

**TOWN OF
APPLE VALLEY, CALIFORNIA**

AGENDA MATTER

Subject Item:

A REQUEST TO MODIFY THE PROVISIONS OF THE DEVELOPMENT CODE BY AMENDING TITLE 9 "DEVELOPMENT CODE" OF THE TOWN OF APPLE VALLEY MUNICIPAL CODE BY AMENDING SECTION A.3 OF TABLE 9.35.030-A "PERMITTED USES" OF THE CODE TO ALLOW EMERGENCY SHELTERS WITHIN THE VILLAGE COMMERCIAL (C-V) ZONING DISTRICT SUBJECT TO A SPECIAL USE PERMIT.

Summary Statement:

At its meeting of September 13, 2011, the Apple Valley Town Council initiated a Development Code Amendment to modify the regulations to allow emergency shelters within the Commercial Village (C-V) land use designation. On October 5, 2011, the Planning Commission conducted a public hearing for Development Code Amendment No. 2011-01 to allow emergency shelters in the Village Commercial (C-V) Zoning District subject to a Special Use Permit (SUP). Following consideration of the information within the staff report and discussion, the Planning Commission reached a consensus for denial of the proposed Code Amendment, with Commissioner Tinsley and Commissioner Cusack recusing themselves from the discussion.

As indicated in the attached draft minute excerpt for the meeting of October 5, 2011, the consensus of the Commission was to deny the Amendment based on the concerns of potential land use compatibility issues along Highway 18 within the Village District. The Commission indicated that, since the majority of the properties along Highway 18 within the Village are zoned C-V, it was not the Commission's desire to allow emergency shelters along the Highway when sufficient area was available for a potential shelter elsewhere within the Village, and away from Highway 18 (Service Commercial, C-S, zoning).

It is standard practice that the staff report presented to the Council be consistent with the Planning Commission determination. In keeping with this practice, staff has provided a recommendation for denial consistent with the Planning Commission's determination. Also, in keeping with standard practice, and if the original staff recommendation to the Planning Commission was for approval, staff has submitted with this staff report the original Findings for approval contained within the Planning Commission staff report.

(Continued)

Recommended Action:

1. Move to open the public hearing and take testimony.
2. Close the public hearing. Then:
3. **Find** the facts presented within the staff report do not support the required Findings for approval of an amendment to the Development Code, and adopt the Findings.

Proposed by: Planning Division **Item Number** _____

Town Manager Approval: _____ **Budgeted Item** Yes No N/A

Following consideration of public comment and Council discussion, if the Council wishes to approve the Amendment, a draft ordinance has been included as an attachment for Council's consideration. Given the sensitive nature of the proposed change, and the imminent approach of our cold weather season, a draft ordinance has been attached to the staff report so the Amendment would not have to be continued given the sensitivity to time, and if Council elects to take action overturning the Planning Commission's decision.

FINDINGS:

Prior to the approval of any Amendment to the Development Code, the Council, based upon the advice of the Planning Commission, must make specific "Findings" as listed within the Code. Code Section 9.06.060 "Required Findings" of Chapter 9.06 Amendments to Zoning Provisions" specifies that two (2) Findings must be made. Based on the comments received by the Planning Commission, negative findings, along with a comment to address each, are presented below.

9.06.060 "Required Findings

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

Comment: The General Plan provides the basic framework for land development within the Town of Apple Valley, with the Development Code setting the specific standards and criteria to fulfill the General Plan's Goals and Policies. The change proposed to the Development Code, is not consistent with the General Plan since the change could have a negative impact on the Village District property values because of incompatible land use issues.

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

Comment: Amending the Code as proposed under Amendment No. 2011-01 will modify the Town's Development Code to allow emergency shelters within the Village Commercial Land Use District. To allow an emergency shelter within the Village Commercial Land Use District, would be detrimental to the health, safety or general welfare of the citizens of the Town of Apple Valley.

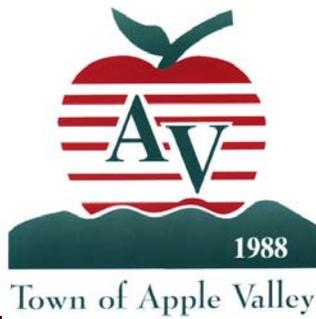
NOTICING

Development Code Amendment No. 2011-01 was advertised as a public hearing in the Apple Valley News newspaper on October 14, 2011.

RECOMMENDATION

Following receipt of public input and discussion by the Council, it is recommended that the Council move to deny Development Code Amendment No. 2011-01 amending Title 9 "Development Code" of the Town of Apple Valley Municipal Code Table 9.35.030-A.

ATTACHMENTS: Planning Commission Staff Report October 5, 2011
Draft Planning Commission Minutes October 5, 2011
Draft Ordinance No. 425



TOWN OF APPLE VALLEY PLANNING COMMISSION

Staff Report

AGENDA DATE:

October 5, 2011

CASE NUMBER:

Development Code Amendment No. 2011-01

APPLICANT:

Town of Apple Valley

PROPOSAL:

A request to consider an Amendment to Title 9 "Development Code" of the Town of Apple Valley Municipal Code, amending Table 9.35.030-A "Permitted Uses" of the Code, to allow emergency shelters within the Village Commercial (C-V) Land Use District subject to a Special Use Permit.

LOCATION:

Village District

**EXISTING GENERAL
PLAN DESIGNATIONS:**

Village Commercial Land Use Designations within the Village District.

EXISTING ZONING:

Village Commercial Zoning Designations within the Village District.

**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.

PROJECT PLANNER:

Ms. Carol Miller, Senior Planner

RECOMMENDATION:

Adopt Planning Commission Resolution No. 2011-04

BACKGROUND ANALYSIS:

At its meeting of September 13, 2011, the Apple Valley Town Council initiated a Development Code Amendment to modify the regulations to allow emergency shelters within the Commercial Village (C-V) Land Use District.

Earlier this year, concerns were expressed during a Town Council meeting regarding the lack of emergency shelters within the Town during extreme weather conditions. To address this issue, Town staff held workshops with local church groups, non-profit organizations and interested individuals. Mr. Jim Anderson, Code Enforcement Manager with the Town of Apple Valley, facilitated two (2) meetings (June 21, 2011 and August 11, 2011) to discuss how best to proceed with establishing emergency sheltering. At the initial meeting, Planning staff informed the group what the Development Code defined as an emergency shelter, where emergency shelters were allowed, and the review process. During the focus group meetings, the need for an emergency shelter within the area of James Woody Park was expressed. The area between Ottawa Road and Highway 18 is primarily zoned Service Commercial (C-S) and Village Commercial (C-V). Allowing a shelter within the C-V Land Use District, as well as the C-S Land Use District, will increase the opportunity for such a facility to occur within an area where a need has been expressed. For this to be implemented within the C-V land use district, a Development Code Amendment would be required to modify the Commercial Land Use Table to allow an emergency shelter within the C-V land use district.

The Development Code states Emergency Shelters/Transitional Housing is allowed within the Service Commercial (C-S) land use district, subject to a Special Use Permit (SUP), with fees waived. The Code defines an Emergency Shelter as:

Emergency Shelter

Consistent with Health and Safety Code Section 50801(e), a facility that provides immediate and short-term housing and minimal supplemental services for the homeless. Shelters come in many sizes, but an optimum size is considered to be twenty (20) to forty (40) beds. Supplemental services may include food, counseling and access to other social programs. Occupancy is limited to six months or less and may not be denied to any person or household because of an inability to pay. See also Single Room Occupancy, Supportive Housing, Transitional Housing.

It is recommended that Table 9.35.030-A “Permitted Uses” of the Code be amended to read as follows:

Table 9.35.030-A Permitted Uses

TYPE OF USE ⁽¹⁾	DISTRICT ⁽¹⁾					
	O-P	C-G	C-S	C-R	C-V	M-U
A. Residential Uses						
3. Emergency shelters/transitional housing ⁽²⁾	-	-	SUP	-	<u>SUP</u>	-

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, it may be adopt and forward its recommendation to the Council for consideration of the Development Code Amendment. If

the Commission wishes to modify 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 provides the basic framework for land development within the Town of Apple Valley, with the Development Code setting the specific standards and criteria to fulfill the General Plan's Goals and Policies. The proposed Code Amendment shall allow emergency shelters as a permitted use in an additional land use designation. The change proposed to the Development Code is consistent with the General Plan and provides a community service, while still protecting the property values and providing an improved living environment for all Apple Valley residents.

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

Comment: Amending the Code as proposed under Amendment No. 2011-01 will modify the Town's Development Code to allow emergency shelters within the Village Commercial Land Use District. To allow an emergency shelter within the Village Commercial Land Use District, where a need has been identified, shall not be detrimental to the health, safety or general welfare of the citizens of the Town of Apple Valley.

NOTICING

Development Code Amendment No. 2011-01 was advertised as a public hearing in the Apple Valley News newspaper on September 23, 2011.

ENVIRONMENTAL REVIEW

Staff has determined that the project is not subject to the California Environmental Quality Act (CEQA), pursuant to Section 15061(b)(3) of the State Guidelines to Implement CEQA, which states that the activity is covered by the general rule that CEQA applies only to projects that have the potential for causing a significant effect on the environment. Where it can be seen with certainty that there is no possibility that the activity in question, the proposed Code Amendment, may have a significant effect on the environment, the activity is not subject to CEQA.

RECOMMENDATION

Following receipt of public input and discussion by the Commission, it is recommended that the Commission move to approve Planning Commission Resolution No. 2011-04, 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.

Prepared By:

Reviewed By:

Carol Miller
Senior Planner

Lori Lamson
Assistant Director of Community Development

ATTACHMENT: Planning Commission Resolution No. 2011-04

Council Meeting Date: 10/25/11

PLANNING COMMISSION RESOLUTION NO. 2011-04

A RESOLUTION OF THE PLANNING COMMISSION OF THE TOWN OF APPLE VALLEY, CALIFORNIA, RECOMMENDING THAT THE TOWN COUNCIL AMEND TITLE 9 "DEVELOPMENT CODE" OF THE TOWN OF APPLE VALLEY MUNICIPAL CODE BY AMENDING TABLE 9.35.030-A "PERMITTED USES" OF THE CODE TO ALLOW EMERGENCY SHELTERS WITHIN THE VILLAGE COMMERCIAL (C-V) LAND USE DISTRICT SUBJECT TO A SPECIAL USE PERMIT.

WHEREAS, Title 9 "Development Code" of the Municipal Code of the Town of Apple Valley was adopted by the Town Council on April 28, 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, specific changes are proposed to Title 9 "Development Code" of the Town of Apple Valley Municipal Code by amending Table 9.35.030-A "Permitted Uses" of the Code; and

WHEREAS, on September 23, 2011, Development Code Amendment No. 2011-01 was duly noticed in the Apple Valley News, a newspaper of general circulation within the Town of Apple Valley; and

WHEREAS, pursuant to Section 15061(b)(3) of the State Guidelines to Implement the California Environmental Quality Act (CEQA), it can be determined 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 may have a significant effect on the environment, the activity is EXEMPT from further CEQA review; and

WHEREAS, on October 5, 2011, the Planning Commission of the Town of Apple Valley conducted a duly noticed and advertised public hearing on Development Code Amendment No. 2011-01, receiving testimony from the public; and

WHEREAS, Development Code Amendment No. 2011-01 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.

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. 2011-01 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. 2011-01 will have a significant effect on the environment and, therefore, the Amendment is EXEMPT from further environmental review.

Section 3. Amend Table 9.35.030-A “Permitted Uses” of the Code to read as follows:

Table 9.35.030-A Permitted Uses

TYPE OF USE ⁽¹⁾	DISTRICT ⁽¹⁾					
	O-P	C-G	C-S	C-R	C-V	M-U
A. Residential Uses						
3. Emergency shelters/transitional housing ⁽²⁾	-	-	SUP	-	<u>SUP</u>	-

Approved and Adopted by the Planning Commission of the Town of Apple Valley this 5th day of October, 2011.

Chairman B. R. “Bob” Tinsley

ATTEST:

I, Debra Thomas, 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 5th day of October, 2011 by the following vote, to-wit:

AYES:
NOES:
ABSENT:
ABSTAIN:

Debra Thomas
Planning Commission Secretary

DRAFT MINUTES EXCERPT

**TOWN OF APPLE VALLEY
PLANNING COMMISSION
Regular Meeting
October 5, 2011**

CALL TO ORDER

At 6:02 p.m., the Regular Meeting of the Planning Commission of the Town of Apple Valley for October 5, 2011, was called to order by Chairman Tinsley.

ROLL CALL

Planning Commission

Roll call was taken with the following members present: Commissioner David Hernandez, Commissioner Jason Lamoreaux, Commissioner Mark Shoup, Vice-Chairman Larry Cusack and Chairman B.R. "Bob" Tinsley.

STAFF PRESENT

Lori Lamson, Assistant Director of Community Development; Douglas Fenn, Senior Planner, Haviva Shane, Town Attorney; and Debra Thomas, Planning Commission Secretary.

3. Development Code Amendment 2011-01

Applicant: Town of Apple Valley

Location: Village District.

Chairman Tinsley opened the public hearing at 6:10 p.m.

Ms. Lori Lamson, Assistant Director of Community Development presented the staff report as filed by the Planning Division. She explained one item requiring change was on P.3. of the Resolution under Section 3., it should state "Amend Section A.3. of Table 9.35.030-A" just to identify the exact line that is being modified within the section itself.

Vice-Chairman Cusack asked if there are any emergency shelters in the area already approved.

Ms. Lamson indicated that there are no emergency shelters located in the Town of Apple Valley.

Commissioner Lamoreaux asked if someone had applied for use in this area.

Ms. Lamson explained with this change two parties will come forward with a request for a Special Use Permit for an emergency shelter utilizing an existing facility. One party has an existing Conditional Use Permit and that would need to be modified. The requesting parties indicated they did not want an emergency shelter during moderate climates only during very cold or very warm temperatures.

Commissioner Lamoreaux is concerned the emergency shelter could be operated year round.

Ms. Lamson explained the guidelines required for emergency shelters to work in assisting homeless people/families.

Chairman Tinsley asked how long in between stays does an individual need to be absent from the facility.

Ms. Lamson stated the answer to that question is absent from the Town's code and that would be a question for legal counsel.

Commissioner Shoup wanted to know who decides when it is an emergency.

Ms. Lamson stated it would be the operators of the facility.

Commissioner Shoup believed the emergency shelter could be open year round based on the language as written.

Ms. Lamson confirmed that the emergency shelter could be open year round however the Conditions of Approval can modify how the emergency shelter operates in that zoned area.

Extensive discussion ensued on how the emergency shelter would operate, possible locations and what requirements and/or restrictions the Commission can place on the facility.

Chairman Tinsley and Vice-Chairman Cusack announced they had interest in various properties located in the Village District.

Haviva Shane, Town Attorney believed that Best, Best & Krieger should perform an analysis on whether or not Chairman Tinsley and Vice-Chairman Cusack have a conflict.

CHAIRMAN TINSLEY AND VICE-CHAIRMAN CUSACK WERE EXCUSED FROM THE DIAS AT 6:41 P.M.

PUBLIC COMMENTS

Mr. Tom Freutel, Apple Valley, CA wanted to know if his apartment complex on Taloga Road is anywhere near the Village and was advised his property was not.

Acting Chairman, Commissioner Hernandez closed the public hearing at 6:43 p.m.

FURTHER DISCUSSION

Commissioner Shoup acknowledged there is a need for a homeless shelter in the community but has concerns with this type of project and believes each project should be analyzed on a case-by-case basis.

Commissioner Lamoreaux cited the location on Highway 18 poses concern and believed there are other areas located off of Highway 18 better suited for the homeless shelter.

Commissioner Hernandez also had concerns with the location of the homeless shelter. He

believed it should only be passed with a Conditional Use Permit.

Commissioner Shoup wanted to see staff modify its recommendations and make the commercial zoning in the Village District allowing for an emergency shelter subject to a Conditional Use Permit rather than a Special Use Permit.

Commissioner Lamoreaux asked if the applicant wished to apply for a zoning change would the fees be waived.

Ms. Lamson stated the fees are not waived and they would run somewhere between \$8,000.00 and \$10,000.00 and that would be cost prohibitive.

Commissioner Hernandez asked if the Town Council would be informed of the Commission's concerns as they relate to the homeless shelter.

Ms. Lamson believed that the Commission's concerns are problematic due to difficulties allowing a Conditional Use Permit in one zone and not in another.

MOTION

Motion by Commissioner Lamoreaux, seconded by Commissioner Hernandez that the Planning Commission move to:

1. Find that the facts do not support that the proposed Amendment will not be detrimental to the public health, safety or welfare of the Town or its residents and deny Development Code Amendment No. 2011-01 and forward to the Town Council.

ROLL CALL VOTE:

Ayes: Commissioner Hernandez
Commissioner Lamoreaux
Noes: Commissioner Shoup
Abstain: None
Absent: Vice Chairman Cusack, Chairman Tinsley
The motion carried by a 2-1-0-2 vote

CHAIRMAN TINSLEY AND VICE-CHAIRMAN CUSACK RETURNED TO THE DIAS AT 6:53 P.M.

ORDINANCE No. 425

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF APPLE VALLEY, CALIFORNIA, DETERMINING THAT DEVELOPMENT CODE AMENDMENT No. 2011-01 IS EXEMPT FROM FURTHER ENVIRONMENTAL REVIEW AND AMEND TITLE 9 "DEVELOPMENT CODE" OF THE TOWN OF APPLE VALLEY MUNICIPAL CODE, BY AMENDING SECTION A.3 OF TABLE 9.35.030-A "PERMITTED USES" OF THE CODE, TO ALLOW EMERGENCY SHELTERS WITHIN THE VILLAGE COMMERCIAL (C-V) LAND USE DISTRICT SUBJECT TO A SPECIAL USE PERMIT.

The Town Council of the Town of Apple Valley, State of California, does hereby 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 April 27, 2010; and

(ii) Title 9 "Development Code" of the Municipal Code of the Town of Apple Valley has been previously modified by the Town Council; and

(iii) Specific changes are proposed to Title 9 "Development Code" of the Town of Apple Valley Municipal Code by amending Section A.3 of Table 9.35.030-A as it relates to the regulations for emergency shelters in the Village Commercial land use district; and

(iv) On October 14, 2011, Development Code Amendment No. 2011-01 was duly noticed in the Apple Valley News, a newspaper of general circulation within the Town of Apple Valley; and

(v) Based upon the State Guidelines to Implement the California Environmental Quality Act (CEQA), it can be seen with certainty that Development Code Amendment will not have a direct, adverse impact upon the environment and, therefore, is EXEMPT from further environmental review; and

(vi) On October 5, 2011, the Planning Commission of the Town of Apple Valley conducted a duly noticed and advertised public hearing on Development Code Amendment No. 2011-01, receiving testimony from the public; and

(vii) Development Code Amendment No. 2011-01 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) Find that the changes proposed by Development Code Amendment No. 2011-01 are consistent with the Goals and Policies of the Town of Apple Valley adopted General Plan while still protecting the property values and providing an improved living environment for all Apple Valley residents.

(ii) Find that, based upon the State Guidelines to Implement the California Environmental Quality Act (CEQA), it can be seen with certainty that the proposed

Development Code Amendment No. 2011-01 is not anticipated to have a direct, adverse impact upon the environment and, therefore, is EXEMPT from further environmental review.

(iii) The change proposed to the Development Code provides a community service within the Village Commercial Land Use District, where a need has been identified and shall not be detrimental to the health, safety or general welfare of the citizens of the Town of Apple Valley.

Section 3. Amend Section A.3 of Table 9.35.030-A “Permitted Uses” of Title 9 Development Code to read as follows:

Table 9.35.030-A Permitted Uses

TYPE OF USE ⁽¹⁾	DISTRICT ⁽¹⁾					
	O-P	C-G	C-S	C-R	C-V	M-U
A. Residential Uses						
3. Emergency shelters/transitional housing ⁽²⁾	-	-	SUP	-	<u>SUP</u>	-

(2) Fees Waived

Section 4. 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 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.

Adopted by the Town Council and signed by the Mayor and attested by the Town Clerk this 8th day of November, 2011.

ATTEST:

Scott Nassif, Mayor

La Vonda M-Pearson, Town Clerk

Approved as to form:

Approved as to content:

John Brown, Town Attorney

Frank Robinson, Town Manager