

**TOWN OF  
APPLE VALLEY, CALIFORNIA**

**AGENDA MATTER**

**Subject Item:**

**ADOPT ORDINANCE No. 370 TO AMEND TITLE 9 “DEVELOPMENT CODE” OF THE TOWN OF APPLE VALLEY MUNICIPAL CODE, BY AMENDING SECTION 9.28.090 OF CHAPTER 9.28 AS IT RELATES TO IMPLEMENTING THE CALIFORNIA STATE GOVERNMENT CODE SECTION 65915 AND THE GENERAL PLAN HOUSING ELEMENT TO PROVIDE INCENTIVES FOR THE CREATION OF AFFORDABLE HOUSING THROUGH THE IMPLEMENTATION OF TWO DENSITY BONUS PROVISIONS INCLUDING INCREASES IN DENSITY AND INCENTIVES OR CONCESSIONS FOR THE INCORPORATION OF ON-SITE AMENITIES.**

**Summary Statement:**

At its December 11, 2007 meeting, the Town Council reviewed and introduced Ordinance No. 370 as it relates to amending Section 9.28.090 of Chapter 9.28 implementing California State Government Code Section 65915 and the General Plan Housing Element to provide incentives for the creation of affordable housing through the implementation of density bonus provisions, including increases in density and incentives or concessions for the incorporation of on-site amenities. As part of the requirements to adopt a new Ordinance, Ordinance No. 370 has been scheduled for adoption at the January 8, 2008 Town Council meeting.

**Recommended Action:**

Adopt Ordinance No. 370

**Proposed by:**           Planning Division          

**Item Number** \_\_\_\_\_

**Town Manager Approval:** \_\_\_\_\_

**Budget Item**  Yes  No

Town Council Meeting: January 8, 2008

## ORDINANCE No. 370

**AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF APPLE VALLEY, CALIFORNIA, AMENDING TITLE 9 “DEVELOPMENT CODE” OF THE TOWN OF APPLE VALLEY MUNICIPAL CODE, BY AMENDING SECTION 9.28.090 OF CHAPTER 9.28 AS IT RELATES TO IMPLEMENTING THE CALIFORNIA STATE GOVERNMENT CODE SECTION 65915 AND THE GENERAL PLAN HOUSING ELEMENT TO PROVIDE INCENTIVES FOR THE CREATION OF AFFORDABLE HOUSING THROUGH THE IMPLEMENTATION OF TWO DENSITY BONUS PROVISIONS INCLUDING INCREASES IN DENSITY AND INCENTIVES OR CONCESSIONS FOR THE INCORPORATION OF ON-SITE AMENITIES.**

The Town Council of the Town of Apple Valley, State of California, does ordain as follows:

### **Section 1. Recitals.**

(i) Title 9 (Development Code) of the Municipal Code of the Town of Apple Valley was adopted by the Town Council on October 24, 2000; and

(ii) 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

(iii) Density bonus and incentives and concessions are requirements of California Government Code Section 65915 and as such, Development Code Amendment No. 2007-004 brings the Development Code into compliance with these regulations; and

(iv) On November 30, 2007, Development Code Amendment No. 2007-004 was duly noticed in the Apple Valley News, a newspaper of general circulation within the Town of Apple Valley; and

(v) 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

(vi) On November 7, 2007 the Planning Commission of the Town of Apple Valley conducted a duly noticed and advertised the public hearing on Development Code Amendment No. 2007-004, receiving testimony from the public and adopted Planning Commission Resolution No. 2007-030; and

(vii) Development Code Amendment No. 2007-004 is consistent with 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.

## **Section 2. Findings.**

(i) The Town Council finds that the changes proposed by Development Code Amendment No. 2007-004 are consistent with the Goals and Policies of the Town of Apple Valley adopted General Plan, and will promote the health, safety and general welfare of the citizens of the Town of Apple Valley.

(ii) The Town Council further finds that, based upon the State Guidelines to Implement the California Environmental Quality Act (CEQA), the project is exempt from further environmental review. Section 15061(b)(3), 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.** Subsection A “Purpose” of Section 9.28.090 “Density Bonuses” of Chapter 9.28 “Residential Uses” of the Town of Apple Valley Development Code is hereby amended to read as follows:

### **A. Purpose**

This Section is intended to implement California State Government Code Section 65915 and General Plan Housing Element, which provide incentives for the creation of affordable housing. The Town allows for two (2) density bonus provisions. The first involves the provision of affordable housing and is based upon California State Government Code Section 65915. The second involves incentives for the incorporation of on-site amenities.

**Section 4.** Subsection B “Definitions” of Section 9.28.090 “Density Bonuses” of Chapter 9.28 “Residential Uses” of the Town of Apple Valley Development Code is hereby amended to read as follows:

### **B. Definitions:**

The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this section. Words, terms, and phrases not defined herein shall be as defined in the Apple Valley Municipal Code, or if not defined therein, then in the Chapter 4.3 of Division 1 of the California Government Code (commencing with Section 65915). These definitions are provided in order to assist in the uniform interpretation and application of the regulations and provisions set forth in this Chapter.

1. **Affordable Units.** A dwelling unit occupied by and available to households of lower, very low, or moderate income.
2. **Approval Body.** The Director, Commission or Council to which approval authority is provided for the permit or approval under this Zoning Ordinance.

3. Density Bonus. A density increase as provided in this Section over the otherwise maximum allowable residential density under the applicable zoning classification, on the Town's General Plan Land Use designation and corresponding designation on the Zoning Map.
4. Housing Development. A "housing development" as defined in subdivision (j) of Section 65915 of the California Government Code.
5. Incentives and Concessions. At least one additional incentive or concession as described in this Section of this Ordinance.
6. Lower Income Unit. A dwelling unit targeted for occupancy by a lower income household as defined in Section 50079.5 of the California Health and Safety Code.
7. Moderate Income Unit. A dwelling unit targeted for occupancy by a moderate income household as defined in Section 50093 of the California Health and Safety Code.
8. Very Low Income Unit. A dwelling unit targeted for occupancy by a very low income household as defined in Section 50105 of the California Health and Safety Code.

**Section 5:** Subsection C "Applicability of Density Bonus and Regulatory Concessions", subsection D "When a Density Bonus May be Requested", subsection E "Large Unit Density Bonus and subsection F "Density Bonus Unit Requirement" of Section 9.28.090 of Chapter 9.28 of the Town of Apple Valley Development Code are hereby repealed; and subsection G "Procedures" of that Section is hereby redesignated as subsection C.

**Section 6:** Paragraphs 3 and 4 of subsection C "Procedures" of Section 9.28.090 "Density Bonuses" of Chapter 9.28 "Residential Uses" of the Town of Apple Valley Development Code are hereby repealed and paragraphs 1 and 2 of said subsection C are hereby amended to read as follows:

**C. Procedures**

1. **Concurrent Project Application.** A request for a density bonus shall be presented concurrently with any Entitlement application, General Plan Amendment, Rezoning or subdivision map application.
2. **Clearly Delineate Density Bonus Units.** Density bonus units and units proposed for regulatory concessions and/or incentives shall be clearly identified on a site plan for the project. If the application involves a waiver or modification of zoning or development standards, the developer must demonstrate that the requested regulatory concessions and/or incentives are necessary to make the project economically feasible.

**Section 7:** Section 9.28.090 "Density Bonuses" of Chapter 9.28 "Residential Uses" of the Town of Apple Valley Development Code is hereby amended adding thereto a new subsection D to read as follows:

**D. Density Bonuses for Qualifying Housing Developments Containing Lower, Very Low and Moderate Income Units.**

1. An applicant for a housing development shall be granted a density bonus, as provided in this Section, by the approval body if the housing development meets the following qualifications:
  - a) The applicant has made a written request for grant of a density bonus with its application for the housing development; and
  - b) One of the following is applicable:
    1. The housing development contains at least the minimum qualifying number of affordable units required under this Section and the applicant agrees to the affordability covenants required under this Section as conditions of approval for the housing development; or
    2. The housing development meets the requirements of the land donation provisions of this Section; and
      - a. Substantial evidence supports the making of the findings required of the approval body under this Section; and
      - b. The applicant satisfies the affordability covenant requirements applicable to the class of affordable units for which the density bonus is granted as provided in this Section; and
      - c. The housing development will consist of at least five (5) or more dwelling units.
2. The Housing development must satisfy the affordable unit requirements of at least one of the categories, or the land dedication provisions, provided below. Qualifying housing developments will be granted a density bonus consistent with the provision of the qualifying category.
  - a. Lower Income Units: At least ten percent (10%) of the total dwelling units in a housing development are lower income units and the applicant agrees to ensure continued affordability of such units to lower income households as defined in Section 50079.5 of the Cal. Health and Safety Code. The base density bonus for housing developments with the qualifying number of lower income units shall be twenty percent (20%) over the otherwise maximum allowable residential density under the applicable zoning classification on the Town's zoning map and the corresponding land use designation in the General Plan. The base density bonus may be increased as provided herein. For each additional one percent (1%) increase in the total number of affordable units over ten percent (10%), the density bonus shall increase from the base of twenty percent (20%) by one and one-half percent (1.5%), to a maximum of thirty-five percent (35%). No density bonus or aggregate of density bonuses for a housing development may exceed thirty-five percent (35%). The density bonus shall not be included when determining the number of housing units that is equal to ten percent (10%) of the total.

- b. Very Low Income Units: At least five percent (5%) of the total dwelling units in a housing development are very low income units and the applicant agrees to ensure continued affordability of such units to lower income households as defined in Section 50105 of the Cal. Health and Safety Code. The base density bonus for housing developments with the qualifying number of very low income units shall be twenty percent (20%) over the otherwise maximum allowable residential density under the applicable zoning classification on the Town's zoning map and the corresponding land use designation in the General Plan. The base density bonus may be increased as provided herein. For each additional one percent (1%) increase in the total number of affordable units over five percent (5%), the density bonus shall increase from the base of twenty percent (20%) by two and one-half percent (2.5%), to a maximum of thirty-five percent (35%). No density bonus or aggregate of density bonuses for a housing development may exceed thirty-five (35%). The density bonus shall not be included when determining the number of housing units that is equal to five percent (5%) of the total.
  
- c. Moderate Income Units: At least ten percent (10%) of the total dwelling units in a housing development as defined in subsection (f) of Section 50093 of the Cal. Health and Safety Code, or a planned unit development, as defined in subdivision (k) of Section 50093 of the Cal. Health and Safety Code are moderate income units and the applicant agrees to restrict purchase of such units to moderate-income household, as defined in Section 50093 of the Cal. Health and Safety Code. The base density bonus for housing developments with the qualifying number of moderate income units shall be five percent (5%) over the otherwise maximum allowable residential density under the applicable zoning classification on the Town's zoning map and the corresponding land use designation in the General Plan. The base density bonus may be increased as provided herein. For each additional one percent (1%) increase in the total number of affordable units over ten percent (10%), the density bonus shall increase from the base of five percent (5%) by one percent (1%), to a maximum of thirty-five percent (35%). No density bonus or aggregate of density bonuses for a housing development may exceed thirty-five (35%). The density bonus shall not be included when determining the number of housing units that is equal to ten percent (10%) of the total.
  
- d. Land Donation: An applicant for a residential tentative tract map, parcel map, or other residential development approval, will qualify for grant of a density bonus if the applicant makes a legally binding commitment to donate land and the land to be donated meets the

requirements set forth in this subdivision. The density bonus to be granted shall be consistent with the provisions of this subdivision. The applicant must make a legally binding commitment to donate and transfer the land requiring the land to be donated and transferred by no later than the date of approval of the final subdivision map, parcel map or residential development approval for which application has been made. The land must meet all of the following criteria:

1. It must be within the boundary of the proposed development or, if the Town agrees, within one-quarter mile of the boundary of the proposed development.
  2. It must be at least two (2) acres in size or of sufficient size to permit development of at least forty (40) affordable units;
  3. It must have a developable acreage of sufficient size to accommodate a number of very low income units equal to at least ten percent (10%) of the total units in the entire proposed development;
  4. It must have the appropriate general plan designation and zoning classification for construction of very low income units (although other affordable units may ultimately be constructed) and it must have appropriate zoning and development standards to make development of very low income units feasible (although other affordable units may ultimately be constructed);
  5. It must be, or will be by the time of transfer, served by adequate public facilities and infrastructure;
  6. It must have all of the permits and approvals, necessary for the development of the very low income units (except that design review and the issuance of building permits need not have been completed) on the transferred land by no later than the date of approval of the final residential subdivision map, parcel map or of the residential development;
  7. It must be transferred to the Town or to a housing developer approved by the Town. The Town may require the applicant to identify and transfer the land to the selected developer;
  8. It (and any units to be constructed thereon) must be subject to a deed restriction recorded against the property at the time of transfer ensuring continued affordability of the units consistent with this Section.
3. In the event the project qualifies for a density bonus under this Section; then the approval body shall grant a density bonus as follows:

- a. The base density bonus shall be fifteen percent (15%) over the otherwise maximum allowable residential density under the applicable zoning classification on the Town's zoning map and the corresponding land use designation in the General Plan for the entire development.
  - b. The base density bonus may be increased as provided herein. For each additional one percent (1%) increase in the total number of affordable units that can be accommodated on the land to be donated above the ten percent (10%) minimum provided in paragraph (3) of subdivision (B)(4)(b), the density bonus shall increase from the base of fifteen percent (15%) by one percent (1%), to a maximum of thirty-five (35%). This increase shall be in addition to any increase mandated by the other provisions of this section provided however, that no density bonus or aggregate of density bonuses for a project may exceed a maximum of thirty-five percent (35%).
4. The density bonuses provided for under subsection (C) of this Section shall be cumulative. No housing development shall receive or be entitled to receive a density bonus or aggregate of density bonuses that would result in the density of the project exceeding thirty-five percent (35%) over the otherwise maximum allowable residential density under the applicable zoning classification on the Town's zoning map and the corresponding land use designation in the General Plan.
  5. Density bonus units shall be generally disbursed throughout a residential planned development and shall not differ in design and exterior appearance from other units in the project.

**Section 8:** Subsection H "Required Findings" of Section 9.28.090 "Density Bonuses" of Chapter 9.28 "Residential Uses" of the Town of Apple Valley Development Code is hereby redesignated as subsection E, and amended to read as follows:

**E. Required Findings:**

**Required Finding for Approval of a Density Bonus or Award of Incentives and Concessions.** The review authority may approve the density bonus or award of incentives and concession request only if the following finding can be made:

1. The housing development meets the qualifications of this Section.
2. The granting of the density bonus and award of incentives and concession will not have a specific, adverse impact upon the public health or safety.
3. The granting of the density bonus and award of incentives and concession will not have a specific adverse impact on any real property listed in the California Register of Historical Resources.
4. The housing development satisfies the affordability covenant requirements as provided in this Section.



5. The affordable units are of comparable quality and offered in a range of sizes comparable to those offered to other purchasers or renters (taking into consideration the need to make development of the affordable units feasible) and are dispersed throughout the housing development.

**Section 9:** Section 9.28.090 “Density Bonuses” of Chapter 9.28 “Residential Uses” of the Town of Apple Valley Development Code is hereby further amended by adding thereto a new subsection F to read as follows:

**F. Concessions and Incentives for Qualifying Housing Developments Containing Lower, Very Low or Moderate Income Units.**

1. In addition to density bonuses that may be granted pursuant to this Section, a housing development providing the qualifying number of lower income units, very low income units or moderate income units, may request, and the approval body shall grant, the following number of incentives or concessions:
  - a. One incentive or concession if the housing development includes at least:
    - 10% low income units; or
    - 5% very low income units; or
    - 10% moderate income condo development units.
  - b. Two incentive or concessions if the housing development includes at least:
    - 20% low income units; or
    - 10% very low income units; or
    - 20% moderate income condo development units.
  - c. Three incentives or concessions if the housing development includes at least:
    - 30% low income units; or
    - 15% very low income units; or
    - 30% moderate income condo development units.

2. For the purpose of this Section the Town shall utilize the following for incentives and concessions:
  - a. Reduction in site development standards or a modification of zoning code requirements or architectural design requirements that exceed the minimum building standards approved by the California Building Standards Commission as provided in Part 2.5 of Division 13 of the Health and Safety Code, including but not limited to:
    1. A reduction in setback and square footage requirements.
    2. A reduction in the ratio of vehicular parking spaces.
    3. Other regulatory incentives or concessions proposed by the developer or the Town that result in identifiable, financially sufficient and actual cost reductions.
  - b. In lieu of the incentives and concessions provided for above, the applicant may submit, at the time of submission of its application for the housing development, to the Town a written proposal for specific incentives and concessions that it requests. The approval body shall grant the requested incentive or concessions, unless it finds negatively, based on substantial evidence in the record or the findings required under Cal. Government Code Section 65915(d)(1).

**Section 10:** Subsection I “Affordability Guarantee” of Section 9.28.090 “Density Bonuses” of Chapter 9.28 “Residential Uses of the Town of Apple Valley Development Code is hereby redesignated as subsection G, and amended to read as follows:

**G. Affordability Requirements for Qualifying Housing Developments Containing Lower, Very Low and Moderate Income Units.**

1. The following requirements shall apply to any housing development granted a density bonus under this Section based on the inclusion of the required number of lower income units or very low income units.
  - a. Those units targeted for sale and occupancy by lower income households, as defined in Cal. Health & Safety Code Section 50079.5, or very low income households, as defined in Cal. Health & Safety Code Section 50105, shall not be sold, resold, or offered for sale or resale at more than the affordable housing cost, as defined in Cal. Health & Safety Code Section 50052.5 for the corresponding income category.
  - b. Those units targeted for rental and occupancy by lower income households, as defined in Cal. Health & Safety Code Section 50079.5, or very low income households, as defined in Cal. Health & Safety Code Section 50105, shall not be leased, rented, subleased, or offered for lease, rent, or sublease, at more than the affordable rent, as defined in Cal. Health & Safety Code Section 50053, for the corresponding income category.

c. Prior to the issuance of a certificate of occupancy for any lower income unit or very low income unit in a housing development for which a density bonus has been granted under this Section, the developer shall identify the restricted units and shall enter into a written affordability agreement with the Town that shall contain the following terms:

1. The agreement shall be a covenant running with the land and binding on the developer, and its successors and assigns, tenants, lessees, and other persons claiming an interest in the property by or through them, and shall be recorded in the chain of title for the property in the official records of the Recorder for the County of San Bernardino in a form acceptable to the Town Attorney. The agreement shall expressly give the Town the right, but not the obligation, to enforce the affordability covenants through such legal and equitable remedies as may be provided by law, including, but not limited to specific performance;

2. The identified units shall continue to be sold or rented to (as identified) and occupied by lower income households or very low income households (as identified) at an affordable housing cost or affordable rent (as the case may be) for a period of not less than thirty (30) years;

3. The agreement shall provide the Town with the continuing right of first refusal to lease any or all of the designated units at their affordable cost for the targeted income category, which may then be subleased by Town to persons and families qualifying a lower, very low or extremely low income households;

4. For rental properties the developer shall maintain a rental schedule and rent rolls for all identified affordable units and annually provide a copy of such to Town with evidences of payments received so that the Town may verify that the actual rental charges do not exceed that affordable rent as defined in this Section;

5. For owner-occupied properties, the deed conveying the property shall contain a requirement that, prior to the consummation of any resale, the owner shall provide the Town with the escrow documents evidencing that the unit will not be sold for more than an affordable housing cost as defined in this Section and that the Town may take such actions as are provided under this Section to stay or prohibit the sale if the sales price exceeds the price required by the affordability covenant;

6. The Town shall have the authority to enter into such other agreements with the developer, renters, and subsequent owners of

the dwelling units as may be necessary to assure that the required dwelling units are continuously occupied by eligible households.

2. The following requirements shall apply to any housing development granted a density bonus under this Section based on the inclusion of the required number of moderate income units.
  - a. Those units targeted for sale and occupancy by persons and families of moderate income, as defined in Cal. Health and Safety Code Section 50093, shall not be sold, resold or offered for sale or resale at more than the affordable housing cost, as defined in Cal. Health and Safety Code Section 50052.5
  - b. Prior to the issuance of a certificate of occupancy for any moderate income condo development or planned development units in a development for which density bonus units have been granted pursuant to this Section, the developer shall identify the restricted units and shall enter into a written affordability agreement with the Town that shall contain the following terms:
    1. The agreement shall be a covenant running with the land and binding on the developer, and its successors and assigns, tenants, lessees, and other persons claiming an interest in the property by or through them, and shall be recorded in the chain of title for the property in the official records of the Recorder for the County of Riverside in a form acceptable to the Town Attorney. The agreement shall expressly give the Town the right, but not the obligation, to enforce the affordability covenants through such legal and equitable remedies as may be provided by law, including, but not limited to specific performance;
    2. The identified units shall continued to be sold to and occupied by persons and families of moderate income at an affordable housing cost for a period of not less than thirty (30) years;
    3. The affordability restrictions for the moderate income condominium or planned development units shall be comprised of both initial occupancy restrictions on the purchasers as well as initial restricted sales prices.
  - c. Prior to the closing of the initial sale by the developer to persons or families of moderate income, the developer shall cause the purchaser to execute and deliver to the Town a promissory note, secured by a deed of trust against the property, in favor of the Town. The promissory note and deed of trust shall protect the Town 's right to recapture its proportionate share of appreciation in the property as

provided in Government Code § 65915(c)(2). The promissory note and deed of trust shall be in a form acceptable to the Town in its sole and reasonable discretion. The deed of trust may be subordinated, in the discretion of the Town, to legitimate and reasonable purchase money mortgages or permanent financing, but shall not have less than second priority above non-tax liens and encumbrances against the property.

- d. Upon the first resale by the initial moderate income purchaser (“homeowner”), the Town shall be entitled to recapture its proportionate share of appreciation, to the extent of available excess equity (as defined herein) in the property. The Town shall use funds received from the recapture, net of reasonable expenses, within three (3) years for any of the purposes described in subdivision (e) of Section 33334.2 of the Health and Safety Code that promote homeownership.
  - e. Upon the first resale by the homeowner, the distribution of sales proceeds shall be as follows: (i) first to discharge liens for taxes and/or assessment, due or delinquent; (ii) second to discharge the lien of the first deed of trust holder; (iii) third to pay the reasonable and customary costs of sale shown on the good faith estimate as adjusted by the final statement of closing costs; (iv) fourth to repay the homeowner’s original down payment (without interest); (v) fifth to pay to the homeowner the assessed value of improvements made by the homeowner that are fixtures to the real property; (vi) the resulting residual amount shall be the “excess equity” and shall be distributed to pay the Town and homeowner their respective proportionate shares of appreciation;
3. For purposes of this Section, the following definitions shall apply:
- a. Town’s proportionate share of appreciation shall be calculated as follows: The qualifying affordable sales price for moderate income persons at the time of homebuyer’s purchase of the property (ModP) shall be subtracted from the fair market value of the property as existing at the time of its purchase by homeowner (FMV). The resulting amount (D) shall be divided by FMV to equal the Town’s proportionate share (T%). This can be expressed in the following formula:  $FMV - ModP = D$ .  $D / FMV = T\%$ .
  - b. The homeowner’s proportionate share shall be calculated as follows:  $1 - T\% = H\%$ .
  - c. The Town’s share of the excess equity (EE) shall be calculated as follows:  $EE \times T\%$ . The homeowner’s share of excess equity shall be calculated as follows:  $EE \times S\%$ .

For example. If the homeowner buys the home for \$200,000 but the fair market value is \$300,000, then \$300,000 (FMV) minus \$200,000 (ModP) equals \$100,000 (D). \$100,000 (D) divided by \$300,000 (FMV) equals 0.33 (T%). The Town's proportionate share of the excess escrow will be 33%. The homeowner's proportionate share would be 1 minus 0.33 = 0.67 or 67%. If the homeowner later resells that home for \$400,000 and the excess equity is \$100,000 after applying paragraph (c) above, then the Town's share would be \$100,000 x 0.33 or \$33,000 and the homeowner's share would be \$100,000 x 0.67 or \$67,000.

- d. Fair market values, if and when required to calculate shares of appreciation, shall be determined by an appraisers licensed by the State of California.
4. The certificate of occupancy for a density bonus unit will automatically expire upon vacation of the unit. Prior to the reissuance of a certificate of occupancy for the unit, the Director shall determine that it will be occupied pursuant to the requirement of this Chapter.

**Section 11:** Section 9.28.090 "Density Bonuses" of Chapter 9.28 "Residential Uses" of the Town of Apple Valley Development Code is hereby further amended by adding thereto new subsections H, I and J to read as follows:

#### **H. Density Bonuses for Qualifying Senior Citizen Housing Developments.**

1. In order to encourage the provision of housing for senior citizens, an applicant for a residential development may request, and the approval body may grant, with applicable findings as set forth in this Section, a density bonus under the following circumstances:
  - a. **Market Rate Senior Citizen Housing Development:** If an applicant has made a written request for grant of a density bonus with its application to build market-rate senior citizen housing development as defined in Section 51.11 of the Civil Code, then the Approval Body shall grant a density bonus of twenty percent (20%) over the otherwise maximum allowable residential density under the applicable zoning classification on the Town's zoning map and corresponding land use designation in the General Plan.
  - b. **Low Income Senior Citizen Housing Development:** If an applicant has made a written request for grant of a density bonus with its application and if at least Twenty-five percent (25%) of the total units in a development are restricted to the rental or purchase by low income senior citizens, then the Approval Body shall grant, with appropriate finding, a density bonus of at least twenty percent (20%) but not more than thirty-five percent (35%) over the otherwise maximum allowable residential density under the

applicable zoning classification on the Town's zoning map and corresponding land use designation in the General Plan.

- c. Very Low Income Senior Citizen Housing Development: If an applicant has made a written request for grant of a density bonus with its application and if at least ten percent (10%) of the total units in a development are restricted to rental or purchase by very low income senior citizens, then the Approval Body shall grant, with appropriate findings, a density bonus of least twenty percent (20%) but not more than thirty-five percent (35%) over the otherwise maximum allowable residential density under the applicable zoning classification on the Town's zoning map and corresponding land use designation in the General Plan.
2. This subsection shall be applicable only to projects which contain at least twenty (20) units.
3. An applicant qualifying for a density bonus under this section may submit to the Town a proposal for specific incentives and concessions as set forth in this Section.
4. Prior to the issuance of a certificate of occupancy for any dwelling unit in a development for which density bonus units have been awarded or incentives have been received, the developer shall identify the restricted units and shall enter into a written agreement, as set forth in this Section, with the Town to guarantee, for thirty (30) years, their continued use and availability to senior citizens. The terms and conditions of such agreement shall run with the land which is to be developed, shall be binding upon the successor in interest of the developer, and shall be recorded in the Office of the County Recorder.
5. The agreement shall include a provision that the Town shall have the authority to enter into such with the developers and with the renters or purchasers of the dwelling units as may be necessary to assure that the required dwelling units are continuously occupied by senior citizen households or renters.
6. Density bonus units for senior citizens shall have design features appropriate to their occupancy by the elderly.

**I. Additional Density Bonuses for Childcare Facilities.**

1. An applicant, who proposes to construct a housing development that conforms to this Section that includes a child care facility that will be located on the premises of, as part of, or adjacent to, the project, may request either of the following:

- a. An additional density bonus that is an amount of square feet of residential space that is equal to or greater than the amount of square feet in the child care facility;
  - b. An additional concession or incentive that contributes significantly to the economic feasibility of the construction of the child care facility.
2. If a child care facility is included and given an additional density bonus, the developer shall require:
    - a. The child care facility shall remain in operation for a period of time that is as long as or longer than the period of time during which the density bonus units are required to remain affordable.
    - b. Of the children who attend the child care facility, the children of very low income households, lower income households, or families of moderate income shall equal a percentage that is equal to or greater than the percentage of dwelling units that are required for very low income households and lower income households.

**J. Special Parking Requirements:**

1. Upon the request of the developer, the Town shall not require on-site vehicle parking ratios, inclusive of handicapped and guest parking, of a development meeting the criteria of within this Section, that exceeds the following ratio:
  - a. Zero (0) to one (1) bedroom : one (1) on-site parking space
  - b. Two (2) to three bedrooms: two (2) on-site parking spaces.
  - c. Four (4) or more bedrooms: Two and one-half (2½) on-site parking spaces.

If the total number of parking spaces required for a development is other than a whole number, the number shall be rounded up to the next whole number.

2. For purposes of this Section, a development may provide “on-site parking through tandem parking or uncovered parking, but not through on-street parking

**Section 12. Invalidation.** The amendment by this Ordinance of Title 9 “Development Code” of the Town of Apple Valley Municipal Code as previously in effect, or of any other prior enactment, shall not be construed to invalidate any entitlement exercised or proceeding taken pursuant to such Title or other enactment while the same was in effect.



**Section 13. 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 14. Effective Date.** This Ordinance shall become effective thirty (30) days after the date of its adoption.

**Section 15. 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.

Adopted by the Town Council and signed by the Mayor and attested by the Town Clerk this 8th day of January, 2008.

\_\_\_\_\_  
Honorable Timothy Jasper, Mayor

ATTEST:

\_\_\_\_\_  
La Vonda M-Pearson, Town Clerk

Approved as to form:

Approved as to content:

\_\_\_\_\_  
Neal Singer, Town Attorney

\_\_\_\_\_  
James L. Cox, Interim Town Manager