



TOWN OF APPLE VALLEY

TOWN COUNCIL STAFF REPORT

To: Honorable Mayor and Town Council **Date:** February 14, 2017

From: Lori Lamson, Assistant Town Manager **Item No:** 11

Subject: INTRODUCE ORDINANCE NO. 492 – AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF APPLE VALLEY, CALIFORNIA, AMENDING CHAPTER 6.30 OF THE APPLE VALLEY MUNICIPAL CODE AS IT RELATES TO NUISANCES

T.M. Approval: _____

Budgeted Item: Yes No N/A

RECOMMENDED ACTION:

1. **Find** that the proposed adoption of Ordinance No. 492 is not subject to and is Exempt from CEQA, based upon findings under CEQA Guidelines, Section 15061 Sub (b)(3) that can be seen with certainty that there is no possibility that the proposed amendment may have a significant effect on the environment.
2. **Move** to waive the reading of Ordinance No. 492 in its entirety and read by title only.
3. **Move** to Introduce Ordinance No. 492 amending Chapter 6.30 as it relates to Nuisances.
4. **Direct** Staff to file a Notice of Exemption.

SUMMARY:

It has become necessary to review the language of the Town's Nuisance Code due to a recent court ruling where a Superior Court Judge ruled against the Town of Apple Valley. The ruling on this case stated that a Code Enforcement Officer did not prove that a purported violation actually caused "depreciable diminution of the property values of surrounding property or is materially detrimental to proximal properties and improvements" as required in the current code. This amendment serves to change the language of some Municipal Code Nuisance sections to allow Town Code Enforcement Officers to more effectively enforce the Town's Municipal Code, to more easily prove the elements of the violation in court, and to uphold the Town Council's intent of the Nuisance section. As a result of the court's ruling and based on recommendations of the

Town Attorney's Office the following changes are proposed to be made to the Municipal Code.

FISCAL IMPACT:

None.

BACKGROUND:

Recently Code Enforcement had a long ongoing Code Enforcement case go to trial. The Judge ruled against the Town on two of the violations based on the Judge's opinion that the Town did not meet the burden of proof to show essentially that the violations were detrimental to neighboring property values as required by the code. The following is the wording of the two sections from the Town's Municipal Code in question during the trial with the specific concerns of the Judge in bold and italicized.

Trash and Debris: Property including, but not limited to, building exteriors which are maintained in such condition as to become so defective, unsightly, or in such condition of deterioration or disrepair that the same causes ***depreciable diminution of the property values of surrounding property or is materially detrimental to proximal properties and improvements***. This includes, but is not limited to, the keeping or disposing of or the scattering over the property or premises of any of the following: (Emphasis added)

Overgrown vegetation: ***Causing detriment to neighboring properties or property values*** or causing a hazardous condition to pedestrian and/or vehicular traffic. (Emphasis added).

During the trial the Judge explained in order for the Town to prove the element of the violation causing harm to property values, a real estate expert would have to be brought in to testify that in fact the neighboring property values were lowered as a direct result of the condition of the property in question. As a result of the court's ruling, the Town sought the opinion of the Town Attorney's Office about how the code sections were written. All of the Nuisance code sections in Title 6.30 were reviewed and the recommended code amendments made by the Town Attorney's office are what is presented in this staff report.

None of these proposed changes to the Municipal Code add or delete any violations but serve to better position the Town to prove a violation of the code exists. The amendments are not intended to alter the Town Council's intent of the violations.

A ~~strikethrough~~ in the municipal code text shows proposed deletions and ***bold with italicized*** text shows proposed additions to the code sections.

ORDINANCE NO. 492

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF APPLE VALLEY, CALIFORNIA, AMENDING CHAPTER 6.30 OF THE APPLE VALLEY MUNICIPAL CODE AS IT PERTAINS TO PUBLIC NUISANCES

WHEREAS, in order to ensure uniformity in the enforcement of the Nuisance section; and

WHEREAS, the Town Council has a desire for all residents to be able to enjoy their property; and

WHEREAS, the Municipal Code is not in easily enforceable with the intent, direction, and current practice of nuisance enforcement; and

WHEREAS, it is in the best interest of the Town to amend the provisions of Chapter 6.30 (entitled "Nuisances") of Title 6 of the Apple Valley Municipal Code; and

WHEREAS, it is the objective of the Town of Apple Valley through code enforcement efforts to preserve and enhance properties located within the Town limits.

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

Section 1. Chapter 6.30 of Title 6 of the Town of Apple Valley Municipal Code is hereby amended to read as follows:

Chapter 6.30 - NUISANCES

Sections:

6.30.010 - Definitions.

The following words, terms and phrases, when used in this Chapter, shall have the meanings ascribed to them in this Section, except where the context clearly indicates a different meaning:

- (a) *Back yard* means that portion of property between a building and the back property line.
- (b) *Building* means any house, garage, duplex, apartment, condominium, stock cooperative, and other residential and nonresidential structures.
- (c) *Driveway* means the vehicular access way between the street and the garage or carport.
- (d) *Front yard* means that portion of property between the street and a building.

- (e) *Owner* means any person owning property, as shown on the last equalized assessment roll for Town taxes or the lessee, tenant or other person having control or possession of the property.
- (f) *Person* means any individual, partnership, corporation, association or other organization, however formed.
- (g) *Property* means:
 - (a) All nonresidential zoned real property and any building located on such property (referred to as "nonresidential property"), and
 - (b) Front yards, the unfenced portions of side yards, the unfenced portion of back yards of corner lots, driveways, walkways and sidewalks of all residential real property and shall include any building located on such property (referred to herein as "residential property").
- ~~(h) *Public nuisance* means a thing, act, occupation, condition or use of property which shall continue for such length of time as to: substantially annoy, injure or endanger the comfort, health, repose or safety of the public; in any way render the public insecure in life or in the use of property; greatly offend the public morals or decency; unlawfully and substantially interfere with, obstruct or tend to obstruct or render dangerous for passage any street, alley, highway, or other public way or the use of public property.~~
- ~~(h) (†) *Side yard* means that portion of property between a building and the side property line.~~
- ~~(i) (†) *Town* means the Town of Apple Valley.~~
- ~~(j) (†) *Town Manager* means the Town Manager or a designee.~~
- ~~(k) (†) *Vehicle* means a device by which any person or property may be propelled, moved, or drawn upon a highway, excepting a device moved exclusively by human power or used exclusively upon stationary rails or tracks.~~

(Ord. 302, 10-25-05)

6.30.020 - Purpose.

Blight, consisting of fire hazards, polluted air and water, abandoned vehicles and improperly maintained property, among others, creates an unsightly appearance, creates a hazard to the public health, safety and welfare, ***interferes with the reasonable enjoyment of property by neighbors, can detrimentally affect property values in the surrounding neighborhood and community,*** and is a ***public nuisance***. It is hereby declared to be in the public interest to promote the public health, safety and welfare of the residents of the Town of Apple Valley by providing a procedure for the abatement of nuisances which shall be in addition to all other procedures allowed by this Code or any other manner provided by law.

6.30.030 - Unlawful nuisances.

Each and every one of the following conditions or acts is **unlawful and hereby** declared to be a **public** nuisance:

- A. *Fire hazards.* Dry or dead shrub, dead tree, combustible refuse and waste or any material growing upon a street, sidewalk or private property within the Town which constitutes a fire hazard to a building, improvement, crop or which, when dry, will in reasonable probability constitute a fire hazard.
- B. *Hazardous obstructions.* An obstacle, landscaping or object installed, planted or maintained within the sight triangle corner setback area reaching a height higher than 30 in. above the nearest street elevation. Hazardous obstructions do not mean existing or future permanent buildings, otherwise constructed or maintained in accordance with applicable building and zoning regulations, public utility poles, trees trimmed at the trunk at least six ft. above the level of the ground surface provided trees are spaced so that trunks do not obstruct the vision of motorists.
- C. *Polluted water.* A swimming pool, pond or other body of water which is abandoned, unattended, unfiltered, or not otherwise maintained, resulting in the water becoming polluted. Polluted water means water contained in a swimming pool, pond or other body of water, which includes but is not limited to bacterial growth, including algae, remains of deceased animals, reptiles, rubbish, refuse, debris, papers and any other foreign matter or material which because of its nature or location constitutes an unhealthy, unsafe or unsightly condition.
- D. *Public burning.* The intentional outdoor burning of any material, structure, matter or thing unless specifically authorized.
- E. *Refuse and waste.* ~~Refuse and waste matter, which by reason of its location and character is unsightly and interferes with the reasonable enjoyment of property by neighbors, detrimentally affects property values in the surrounding neighborhood or community or which would materially hamper or interfere with the prevention or suppression of fire upon the premises. "Refuse and waste" which means~~ **Unused or discarded matter and material, including but not limited to the following:** and material having no substantial market value and which consists of such matter and material as rubbish, refuse, debris, and matter of any kind including, but not limited to rubble, asphalt, concrete, plaster, tile, rocks, brick, soil, building materials, crates, cartons, containers, boxes, machinery or parts thereof, scrap metal and other pieces of ferrous or nonferrous metal, furniture, inoperative vehicles and parts, trimmings from plants and trees, cans, bottles and barrels.
 - 1. *Animal waste.* All animal waste must be cleaned up every 72 hours, excluding all large animal waste (i.e., horses, cattle, sheep) which will be required to be cleaned up once a week.
- (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 30 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.
2. Unpainted buildings or portions of buildings or structures causing dry rot, warping and **or** termite infestation.
3. Broken, **dilapidated, and/or unsecured** windows, **doorways, and/or gates** constituting hazardous conditions and inviting trespassers and malicious mischief.
4. **[Reserved]** ~~Overgrown vegetation:~~
 - a. ~~Causing detriment to neighboring properties or property values or causing a hazardous condition to pedestrian and/or vehicular traffic, or~~
 - b. ~~Likely to harbor rats, vermin and other nuisances.~~
5. **Vegetation that is overgrown, dead, decayed, dry, or hazardous.** ~~Dead trees, weeds and debris:~~
 - a. ~~Constituting unsightly appearance, or~~
 - b. ~~Dangerous to public safety and welfare, or values,~~
 - c. ~~Detrimental to nearby property or property.~~
6. Stored vehicles or trailers, campers, boats and other objects parked or stored in a manner which extends or otherwise encroaches over, under or upon the Town's right-of-way.
7. Any vehicle or trailer containing any advertising matter, words, symbols or pictures, parked whether on public or private property, for the primary purpose of advertising or directing attention to a business or vehicle for sale. Exception: This Chapter shall not apply to one vehicle, which is parked legally on the vehicle owner's occupied residential property or commercially zoned properties licensed for vehicle sales.

Any person in violation of this condition g. of paragraph (6) of Section 6.30.030 may be issued a parking citation, and the fine for that infraction shall be \$50.00.
8. Operative vehicles parked or stored on the premises shall be limited to six vehicles per single family residential lot. The vehicles must be operative at

all times and in compliance with Chapter 11.80 of the Town of Apple Valley Municipal Code. All vehicles located in the front yard area between the front of the home and the public right-of-way must be parked on a driveway or on a concrete, asphalt or gravel parking surface. The following shall be exceptions to this provision and will not be included in the maximum vehicles permitted as described in this Section:

- a. Vehicles completely screened from public view by a wooden fence, concrete block wall, brick wall, or chain link fence with approved screening materials, in accordance with Section 6.30.030(6)o.5. of the Town of Apple Valley Municipal Code or solid landscaping that completely screens the vehicle from view, provided the vehicles are located behind the structure.
 - b. Vehicles provided to the resident that are owned by the resident's employer and used by the resident for business. This exemption shall not apply to vehicles related to a Home Occupation Permit.
 - c. Operable motorcycles and mopeds;
 - d. Vehicles owned by visitors to the property that will be parked for less than 24 hours.
 - e. Vehicles located in an enclosed garage are not included in the maximum number of vehicles.
9. Attractive nuisances dangerous to children in the form of:
- a. Abandoned and/or broken equipment.
 - b. ~~Hazardous~~ **Unfenced, unsecured, or otherwise accessible** pools, ponds and excavations.
 - c. Neglected machinery, broken or discarded furniture and household equipment, stoves, refrigerators, freezers, cans, packing boxes and similar debris.
 - d. Any attractive nuisance which is potentially detrimental to children whether in a building, on the premises of a building or upon an unoccupied lot or parcel. This includes, but is not limited to, any abandoned wells, shafts, basements or excavations; abandoned refrigerators and motor vehicles; any structurally unsound fences or structures; or any lumber, trash, fences, debris or vegetation which may prove a hazard for inquisitive minors.
10. Broken or discarded furniture and household equipment in visible yard areas.
11. Clothesline or clothes hanging in front yard areas.
12. Packing boxes and other debris stored in yards and visible from public streets.

13. Toxic materials, hazardous waste or chemicals that are improperly or unlawfully stored, which includes the disposal of sewage, human excrement or other liquid waste in any place or manner.
14. Maintenance of premises in such condition as to be detrimental to the public health, safety or general welfare or in such a manner as to constitute a public nuisance as defined by Civil Code § 3480.
15. Property including, but not limited to, **with** buildings **or** exteriors which are maintained in such condition as to become ~~so~~ defective, unsightly, or **in a state of disrepair** ~~such condition of deterioration or disrepair that the same causes depreciable diminution of the property values of surrounding property or is materially detrimental to proximal properties and improvements.~~ This includes, but is not limited to, the keeping or disposing of or the scattering over the property or premises of any of the following:
 - a. Lumber, junk, trash or debris,
 - b. Abandoned, discarded or unused objects of equipment such as automobiles, furniture, stoves, refrigerators, freezers, cans or containers,
 - c. Stagnant water or excavations,
 - d. Any device, decoration, design, fence or structure which is unsightly by reason of its condition or its inappropriate location,
 - e. Fences shall be maintained using approved fencing material. Approved screening material to shield, conceal or hide shall consist of solid block, stucco, wood slat fencing and chain link fencing with plastic, wood or metal inserts. Materials including, but not limited to, plywood, particleboard, garage doors, plastic tarps or canvas are prohibited screening materials. All fences shall be in compliance with Section 9.08.1300 Walls and Fences of the Town of Apple Valley Development Code.
 - f. Permitting or allowing any graffiti to remain on any building, wall, fence or structure.
16. Any building, driveway or structure which has any of the following conditions or defects:
 - a. Whenever any door, aisle, passageway, stairway or other means of exit is not of sufficient width or size, or is not so arranged as to provide safe and adequate means of exit, in case of fire or panic, for all persons housed or assembled therein who would be required to, or might use such door, aisle, passageway, stairway or other means of exit,
 - b. Whenever any portion thereof has been damaged by earthquake, wind, flood, or by any other cause, in such a manner that the structural strength or stability thereof is appreciably less than the minimum requirements of this Code for a new building or similar structure, purpose or location,

- c. Whenever any portion or member or appurtenance thereof is likely to fall or to become detached or dislodged or to collapse and thereby injure persons or damage property,
- d. Whenever any building, portion of a building, or any member, appurtenance or ornamentation on the exterior thereof is not of sufficient strength or stability or is not so anchored, attached or fastened in place so as to be capable of resisting wind pressure, earthquake forces, live-load or dead-load as specified in the Uniform Building Code without exceeding the stresses permitted in the Uniform Building Code,
- e. Whenever any portion thereof has settled to such an extent that walls or other structural portions have materially less resistance to winds or earthquake than is required in new construction,
- f. Whenever the building or structure, or any portion thereof, because of dilapidation, deterioration, decay, faulty construction or because of the removal or movement of some portion of the ground necessary for the purpose of supporting such building or portion thereof, or some other cause is likely to completely collapse or some portion of the foundation or underpinning is likely to fall or give way,
- g. Whenever, for any reason whatsoever, the building or structure, or any portion thereof is unsafe for the purpose for which it is used,
- h. Whenever the building or structure ~~has been so~~ **become dilapidated, damaged, or dangerous, resulting from decay, damage, faulty construction or arrangement,** ~~by fire, wind, earthquake or flood, or~~ **old age, or neglect,** ~~has become so dilapidated or deteriorated as to become an attractive nuisance to children who might play therein to their danger or as to afford a harbor for vagrants, criminals or immoral persons, or as to enable persons to resort thereto for the purpose of committing nuisance or unlawful or immoral acts,~~
- i. Whenever any building or structure which has been constructed or which now exists or is maintained in violation of any specific requirement or prohibition applicable to such building or structure, of the building regulations of this Town as set forth in the Uniform Building Code, or Uniform Housing Code or of any law or ordinance of this State or Town relating to the condition, location or structure of buildings,
- j. Whenever a building or structure, used or intended to be used for dwelling purposes, because of dilapidation, decay, damage or faulty construction or arrangement, or otherwise is unsanitary or unfit for human habitation or is in a condition that is likely to cause sickness or disease when so determined by the health officer, or is likely to work injury to the health, safety or general welfare of those living within,

- k. Whenever any building or structured used, or intended to be used, for dwelling purposes has light, air and sanitation facilities inadequate to protect the health, safety or general welfare of persons living within,
- l. Whenever any building or structure, by reason of obsolescence, dilapidated condition, deterioration, damage, electric wiring, gas connections, heating apparatus, or other cause, is in such condition as to be a fire hazard and is so situated as to endanger life or other buildings or property in the vicinity or provide a ready fuel supply to augment the spread and intensity of fire arising from any cause,
- m. Any building which meets the definitions of a sub-standard building in Health and Safety Code § 17920.3,
- n. Any building that does not have the exterior fire resistive requirements of the Uniform Building Code,
- o. Buildings or structures maintained in violation of Section 203(a) of the Uniform Building Code of the Town,
- p. Any curb, gutter, sidewalk or driveway which is debilitated, broken damaged or raised one-half in. or more above the surrounding grade.

(Ord. 302, 10-25-05; Ord. 333, 2-13-07, eff. 3-15-07)

(Ord. No. 464, § 1, 9-23-2014)

Section 2. Except as expressly amended hereby, all other provisions of Title 6 of the Town of Apple Valley Municipal Code shall remain in effect.

Section 3. Invalidation. The amendment by this ordinance of Chapter 6.30 of the Town of Apple Valley Municipal Code as previously in effect shall not be construed to invalidate any entitlement exercised or proceeding taken pursuant to either of said Chapters while the same was in effect.

Section 4. Effective Date. This ordinance shall become effective thirty days from and after its adoption.

Section 5. 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.

APPROVED and **ADOPTED** by the Town Council and signed by the Mayor and attested by the Town Clerk this 14h day of February, 2017.

Scott Nassif, Mayor

ATTEST:

La Vonda Pearson, Town Clerk

APPROVED AS TO FORM:

John Brown, Town Attorney

APPROVED AS TO CONTENT:

Frank W. Robinson, Town Manager