



## Town Council Agenda Report

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Date: November 12, 2019 Item No.11

To: Honorable Mayor and Town Council

Subject: DEVELOPMENT CODE AMENDMENT NO. 2019-011, AN AMENDMENT TO TITLE 9 "DEVELOPMENT CODE" OF THE TOWN OF APPLE VALLEY MUNICIPAL CODE TO PROVIDE THE COMMUNITY DEVELOPMENT DIRECTOR THE AUTHORITY TO APPROVE REQUESTS FOR INTENSITY BONUSES OR CONCESSIONS BASED UPON ENHANCED SITE AMENITIES AND/OR SUSTAINABLE, ENVIRONMENTALLY SUPPORTIVE COMMERCIAL OR INDUSTRIAL PROJECTS.

From: Douglas Robertson, Town Manager

Submitted by: Pam Cupp, Senior Planner  
Planning Department

Budgeted Item:  Yes  No  N/A

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### RECOMMENDED ACTION:

- A. **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.
- B. **Find** the facts presented within the staff report, including the attached Planning Commission Resolution No. 2019-014 adopted September 18, 2019, support the required Findings for approval of the proposed Development Code Amendment and adopt the Findings.
- C. **Move** to waive the reading of Ordinance No. 522 in its entirety and read by title only.
- D. **Introduce** Ordinance No. 522 approving Development Code Amendment No. 2019-011; and
- E. **Direct** staff to file a Notice of Exemption with the San Bernardino County Clerk of the Board.

## **SUMMARY:**

Development Code Amendment No. 2019-011 was initiated by the Town Council at its May 1, 2019 joint meeting with the Planning Commission to draft language that would allow the Director the authority to approve requests for intensity bonuses or concession for sustainable, environmentally supportive commercial or industrial development. On September 18, 2019, the Planning Commission adopted Planning Commission Resolution No. 2019-014 recommending the Town Council approve Development Code Amendment No. 2019-011.

The changes proposed under Development Code Amendment No. 2019-011 will remove the requirement for a Conditional Use Permit when a developer requests an intensity bonus (e.g., increased height, reduced setbacks, and reduced landscaping) for commercial or industrial projects that incorporate enhanced site amenities such as employee trip reduction incentives, shaded public spaces, public art or enhanced landscaping.

This Amendment will also incorporate additional sustainable design features that could be eligible for a reduction to certain development standards. It is further recommended that parking reduction be added as a permitted intensity bonus and to allow the developer to suggest other concession that would result in an actual reduction in energy or water use.

## **ANALYSIS:**

Development Code Amendment No. 2019-011 was initiated by the Town Council at its May 1, 2019 joint meeting with the Planning Commission to allow the Director the authority to approve requests for intensity bonuses or concession for sustainable, environmentally supportive commercial or industrial development. Current Code requires any such request be processed through a Conditional Use Permit. As discussed under a prior amendment, a Conditional Use Permit cannot be revoked from a building; therefore, it is recommended that the review process be modified to allow approval by the applicable review authority, instead of requiring a Conditional Use Permit. The Code Sections under consideration for modification correlate with the Town's Climate Action Plan.

The Code Sections proposed for modification include specific, amenities and design features that can be considered when requesting intensity bonuses or concessions. This presents the opportunity to include design measures identified within the Town's Climate Action Plan. On June 12, 2018, the Town Council adopted the most recent update to the Town's Climate Action Plan (CAP). The purpose of the CAP is to ensure the reduction measures proposed and implemented in the original CAP continue to support the Town's greenhouse gas emissions reduction target of 15% below 2005 levels by 2020. The most recent legislation requires that greenhouse gases be reduced to 40% below 2005 emissions by 2030. The CAP identified specific environmentally sustainable measures that should be taken to ensure the Town's compliance with the required reduction to greenhouse gases. These measures were incorporated into the Development Code in 2010 and included "suggested concessions"; however, no specific incentives were

adopted.

It is recommended that several of the “suggested” environmentally sustainable design features identified within Development Code Sections 9.37.100 and 9.46.090, be added to the list of features that could be eligible for intensity bonuses or concessions. Also suggested is to incorporate a parking reduction as a permitted intensity bonus and to allow the developer to suggest other concessions that would result in an actual reduction in energy or water use.

Commission discussion focused upon the available intensity bonuses available, such as height and floor area ratio. Also discussed was that LEED Certification should be its own amenity option, rather than a menu item included under energy efficient measures that could qualify for an intensity bonus.

A complete strike-thru/underline version of the proposed changes can be reviewed within the attached Planning Commission report from the September 18, 2019 public hearing for Development Code Amendment No. 2019-011.

**NOTICING:**

Development Code Amendment No. 2019-011 was advertised as a Town Council public hearing in the Apple Valley News newspaper on November 1, 2019.

**ENVIRONMENTAL REVIEW:**

Development Code Amendment No. 2019-011 will modify the process and review authority for intensity bonuses or concessions for commercial or industrial development. The amendment will also incorporate environmentally sustainable measures that could qualify for such intensity bonuses or concessions. As proposed, this amendment will not promote development beyond that anticipated within the Environmental Impact Report prepared for the General Plan and certified August 11, 2009.

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.

**REQUIRED FINDINGS:**

An Amendment to the Development Code requires that the Town Council address two (2) required “Findings”, as listed within Development Code Section 9.06.060. For Council consideration, the required Findings are listed below, along with a comment addressing each. If the Council concurs with these comments, it may be adopted. If the Council wishes to modify the offered comments, after considering input and public testimony at the public hearing, modifications to the Findings and Code Amendment can be included.

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

Comment: The General Plan is the blueprint for the community's future growth. Specific Goals and Objectives are provided within each of the adopted General Plan's State-mandated Elements. The Commercial and Industrial Land Use Goals, Policies and Programs promotes commercial developments that strengthen the local economy and enhance the quality of life. Providing a mechanism to offer flexibility in site development standards as an incentive to provide enhanced site development features or environmentally sustainable measures will further the goals of the General Plan.

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

Comment: The intensity bonuses and concessions suggested will encourage enhanced site development features such as public art, enhanced landscaping or environmentally sustainable measures, such as alternative energy systems or LEED Certification, will enhance the built environment and reduce greenhouse gases. Therefore, the changes proposed under Development Code Amendment No. 2019-011 will not be materially detrimental to the public health, safety or welfare, or injurious to the property or improvements in the vicinity and land use district in which the property is located.

**Fiscal Impact:**

Not Applicable

**Attachments:**

Ordinance No. 522

Planning Commission Staff Report

Planning Commission Resolution No. 2019-014

**ORDINANCE NO. 522**

**AN ORDINANCE OF THE TOWN OF APPLE VALLEY, CALIFORNIA, AMENDING TITLE 9 “DEVELOPMENT CODE” OF THE TOWN OF APPLE VALLEY MUNICIPAL CODE, BY MODIFYING CHAPTER 9.35 “COMMERCIAL AND OFFICE DISTRICTS” AND CHAPTER 9.46 “SPECIFIC USE REGULATIONS FOR INDUSTRIAL DISTRICTS” TO ALLOW ANY REQUEST FOR AN INTENSITY BONUS OR CONCESSION FOR SUSTAINABLE, ENVIRONMENTALLY SUPPORTIVE COMMERCIAL OR INDUSTRIAL DEVELOPMENT TO BE APPROVED BY THE APPLICABLE REVIEW AUTHORITY AND TO INCORPORATE SPECIFIC SUSTAINABLE MEASURES AS QUALIFYING FACTORS WHEN CONSIDERING ANY INTENSITY BONUS OR CONCESSION.**

**WHEREAS**, The General Plan of the Town of Apple Valley was adopted by the Town Council on August 11, 2009; and

**WHEREAS**, Title 9 “Development Code” of the Municipal Code of the Town of Apple Valley was adopted by the Town Council on April 27, 2010; and

**WHEREAS**, On May 1, 2019, the Town Council initiated a Development Code Amendment that would provide the Community Development Director the authority to approve requests for intensity bonuses or concessions based upon enhanced site amenities and/or sustainable, environmentally supportive commercial or industrial projects;

**WHEREAS**, Title 9 “Development Code” of the Municipal Code of the Town of Apple Valley has been previously modified by the Town Council on the recommendation of the Planning Commission; and

**WHEREAS**, On September 18, 2019, the Planning Commission of the Town of Apple Valley conducted a duly noticed public hearing on Development Code Amendment No. 2019-011, receiving testimony from the public and adopting Planning Commission Resolution No. 2019-014 forwarding a recommendation to the Council; and

**WHEREAS**, Specific changes are proposed to Title 9 “Development Code” of the Town of Apple Valley Municipal Code by amending Chapter 9.35 “Commercial and Office Districts” and Chapter 9.46 “Specific Use Regulations for Industrial Districts” to allow any request for an intensity bonus or concession for sustainable, environmentally supportive commercial or industrial development to be approved by the applicable review authority and to incorporate specific sustainable measures as qualifying factors when considering any intensity bonus or concession; and.

**WHEREAS**, Development Code Amendment No. 2019-011 is consistent with the Town's General Plan and Title 9 "Development Code" of the Municipal Code of the Town of Apple Valley and shall promote the health, safety, and general welfare of the citizens

of the Town of Apple Valley; and

**WHEREAS**, 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; and

**WHEREAS**, On November 1, 2019, Development Code Amendment No. 2019-011 was duly noticed in the Apple Valley News, a newspaper of general circulation within the Town of Apple Valley; and

**WHEREAS**, On November 12, 2019, the Town Council of the Town of Apple Valley conducted a duly noticed and advertised public hearing on Development Code Amendment No. 2019-011, receiving testimony from the public and

**NOW, THEREFORE**, the Town Council of the Town of Apple Valley, State of California, does ordain as follows:

**Section 1.** Find that the changes proposed by Development Code Amendment No. 2019-011 are consistent with the Goals and Policies of the Town of Apple Valley adopted General Plan.

**Section 2.** Pursuant to Section 15061(b)(3) of the State Guidelines to Implement the California Environmental Quality Act (CEQA), it can be determined that the Code amendment 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, as with the proposed Code Amendment, that there is no possibility that the proposal approved under Development Code Amendment No. 2019-009 will have a significant effect on the environment and, therefore, the Amendment is EXEMPT from further environmental review.

**Section 3.** Amend Section 9.35.100 “Intensity Bonus” of Chapter 9.35 “Commercial and Office Districts” as follows:

“9.35.100 - Intensity Bonus/Concessions

- A. Purpose. The purpose of this Section is to encourage the addition of enhanced site amenities or environmentally sustainable design features with and increased flexibility in design for new developments in the commercial and office districts through the granting of additional floor space, additional building height, reduced setbacks or other variations from the Site Development Standards, Section 9.35.040. Such variations are subject to the approval of the applicable review authority.
- B. Types of Amenities and environmentally sustainable measures:
  - 1. Employee trip reduction incentives and/or facilities

2. Shaded public spaces, plazas
  3. Public art, sculptures and fountains
  4. Enhanced landscaping
  5. Energy efficiencies shall exceed Title 24 standards and incorporate two or more of the following energy reduction measures:
    - a. alternative energy systems on-site;
    - b. design parameters that allow for frequent, reliable and convenient public transit;
    - c. site design that utilizes appropriate site orientation to assure solar access and the use of shade and windbreak trees to enhance the use of alternative energy systems;
    - d. site design that utilizes a minimum of fifty (50) percent sustainable and energy efficient interior and exterior building materials;
    - e. landscape plans that exceed Town water efficient landscape requirements by at least fifteen (15) percent through the use of landscape materials and efficient irrigation systems;
    - f. installation of energy-efficient indoor and outdoor lighting that reduces energy use at least twenty-five (25) percent over traditional or existing lighting fixtures;
  6. Certification as LEED Gold or Platinum.
  7. Other amenities or environmentally sustainable measures as approved by the review authority.
- C. Types of Intensity Bonuses. Variations from the provisions of Section 9.35.040, Site Development Standards, of this Chapter, may be granted by the review authority through the approval of a Development or Use Permit when enhanced site amenities or sustainable design measures as described in subsection B of this Section are provided. Such variations are limited to:
1. Fifteen (15)-foot increase in height, except within 100 feet of a residential use or district; or
  2. Ten (10) percent decrease in required landscape coverage, e.g., 10% to 9%, 15% to 13.5%; or
  3. Ten (10) percent decrease in required setbacks, except when adjacent to residential uses or districts.
  4. Ten (10) percent increase to floor area ratio (F.A.R.)
  5. A reduction of up to ten (10) percent in the ratio of vehicular parking spaces;
  6. Other concessions proposed by the developer that result in identifiable and actual reductions in energy or water use, subject to the approval of the review authority.”

**Section 4.** Amend Section 9.46.060 “Intensity Bonus” Chapter 9.46 “Specific Use Regulation for Industrial Districts” as follows:

“9.46.060 - Intensity Bonus/Concessions

- A. Purpose. The purpose of this Section is to encourage the addition of enhanced site amenities or environmentally sustainable design features and increased flexibility in design for new developments in the industrial districts through the granting of additional building height, reduced setbacks or other variations from the Site Development Standards, Section 9.45.040, of this Code. Such variations are subject to the approval of the applicable review authority.
- B. Types of Amenities and environmentally sustainable measures:
  - 1. Employee trip reduction incentives and/or facilities
  - 2. Shaded public spaces, plazas
  - 3. Public art, sculptures and fountains
  - 4. Enhanced landscaping
  - 5. Energy efficiencies shall exceed Title 24 standards and incorporate two or more of the following energy reduction measures:
    - a. alternative energy systems on-site;
    - b. design parameters that allow for frequent, reliable and convenient public transit;
    - c. site design that utilizes appropriate site orientation to assure solar access and the use of shade and windbreak trees to enhance the use of alternative energy systems;
    - d. site design that utilizes a minimum of fifty (50) percent sustainable and energy efficient interior and exterior building materials;
    - e. landscape plans that exceed Town water efficient landscape requirements by at least fifteen (15) percent through the use of landscape materials and efficient irrigation systems;
    - f. installation of energy-efficient indoor and outdoor lighting that reduces energy use at least twenty-five (25) percent over traditional or existing lighting fixtures;
  - 6. Certification as LEED Gold or Platinum.
  - 7. Other amenities or environmentally sustainable measures as approved by the review authority.
- C. Types of Intensity Bonuses. Variations from the provisions of Section 9.45.040, Site Development Standards, of this Code, may be granted by the review authority through the approval of a Development or Use Permit when enhanced site amenities



or sustainable design measures as described in subsection B of this Section are provided. Such variations are limited to:

1. Fifteen (15)-foot increase in height, except within 100 feet of a residential use or district; or
2. Ten (10) percent decrease in required landscape coverage, e.g., 10% to 9%, 15% to 13.5%; or
3. Ten (10) percent decrease in required setbacks, except when adjacent to residential uses or districts.
4. Ten (10) percent increase to floor area ratio (F.A.R.)
5. A ten (10) percent reduction in the ratio of vehicular parking spaces;
6. Other concessions proposed by the developer that result in identifiable and actual reductions in energy or water use, subject to the approval of the review authority.”

**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 of the State of California.

**Section 6.** Effective Date. This Ordinance shall become effective thirty (30) days after the date of its adoption.

**Section 7.** 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 10<sup>th</sup> day of December, 2019.

\_\_\_\_\_  
Honorable Larry Cusack, Mayor

ATTEST:

\_\_\_\_\_  
Ms. La Vonda M. Pearson, Town Clerk

Approved as to form:

Approved as to content:

\_\_\_\_\_  
Mr. Thomas Rice, Town Attorney

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Mr. Douglas B. Robertson, Town Manager



**DATE:** September 18, 2019 Item No. 2

**CASE NUMBER:** Development Code Amendment No. 2019-011

**APPLICANT:** Town of Apple Valley

**PROPOSAL:** An amendment to Title 9 "Development Code" of the Town of Apple Valley Municipal Code to provide the Community Development Director the authority to approve requests for intensity bonuses or concessions based upon enhanced site amenities and/or sustainable, environmentally supportive commercial or industrial projects.

**LOCATION:** Commercial and Industrial Districts 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.

**PREPARED BY:** Ms. Pam Cupp, Senior Planner

**RECOMMENDATION:** Adopt Planning Commission Resolution No. 2019-014

**BACKGROUND**

At the May 1, 2019 joint meeting of the Town Council and Planning Commission. Staff was directed by the Council to work with the Planning Commission to allow for an intensity bonus or concessions for sustainable, environmentally supportive commercial or industrial development be reviewed and approved by the Community Development Director.

## **ANALYSIS**

On June 12, 2018, the Town Council adopted the most recent update to the Town's Climate Action Plan (CAP). The purpose of the CAP is to ensure the reduction measures proposed and implemented in the original CAP continue to support the Town's greenhouse gas emissions reduction target of 15% below 2005 levels by 2020. The most recent legislation requires that greenhouse gases be reduced to 40% below 2005 emissions by 2030. The CAP identified specific environmentally sustainable measures that should be taken to ensure the Town's compliance with the required reduction to greenhouse gases. These measures were incorporated into the Development Code in 2010 and included "suggested concessions"; however, no specific incentives were adopted.

The Development Code has provisions for intensity bonuses (e.g., increased height, reduced setbacks, and reduced landscaping) for commercial or industrial projects that incorporate enhanced site amenities such as employee trip reduction incentives, shaded public spaces, public art or enhanced landscaping. Any of these amenities could qualify for reductions to the required site development standards through the approval of a Conditional Use Permit by the Planning Commission.

Staff is suggesting that environmentally sustainable design features be added to the list of features that could be eligible for a reduction to certain development standards. Also suggested is to incorporate a parking reduction as a permitted intensity bonus and to allow the developer to suggest other concessions that would result in an actual reduction in energy or water use.

As discussed under a prior amendment, a Conditional Use Permit cannot be revoked from a building. Therefore, staff is suggesting that any request for a reduction to site development standards as identified below be subject to the approval by the applicable review authority, instead of through the Conditional Use Permit process.

Staff is offering for the Commission's consideration a modification to Section 9.35.100 "Intensity Bonus" Chapter 9.35 "Commercial and Office Districts" as follows:

### 9.35.100 - Intensity Bonus/**Concessions**

A. Purpose. The purpose of this Section is to encourage the addition of enhanced site amenities **or environmentally sustainable design features with** and increased flexibility in design for new developments in the commercial and office districts through the granting of additional floor space, additional building height, ~~additional lot coverage~~, reduced setbacks or other variations from the Site Development Standards, Section 9.35.040. Such variations are subject to the approval of a ~~Conditional Use Permit~~ **the applicable review authority**.

B. Types of Amenities **and environmentally sustainable measures:**

1. Employee trip reduction incentives and/or facilities
2. Shaded public spaces, plazas

3. Public art, sculptures and fountains
  4. Enhanced landscaping
  5. **Energy efficiencies shall exceed Title 24 standards and incorporate two or more of the following energy reduction measures:**
    - a. **alternative energy systems on-site;**
    - b. **design parameters that allow for frequent, reliable and convenient public transit;**
    - c. **site design that utilizes appropriate site orientation to assure solar access and the use of shade and windbreak trees to enhance the use of alternative energy systems;**
    - d. **site design that utilizes a minimum of fifty (50) percent sustainable and energy efficient interior and exterior building materials;**
    - e. **landscape plans that exceed Town water efficient landscape requirements by at least fifteen (15) percent through the use of landscape materials and efficient irrigation systems;**
    - f. **installation of energy-efficient indoor and outdoor lighting that reduces energy use at least twenty-five (25) percent over traditional or existing lighting fixtures;**
    - g. **certification as LEED Gold or Platinum.**
  6. Other amenities **or environmentally sustainable measures** as approved by the Planning Commission **review authority.**
- C. **Types of Intensity Bonuses.** Variations from the provisions of Section 9.35.040, Site Development Standards, of this Chapter, may be granted by the Planning Commission **review authority** through the approval of a ~~Conditional~~ **Development or Use Permit** when enhanced site amenities **or sustainable design measures as** described in subsection B of this Section are provided. Such variations are limited to:
1. Fifteen (15)-foot increase in height, except within 100 feet of a residential use or district; or
  2. Ten (10) percent decrease in required landscape coverage, e.g., 10% to 9%, 15% to 13.5%; or
  3. Ten (10) percent decrease in required setbacks, except when adjacent to residential uses or districts.
4. **Ten (10) percent increase to floor area ratio (F.A.R.)**
  5. **A reduction of up to ten (10) percent in the ratio of vehicular parking spaces;**
  6. **Other concessions proposed by the developer that result in identifiable and actual reductions in energy or water use, subject to the approval of the review authority.**

Staff is offering for the Commission's consideration a modification to Section 9.46.060 "Intensity Bonus" Chapter 9.46 "Specific Use Regulation for Industrial Districts" as follows:

9.46.060 - Intensity Bonus/Concessions

- A. Purpose. The purpose of this Section is to encourage the addition of enhanced site amenities or environmentally sustainable design features and increased flexibility in design for new developments in the industrial districts through the granting of ~~additional floor space, additional building height, additional lot coverage,~~ reduced setbacks or other ~~differences~~variations from the Site Development Standards, Section 9.45.040, of this Code. Such ~~differences~~variations are subject to the approval of a Conditional Use Permit the applicable review authority.
- B. Types of Amenities and environmentally sustainable measures:
1. Employee trip reduction incentives and/or facilities
  2. Shaded public spaces, plazas
  3. Public art, sculptures and fountains
  4. Enhanced landscaping
  - 5. Energy efficiencies shall exceed Title 24 standards and incorporate two or more of the following energy reduction measures:**
    - a. alternative energy systems on-site;
    - b. design parameters that allow for frequent, reliable and convenient public transit;
    - c. site design that utilizes appropriate site orientation to assure solar access and the use of shade and windbreak trees to enhance the use of alternative energy systems;
    - d. site design that utilizes a minimum of fifty (50) percent sustainable and energy efficient interior and exterior building materials;
    - e. landscape plans that exceed Town water efficient landscape requirements by at least fifteen (15) percent through the use of landscape materials and efficient irrigation systems;
    - f. installation of energy-efficient indoor and outdoor lighting that reduces energy use at least twenty-five (25) percent over traditional or existing lighting fixtures;
    - g. certification as LEED Gold or Platinum.
  6. Other amenities or environmentally sustainable measures as approved by the ~~Planning Commission~~ review authority.
- C. ~~Exceptions~~Types of Intensity Bonuses. ~~Exceptions~~Variations from the provisions of Section 9.45.040, Site Development Standards, of this Code, may be granted by the ~~Planning Commission~~ review authority through the approval of a ~~Conditional Development or~~ Use Permit when enhanced site amenities or sustainable design

**measures as** described in subsection B of this Section are provided. Such ~~exceptions~~  
**variations** are limited to:

1. Fifteen (15)-foot increase in height, except within 100 feet of a residential use or district; or
2. Ten (10) percent decrease in required landscape coverage, e.g., 10% to 9%, 15% to 13.5%; or
3. Ten (10) percent decrease in required setbacks, except when adjacent to residential uses or districts.

**4. 4. Ten (10) percent increase to floor area ratio (F.A.R.)**

**5. A ten (10) percent reduction in the ratio of vehicular parking spaces;**

**6. Other concessions proposed by the developer that result in identifiable and actual reductions in energy or water use, subject to the approval of the review authority.**

## **FINDINGS**

An amendment to the Development Code requires that the Planning Commission address two (2) required "Findings", as listed within Development Code Section 9.06.060. For Commission consideration, the required Findings are listed below, along with a comment addressing each. If the Commission concurs with these comments, they may be adopted and forwarded to the Council for its consideration of the Development Code Amendment. If the Commission wishes modifications to the offered comments, after considering input and public testimony at the public hearing, modifications to the Findings and Code Amendment recommendations can be included into the information forwarded to the Council for consideration.

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

Comment: The General Plan is the blueprint for the community's future growth. Specific Goals and Objectives are provided within each of the adopted General Plan's State-mandated Elements. The Commercial and Industrial Land Use Goals, Policies and Programs promotes commercial developments that strengthen the local economy and enhance the quality of life. Providing a mechanism to offer flexibility in site development standards as an incentive to provide enhanced site development features or environmentally sustainable measures will further the goals of the General Plan.

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

Comment: The intensity bonuses and concessions suggested will encourage enhanced site development features such as public art, enhanced landscaping or environmentally sustainable measures, such as

alternative energy systems or LEED Certification, will enhance the built environment and reduce greenhouse gases. Therefore, the changes proposed under Development Code Amendment No. 2019-011 will not be materially detrimental to the public health, safety or welfare, or injurious to the property or improvements in the vicinity and land use district in which the property is located.

### **NOTICING**

Development Code Amendment No. 2019-011 was advertised as a public hearing in the Apple Valley News newspaper on September 6, 2019.

### **ENVIRONMENTAL REVIEW**

Development Code Amendment No. 2019-011 will modify the process and review authority for intensity bonuses or concessions for commercial or industrial development. The amendment will also incorporate environmentally sustainable measures that could qualify for such intensity bonuses or concessions. As proposed, this amendment will not promote development beyond that anticipated within the Environmental Impact Report prepared for the Town's General Plan.

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.

### **RECOMMENDATION**

Following receipt of public input and discussion by the Commission, it is recommended that the Commission move to approve Planning Commission Resolution No. 2019-014 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.



**PLANNING COMMISSION RESOLUTION NO. 2019-014**

**A RESOLUTION OF THE PLANNING COMMISSION OF THE TOWN OF APPLE VALLEY, CALIFORNIA, RECOMMENDING THAT THE TOWN COUNCIL ADOPT DEVELOPMENT CODE AMENDMENT NO. 2019-011 AMENDING TITLE 9 “DEVELOPMENT CODE” OF THE TOWN OF APPLE VALLEY MUNICIPAL CODE, BY MODIFYING CHAPTER 9.35 “COMMERCIAL AND OFFICE DISTRICTS” AND CHAPTER 9.46 “SPECIFIC USE REGULATIONS FOR INDUSTRIAL DISTRICTS” TO ALLOW ANY REQUEST FOR AN INTENSITY BONUS OR CONCESSION FOR SUSTAINABLE, ENVIRONMENTALLY SUPPORTIVE COMMERCIAL OR INDUSTRIAL DEVELOPMENT TO BE APPROVED BY THE APPLICABLE REVIEW AUTHORITY AND TO INCORPORATE SPECIFIC SUSTAINABLE MEASURES AS QUALIFYING FACTORS WHEN CONSIDERING ANY INTENSITY BONUS OR CONCESSION.**

**WHEREAS**, The General Plan of the Town of Apple Valley was adopted by the Town Council on August 11, 2009; and

**WHEREAS**, Title 9 “Development Code” of the Municipal Code of the Town of Apple Valley was adopted by the Town Council on April 27, 2010; and

**WHEREAS**, Title 9 (Development Code) of the Municipal Code of the Town of Apple Valley has been previously modified by the Town Council on the recommendation of the Planning Commission; and

**WHEREAS**, Development Code Amendment No. 2019-011 is consistent with the General Plan and Municipal Code of the Town of Apple Valley;

**WHEREAS**, On May 1, 2019, the Town Council initiated a Development Code Amendment, directing staff to draft language that would provide the Community Development Director the authority to approve requests for intensity bonuses or concessions based upon enhanced site amenities and/or sustainable, environmentally supportive commercial or industrial projects;

**WHEREAS**, Specific changes are proposed to Title 9 “Development Code” of the Town of Apple Valley Municipal Code by amending Chapter 9.35 “Commercial and Office Districts” and Chapter 9.46 “Specific Use Regulations for Industrial Districts” to allow any request for an intensity bonus or concession for sustainable, environmentally supportive commercial or industrial development to be approved by the applicable review authority and to incorporate specific sustainable measures as qualifying factors when considering any intensity bonus or concession; and,

**WHEREAS**, on September 6, 2019, Development Code Amendment No. 2019-011 was duly noticed in the Apple Valley News, a newspaper of general circulation within the Town of Apple Valley; and

**WHEREAS**, 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; and

**WHEREAS**, on September 18, 2019 the Planning Commission of the Town of Apple Valley conducted a duly noticed and advertised the public hearing on Development Code Amendment No. 2019-011 receiving testimony from the public; and

**WHEREAS**, Development Code Amendment No. 2019-011 is consistent with the Land Use Element goals and policies of the Town's General Plan and Title 9 "Development Code" of the Municipal Code of the Town of Apple Valley and shall promote the health, safety, and general welfare of the citizens of the Town of Apple Valley.

**NOW, THEREFORE, BE IT RESOLVED** that in consideration of the evidence presented at the public hearing, and for the reasons discussed by the Commissioners at said hearing, the Planning Commission of the Town of Apple Valley, California, does hereby resolve, order and determine as follows and recommends that the Town Council make the following findings and take the following actions:

**Section 1.** Find that the changes proposed by Development Code Amendment No. 2019-011 are consistent with the Goals and Policies of the Town of Apple Valley adopted General Plan.

**Section 2.** 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.

**Section 3.** Amend Section 9.35.100 "Intensity Bonus" of Chapter 9.35 "Commercial and Office Districts" as follows:

"9.35.100 - Intensity Bonus/Concessions

A. Purpose. The purpose of this Section is to encourage the addition of enhanced site amenities or environmentally sustainable design features with and increased flexibility in design for new developments in the commercial and office districts through the granting of additional floor space, additional building height, reduced setbacks or other variations from the Site Development Standards, Section 9.35.040. Such variations are subject to the approval of the applicable review authority.

B. Types of Amenities and environmentally sustainable measures:

1. Employee trip reduction incentives and/or facilities
  2. Shaded public spaces, plazas
  3. Public art, sculptures and fountains
  4. Enhanced landscaping
  5. Energy efficiencies shall exceed Title 24 standards and incorporate two or more of the following energy reduction measures:
    - a. alternative energy systems on-site;
    - b. design parameters that allow for frequent, reliable and convenient public transit;
    - c. site design that utilizes appropriate site orientation to assure solar access and the use of shade and windbreak trees to enhance the use of alternative energy systems;
    - d. site design that utilizes a minimum of fifty (50) percent sustainable and energy efficient interior and exterior building materials;
    - e. landscape plans that exceed Town water efficient landscape requirements by at least fifteen (15) percent through the use of landscape materials and efficient irrigation systems;
    - f. installation of energy-efficient indoor and outdoor lighting that reduces energy use at least twenty-five (25) percent over traditional or existing lighting fixtures;
  6. Certification as LEED Gold or Platinum.
  7. Other amenities or environmentally sustainable measures as approved by the review authority.
- C. Types of Intensity Bonuses. Variations from the provisions of Section 9.35.040, Site Development Standards, of this Chapter, may be granted by the review authority through the approval of a Development or Use Permit when enhanced site amenities or sustainable design measures as described in subsection B of this Section are provided. Such variations are limited to:
1. Fifteen (15)-foot increase in height, except within 100 feet of a residential use or district; or
  2. Ten (10) percent decrease in required landscape coverage, e.g., 10% to 9%, 15% to 13.5%; or
  3. Ten (10) percent decrease in required setbacks, except when adjacent to residential uses or districts.
  4. Ten (10) percent increase to floor area ratio (F.A.R.)
  5. A reduction of up to ten (10) percent in the ratio of vehicular parking spaces;

6. Other concessions proposed by the developer that result in identifiable and actual reductions in energy or water use, subject to the approval of the review authority.”

**Section 4.** Amend Section 9.46.060 “Intensity Bonus” Chapter 9.46 “Specific Use Regulation for Industrial Districts” as follows:

“9.46.060 - Intensity Bonus/Concessions

- A. Purpose. The purpose of this Section is to encourage the addition of enhanced site amenities or environmentally sustainable design features and increased flexibility in design for new developments in the industrial districts through the granting of additional building height, reduced setbacks or other variations from the Site Development Standards, Section 9.45.040, of this Code. Such variations are subject to the approval of the applicable review authority.
- B. Types of Amenities and environmentally sustainable measures:
  1. Employee trip reduction incentives and/or facilities
  2. Shaded public spaces, plazas
  3. Public art, sculptures and fountains
  4. Enhanced landscaping
  5. Energy efficiencies shall exceed Title 24 standards and incorporate two or more of the following energy reduction measures:
    - a. alternative energy systems on-site;
    - b. design parameters that allow for frequent, reliable and convenient public transit;
    - c. site design that utilizes appropriate site orientation to assure solar access and the use of shade and windbreak trees to enhance the use of alternative energy systems;
    - d. site design that utilizes a minimum of fifty (50) percent sustainable and energy efficient interior and exterior building materials;
    - e. landscape plans that exceed Town water efficient landscape requirements by at least fifteen (15) percent through the use of landscape materials and efficient irrigation systems;
    - f. installation of energy-efficient indoor and outdoor lighting that reduces energy use at least twenty-five (25) percent over traditional or existing lighting fixtures;
  6. Certification as LEED Gold or Platinum.
  7. Other amenities or environmentally sustainable measures as approved by the review authority.
- C. Types of Intensity Bonuses. Variations from the provisions of Section 9.45.040, Site Development Standards, of this Code, may be granted by the review authority

through the approval of a Development or Use Permit when enhanced site amenities or sustainable design measures as described in subsection B of this Section are provided. Such variations are limited to:

1. Fifteen (15)-foot increase in height, except within 100 feet of a residential use or district; or
2. Ten (10) percent decrease in required landscape coverage, e.g., 10% to 9%, 15% to 13.5%; or
3. Ten (10) percent decrease in required setbacks, except when adjacent to residential uses or districts.
4. Ten (10) percent increase to floor area ratio (F.A.R.)
5. A ten (10) percent reduction in the ratio of vehicular parking spaces;
6. Other concessions proposed by the developer that result in identifiable and actual reductions in energy or water use, subject to the approval of the review authority.”

Approved and Adopted by the Planning Commission of the Town of Apple Valley this 18th day of September 2019.

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Vice-Chairman, Bruce Kallen

ATTEST:

I, Maribel Hernandez, 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 18th day of September 2019, by the following vote, to-wit:

AYES:

NOES:

ABSENT:

ABSTAIN:

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Ms. Maribel Hernandez, Planning Commission Secretary