Title 14, Chapter 3, 15060(c)(3) (the activities are not “projects” as defined in Section 15378) of the CEQA Guidelines, California Code of Regulations, Title 14, Chapter 3, because they have no potential for resulting in physical change to the environment, directly or indirectly and pursuant to CEQA Guidelines Section 15061(b)(3) of the CEQA Guidelines, California Code of Regulations, Title 14, Chapter 3, because it can be seen with certainty that it will not have a significant effect or physical change to the environment. 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. Severability. If any section, subsection, subdivision, sentence, clause, phrase, or portion of this Ordinance for any reason is held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Code. The Town Council hereby declares that it would have adopted this Ordinance and each section, subsection, subdivision, sentence, clause, phrase, or portion thereof, irrespective of the fact that any one or more sections, subsections, subdivisions, sentences, clauses, phrases, or portions thereof be declared invalid or unconstitutional.

SECTION 5. Publication. The Town Clerk shall certify as to the adoption of these amendments and shall cause it to be published within fifteen (15) days of the adoption and shall post a certified copy of this Ordinance, including the vote for and against the same, in the Office of the Town Clerk, in accordance with California Government Code Section 36933.

APPROVED and **ADOPTED** by the Town Council and signed by the Mayor and attested by the Town Clerk this _____ day of September, 2016.

Barb Stanton, Mayor

ATTEST:

La Vonda M-Pearson, Town Clerk

APPROVED AS TO FORM:

APPROVED AS TO CONTENT:

Best Best & Krieger LLP
Town Attorney

Frank Robinson, Town Manager

**MINUTES
DRAFT EXCERPT
TOWN OF APPLE VALLEY
PLANNING COMMISSION
Regular Meeting**

Wednesday, August 3, 2016

CALL TO ORDER

Chairman Qualls called to order the Regular Meeting of the Planning Commission of the Town of Apple Valley for August 3, 2016 at 6:00 p.m.

ROLL CALL

Planning Commission

Roll call was taken with the following members present: Commissioner Bruce Kallen, Commissioner Jason Lamoreaux, Commissioner B.R. "Bob" Tinsley, Vice-Chairman Mark Shoup and Chairman Doug Qualls. Absent: None

STAFF PRESENT

Carol Miller, Principal Planner, Pam Cupp, Associate Planner, Thomas Rice, Town Attorney, Jordan Ferguson, Town Attorney and Yvonne Rivera, Planning Commission Secretary.

PUBLIC HEARING ITEMS

3. **Development Code Amendment No. 2016-003.** A request Amend the Town Municipal Code to Repeal Provisions Regulating and Referring to Sex Offender Residency.
Applicant: Town of Apple Valley
Location: Town-wide

Chairman Qualls opened the public hearing at 6:15 p.m.

Thomas Rice, Town Attorney, presented the staff report as filed with the Planning Division.

Mr. Rice responded to questions by the Planning Commission regarding the lawsuit. He commented on some of the challenges made against the current regulations.

Chairman Qualls requested to know if any of the other jurisdictions have prevailed by increasing their restrictions over and above state law.

It was the consensus of the Planning Commission to move forward with staff's recommendation to approve Planning Commission Resolution No. 2016-007, to amend various sections of Town's Municipal Code.

PUBLIC COMMENT

None.

Chairman Qualls closed the public hearing at 6:22 p.m.

MOTION

Motion by Commissioner Tinsley, seconded by Vice-Chairman Shoup that the Planning Commission move to:

1. Approve Planning Commission Resolution No. 2016-007, forwarding a recommendation that the Town Council amend Title 9 "Development Code" of the Town of Apple Valley Municipal Code as outlined within the staff report.

ROLL CALL VOTE

Ayes:	Commissioner Kallen Commissioner Lamoreaux Commissioner Tinsley Vice-Chairman Shoup Chairman Qualls
Noes:	None
Abstain:	None
Absent:	None

The motion carried by a 5-0-0-0 vote.



Get a Slice of the Apple.

Agenda Item No. 3

TOWN OF APPLE VALLEY PLANNING COMMISSION

Staff Report

AGENDA DATE: August 3, 2016

CASE NUMBER: Development Code Amendment No. 2016-003

APPLICANT: Town of Apple Valley

PROPOSAL: To Amend the Town Municipal Code to Repeal Provisions Regulating and Referring to Sex Offender Residency

LOCATION: Town-wide

ENVIRONMENTAL DETERMINATION: Staff has determined that 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.

PRESENTER: Thomas Rice, Town Attorney

RECOMMENDATION: Adopt Planning Commission Resolution No. 2016-007 Recommending that the Town Council Amend Various Sections of Title 9 of the Apple Valley Municipal Code to Repeal Provisions Regulating and Referring to Sex Offender Residency

BACKGROUND:

Under current California law, it is unlawful for any registered sex offender to reside within 2,000 feet of any public or private school, or park where children regularly gather. Pursuant to Penal Code Section 3003.5(c), cities in California, including the Town of Apple Valley, are authorized to enact local ordinances that restrict the residency of registered sex offenders beyond the limits established under California law.

In accordance with Penal Code Section 3003.5(c), the Town currently regulates the residency of registered sex offenders through several sections of Title 9 of the Apple Valley Municipal Code. For example, Section 9.29.170 of the Apple Valley Municipal Code presently prohibits registered sex offenders from residing within 4,000 feet of the following sensitive uses: schools (public and private); parks (public and private); libraries; day care facilities (including family home day care); foster or juvenile residential care facilities or group homes; video arcades; movie theaters; religious institutions; museums; hospitals; private and public clubs and lodges; youth centers; places of assembly; dance/martial art studios; amusement parks; children play grounds; and educational/tutorial learning centers.

In 2014, in response to several decisions of the California Court of Appeal including *People v. Nguyen*, the Town Council adopted Ordinance No. 463 to repeal Chapter 11.54 of the Apple Valley Municipal Code to remove regulations restricting where sex offenders may travel or loiter.

In March 2015, the California Supreme Court, in *In re Taylor*, held that a blanket 2,000 foot residency restriction imposed on sex offenders in San Diego County was unconstitutional as applied in San Diego County because the restrictions essentially meant sex offenders could not live anywhere in the County.

Despite the explicit authorization provided by Penal Code Section 3003.5(c), several cities have been subjected to challenge on the basis that their residency restrictions violate the United States and California Constitutions.

DISCUSSION:

In light of the recent case law regarding residency restrictions, the Town Attorney's Office has recommended that the Town repeal its residency restrictions and instead rely on state law. The proposed resolution recommends that the Town Council repeal the residency restriction (section 9.29.170) in its entirety. The proposed resolution further recommends that the Town Council remove references to sex offenders contained in Chapter 9.08 and Chapter 9.29 (including sections 9.29.140, 9.29.150, 9.29.160 and 9.29.180) of the Apple Valley Municipal Code.

If the Town repeals its residency restrictions, sex offenders will remain subject to all state laws affecting sex offenders including, but not limited to, the following:

- Penal Code Section 290 et seq., which requires lifetime registration of sex offenders with law enforcement in the jurisdiction in which they reside;
- Penal Code Section 3003.5 (b), which prohibits sex offenders from residing within 2,000 feet of any public or private school or park where children regularly gather;
- Penal Code Section 3053.8 (a), which prohibits a paroled sex 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), which prohibits sex offenders from entering any school building or school ground without "lawful business" and written permission from the school;

- Penal Code Section 653b, which provides enhanced penalties for any sex 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; and
- Penal Code Section 653c, which prohibits a sex 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.

NOTICING

Development Code Amendment No. 2016-003 was advertised as a public hearing in the Apple Valley News newspaper on June 22, 2016.

ENVIRONMENTAL REVIEW:

Town staff has determined that the Ordinance is not a project within the meaning of Section 15378 of the State California Environmental Quality Act (“CEQA”) Guidelines, because it has no potential for resulting in physical change in the environment, directly or indirectly. Further, the Ordinance is exempt from 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. 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.

RECOMMENDATION:

Following receipt of public input and discussion by the Commission, it is recommended that the Commission move to approve Planning Commission Resolution No. 2016-007, forwarding a recommendation that the Town Council amend Title 9 “Development Code” of the Town of Apple Valley Municipal Code as outlined within the staff report.

ATTACHMENT:

1. Planning Commission Resolution No. 2016-007
2. Draft Town Council Ordinance

PLANNING COMMISSION RESOLUTION NO. 2016-007

A RESOLUTION OF THE TOWN OF APPLE VALLEY PLANNING COMMISSION RECOMMENDING TO THE TOWN COUNCIL ADOPTION OF AN ORDINANCE AMENDING VARIOUS SECTIONS OF TITLE 9 OF THE APPLE VALLEY MUNICIPAL CODE TO REPEAL PROVISIONS REGULATING SEX OFFENDER RESIDENCY

WHEREAS, under current state law, it is unlawful for any registered sex offender to reside within 2,000 feet of any public or private school, or park where children regularly gather; and

WHEREAS, the Town of Apple Valley is authorized, as recognized by Penal Code Section 3003.5(c), to enact local ordinances that restrict the residency of registered sex offenders beyond the limits established under California law; and

WHEREAS, in accordance with Penal Code Section 3003.5(c), the Town of Apple Valley currently regulates the residency of registered sex offenders through several sections of Title 9 of the Apple Valley Municipal Code; and

WHEREAS, notwithstanding Penal Code Section 3003.5(c), several cities have been subjected to challenge on the basis that certain residency restrictions violate the United States and California Constitutions; and

WHEREAS, the Planning Commission determines that state law restrictions protect children from registered sex offenders; and

WHEREAS, the Planning Commission recommends that the Town Council repeal the residency restriction for sex offenders listed in Section 9.29.170 of the Apple Valley Municipal Code in its entirety; and

WHEREAS, the Planning Commission further recommends that the Town Council remove references to sex offenders in Chapter 9.08 and Chapter 9.29 (including Sections 9.29.140, 9.29.150, 9.29.160 and 9.29.180) of the Apple Valley Municipal Code, while preserving the remaining terms of those provisions of the Apple Valley Municipal Code.

NOW, THEREFORE, the Planning Commission of the Town of Apple Valley does resolve as follows:

SECTION 1. Incorporation of Recitals. The above recitals are true and correct and are incorporated herein by this reference.

SECTION 2. Apple Valley Municipal Code Amendment. The Planning Commission hereby recommends that the Town Council adopt the attached Ordinance revising Title 9 of the Apple Valley Municipal Code to repeal the residency restriction for sex offenders in section 9.29.170 and remove references to sex offenders in Chapter 9.08 and Chapter 9.29 (including Sections 9.29.140, 9.29.150, 9.29.160 and 9.29.180).

SECTION 3. CEQA. The Planning Commission finds, under Title 14 of the California Code of Regulations, Section 15061(b)(3), that this Development Code Amendment 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. Consistency. The changes as proposed are consistent with the Goals and Policies of the Town of Apple Valley and the adopted General Plan.

Approved and Adopted by the Planning Commission of the Town of Apple Valley this 15th day of June, 2016.

Chairman Doug Qualls

ATTEST:

I, Yvonne Rivera, Secretary to the Planning Commission of the Town of Apple Valley, California, do hereby certify that the foregoing resolution was duly and regularly adopted by the Planning Commission at a regular meeting thereof, held on the 3rd day of August, 2016 by the following vote, to-wit:

AYES:
NOES:
ABSENT:
ABSTAIN:

Ms. Yvonne Rivera
Planning Commission Secretary

ORDINANCE NO. _____

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF APPLE VALLEY AMENDING VARIOUS SECTIONS OF TITLE 9 OF THE APPLE VALLEY MUNICIPAL CODE TO REPEAL PROVISIONS REGULATING SEX OFFENDER RESIDENCY

WHEREAS, under current state law, it is unlawful for any registered sex offender to reside within 2,000 feet of any public or private school, or park where children regularly gather; and

WHEREAS, the Town of Apple Valley is authorized, as recognized by Penal Code Section 3003.5(c), to enact local ordinances that restrict the residency of registered sex offenders beyond the limits established under California law; and

WHEREAS, in accordance with Penal Code Section 3003.5(c), the Town of Apple Valley currently regulates the residency of registered sex offenders through several sections of Title 9 of the Apple Valley Municipal Code; and

WHEREAS, notwithstanding Penal Code Section 3003.5(c), several cities have been subjected to challenge on the basis that certain residency restrictions violate the United States and California Constitutions; and

WHEREAS, the Town Council determines that state law restrictions protect children from registered sex offenders; and

WHEREAS, the Town Council desires to amend the Apple Valley Municipal Code to repeal the residency restriction for sex offenders listed in section 9.29.170 of the in its entirety and to remove references to sex offenders from Chapter 9.08 and Chapter 9.29 (including sections 9.29.140, 9.29.150, 9.29.160 and 9.29.180) while preserving the remaining terms of those provisions; and

WHEREAS, any sex offenders within the Town shall remain subject to state law restrictions on their residency.

NOW, THEREFORE, THE TOWN COUNCIL OF THE TOWN OF APPLE VALLEY, CALIFORNIA, DOES ORDAIN AS FOLLOWS:

SECTION 1. Incorporation of Recitals. The Town Council hereby finds that all of the foregoing recitals and the staff report presented herewith are true and correct and are hereby incorporated and adopted as findings of the Town Council as if fully set forth herein.

SECTION 2. Apple Valley Municipal Code Amendments.

A. The definition of “transitional housing” listed in Chapter 9.08 is amended to remove the reference to “sex offenders.”

B. Subdivision B of Section 9.29.140 of the Apple Valley Municipal Code is hereby amended to remove the definition of “sex offender.”

C. Subdivision C.2. of Section 9.29.140 of the Apple Valley Municipal Code is hereby amended to read as follows:

“2. Group Homes of two (2) or more individuals on probation are prohibited.”

D. Subdivision C.3. of Section 9.29.140 of the Apple Valley Municipal Code is hereby amended to read as follows:

“3. Reserved.”

E. Subdivision F.5. of Section 9.29.140 of the Apple Valley Municipal Code is hereby amended to read as follows:

“5. The property owner or designated on-site manager, that is not on parole/probation, must live on the site of the Residential Care Facility for the Elderly. The name and a copy of legal identification of the property owner/on-site manager shall be provided to the Town of Apple Valley with the business license.”

F. Subdivision B of Section 9.29.150 of the Apple Valley Municipal Code is hereby amended to remove the definition of “sex offender.”

G. Subdivision C.2. of Section 9.29.150 of the Apple Valley Municipal Code is hereby amended to read as follows:

“2. Group Homes of two (2) or more individuals on probation are prohibited.”

H. Subdivision C.3. of Section 9.29.150 of the Apple Valley Municipal Code is hereby amended to read as follows:

“3. Reserved.”

I. Subdivision F.5. of Section 9.29.150 of the Apple Valley Municipal Code is hereby amended to read as follows:

“5. The property owner or designated on-site manager, that is not on parole/probation, must live on the site of the Large Residential Care Facility. The name and a copy of legal identification of the property owner/on-site

manager shall be provided to the Town of Apple Valley with the business license.”

J. Subdivision B of Section 9.29.160 of the Apple Valley Municipal Code is hereby amended to remove the definition of “sex offender.”

K. Subdivision C.2. of Section 9.29.160 of the Apple Valley Municipal Code is hereby amended to read as follows:

“2. Group Homes of two (2) or more individuals on probation are prohibited.”

L. Subdivision C.3. of Section 9.29.160 of the Apple Valley Municipal Code is hereby amended to read as follows:

“3. Reserved.”

M. Subdivision F.5. of Section 9.29.160 of the Apple Valley Municipal Code is hereby amended to read as follows:

“5. The property owner or designated on-site manager, that is not on parole/probation, must live on the site of the Group Home. The name and a copy of legal identification of the property owner/on-site manager shall be provided to the Town of Apple Valley with the business license.”

N. Section 9.29.170 of the Apple Valley Municipal Code is hereby deleted in its entirety.

O. Subdivision B of Section 9.29.180 of the Apple Valley Municipal Code is hereby amended to remove the definition of “sex offender.”

P. Subdivision C.2. of Section 9.29.180 of the Apple Valley Municipal Code is hereby amended to read as follows:

“2. Group Homes of two (2) or more individuals on probation are prohibited.”

Q. Subdivision C.3. of Section 9.29.180 of the Apple Valley Municipal Code is hereby amended to read as follows:

“3. Reserved.”

R. Subdivision F.5. of Section 9.29.180 of the Apple Valley Municipal Code is hereby amended to read as follows:

“5. The property owner or designated on-site manager, that is not on parole/probation, must live on the site of the Transitional Housing Facility or Supportive Housing Facility. The name and a copy of legal identification of the

property owner/on-site manager shall be provided to the Town of Apple Valley with the business license.”

SECTION 3. CEQA. The Town Council finds that this Ordinance is not subject to the California Environmental Quality Act (“CEQA”) pursuant to CEQA Guidelines Sections 15060(c)(3) because this activity is not a project as defined by Section 15378 of the CEQA Guidelines, California Code of Regulations, Title 14, Chapter 3, 15060(c)(3) (the activities are not “projects” as defined in Section 15378) of the CEQA Guidelines, California Code of Regulations, Title 14, Chapter 3, because they have no potential for resulting in physical change to the environment, directly or indirectly and pursuant to CEQA Guidelines Section 15061(b)(3) of the CEQA Guidelines, California Code of Regulations, Title 14, Chapter 3, because it can be seen with certainty that it will not have a significant effect or physical change to the environment. 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. Severability. If any section, subsection, subdivision, sentence, clause, phrase, or portion of this Ordinance for any reason is held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Code. The Town Council hereby declares that it would have adopted this Ordinance and each section, subsection, subdivision, sentence, clause, phrase, or portion thereof, irrespective of the fact that any one or more sections, subsections, subdivisions, sentences, clauses, phrases, or portions thereof be declared invalid or unconstitutional.

SECTION 5. Publication. The Town Clerk shall certify as to the adoption of these amendments and shall cause it to be published within fifteen (15) days of the adoption and shall post a certified copy of this Ordinance, including the vote for and against the same, in the Office of the Town Clerk, in accordance with California Government Code Section 36933.

PASSED, APPROVED and ADOPTED this _____ day of September, 2016.

Barb Stanton, Mayor

ATTEST:

La Vonda M-Pearson, Town Clerk

APPROVED AS TO FORM:

Best Best & Krieger LLP
Town Attorney