

**TOWN OF
APPLE VALLEY, CALIFORNIA**

AGENDA MATTER

Subject Item:

A REQUEST TO CONSIDER AN AMENDMENT TO TITLE 3 "REVENUE AND FINANCE CODE" OF THE TOWN OF APPLE VALLEY MUNICIPAL CODE AMENDING SECTIONS 3.12.230 "OPEN MARKET OR INFORMAL BID PROCEDURE" AND 3.12.270(5) "EXCEPTIONS TO COMPETITIVE BIDDING REQUIREMENT" OF THE CODE BY AMENDING AND ESTABLISHING PROVISIONS ALLOWING LOCAL PREFERENCE FOR BUSINESSES WITHIN THE HIGH DESERT/VICTOR VALLEY AREA FOR THE PROMOTION OF THE LOCAL ECONOMY AND TO OFFSET INCREASED COSTS FOR LOCAL BUSINESSES.

Summary Statement:

On August 8, 2011 the Council conducted a discussion regarding local preference in response to a Request for Proposals (RFP) for an update to the Town's Sewer Master Plan. After discussion, the Council continued the matter until it could receive a report on Local Preference and determine a proper course of action. The report was provided by Staff to the Council on September 27, 2011.

(Continued)

Recommendation:

Move to open the public hearing and take testimony.

Close the public hearing. Then:

1. **Determine** that, pursuant to Section 20162 of the State of California Public Contract Code and the Federal Office of Management and Budget Circular A-102, it can be determined that the Municipal Code amendment complies with the legal requirement(s) of the Public Contract Code statute and adheres to the federal grant requirements for state and local governments and nonprofit entities.
2. **Find** the facts presented within the staff report support the required Findings for approval of an amendment to the Municipal Code and adopt the Findings.
3. **Find** that the proposed Town Council Ordinance is consistent with the Goals and Objectives of the adopted Town of Apple Valley General Plan and that it is necessary to promote the local economy of the Town of Apple Valley and Victor Valley region.
4. **Move** to waive the reading of Ordinance 426 in its entirety and read by title only.
5. **Introduce** Ordinance 426, amending Chapter 3.12 "Purchases" by adding Section 3.12.290 which establishes regulations to provide for local business preference, and amending Sections 3.12.230 "Open market or informal bid procedure" and 3.17.270(5) "Exceptions to Competitive Bidding Requirement".
6. **Direct** staff to file report.

Proposed by: Assistant Town Manager, Economic & Community Development Item Number _____

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

Council Meeting Date: 11/8/11

15-1

At the October 12, 2011 Town Council meeting regarding the RFP for an update to the Town's Consolidated Plan, members of the public requested that the Town Council establish a local preference program in light of the need to boost the local economy. In response, the Council directed Staff to present a proposed amendment to the Municipal Code for its consideration.

Staff has completed its research on this issue, and determined that the following amendment and update to the Municipal Code is necessary to implement a Local Preference program. The local preference classification shall be utilized in addition to Section 3.12.212 entitled "Credit for Sales and Use Tax".

Local Preference shall apply only to the procurement of supplies, equipment and services not involving public works projects of more than five thousand dollars (\$5,000). The local preference classification shall not apply to the procurement of goods and services for public works projects that exceed five thousand dollars (\$5,000) as outlined under state law (Public Contract Code, § 20162) or to any Town project assisted in whole or in part with federal funds.

In an effort to foster growth within the local economy and in response to the increased costs of local businesses, the Town will implement a Local Preference credit to businesses with their principal place of operation located within the High Desert/Victor Valley region. For the purpose of this discussion, the High Desert/Victor Valley region is defined to include the following municipalities and communities: Adelanto, Apple Valley, Barstow, Helendale, Hesperia, Hodge, Lenwood, Lucerne Valley, Nebo Center, Oak Hills, Oro Grande, Phelan, and Victorville. Residency, as determined by this section, will apply to those local businesses that have established a place of operation within the High Desert/Victor Valley region, as defined by this section, for at least six (6) months prior to the publication of the call for bids, or issuance of an RFP/RFQ, that qualify under the local preference guidelines set forth. Bidders or Respondents that qualify as local business shall be given a credit equal to five (5) percent of the total points used to determine the most advantageous quote or proposal.

The amendment of Section 3.12.230 "Open market or informal bid procedure" is proposed to read as follows:

Purchases of supplies and equipment of an estimated value in the amount of fifty thousand dollars (\$50,000) or less may be made by the purchasing agent in the open market pursuant to the procedures prescribed in Sections 3.12.240 through 3.12.260 with consideration given to the guidelines for Local Preference under Section 3.12.290, and without observing the procedure prescribed in Sections 3.12.120 through 3.12.215; provided, however, all bidding may be dispensed with for purchases of supplies and equipment having a total estimated value of less than one thousand dollars.;

The amendment of Section 3.12.270(5) "Exceptions to Competitive Bidding Requirement" is proposed to read as follows:

The Town Manager is authorized to enter into contracts for personal services, for professional and consulting services and for other contractual services without observing the bidding procedure provided herein where the amount of the contract does not exceed the amount of fifty thousand dollars, and falls within the guidelines for Local Preference as specified under Section 3.12.290 in instances where the contract does not involve a public works project, and does not exceed five thousand dollars (\$5,000).

Based upon the foregoing, staff recommends adoption of the form motions.

Attachment

ORDINANCE 426

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF APPLE VALLEY, CALIFORNIA, AMENDING TITLE 3, "REVENUE AND FINANCE CODE", CHAPTER 3.12 "PURCHASES", OF THE TOWN OF APPLE VALLEY MUNICIPAL CODE BY ADDING SECTION 3.12.290 "REGULATION REGARDING LOCAL PREFERENCE" TO ALLOW A LOCAL PREFERENCE CLASSIFICATION FOR LOCAL BUSINESSES AND AMENDING SECTIONS 3.12.230 "OPEN MARKET OR INFORMAL BID PROCEDURE" AND, 3.12.270(5) "EXCEPTIONS TO COMPETITIVE BIDDING REQUIREMENT".

WHEREAS, on October 12, 2011, the Town Council of the Town of Apple Valley directed Staff to develop an ordinance regarding Local Preference for local businesses within the High Desert/Victor Valley region in response to the request of the citizens of the Town; and

WHEREAS, on October 28, 2011, the Municipal Code Amendment No. 2011 - ___ was duly noticed in the Daily Press, a newspaper of general circulation within the Town of Apple Valley; and

WHEREAS, based upon the federal grants requirement for state and local governments, it can be seen with a certainty that the Municipal Code Amendment will not be in conflict with California Public Contract Code §20162; and

WHEREAS, Municipal Code Amendment No. 2011 - _____ is consistent with Title 3 (Revenue and Finance Code) of the Municipal Code of the Town of Apple Valley and shall promote the local economy of the citizens of the Town of Apple Valley.

SECTION 1. Section 3.12.290 is hereby added to Chapter 3.12 "Purchases" of the Town Municipal Code which is hereby amended to read as follows:

"3.12.290 Regulation regarding local preference

The local preference classification will apply only to the procurement of supplies, equipment and services not involving public works projects of more than five thousand dollars (\$5,000). The local preference classification shall not apply to the procurement of goods and services for public works projects that exceed five thousand dollars (\$5,000) as outlined under state law (Public Contract Code, § 20162) or to any project assisted in whole or in part with federal funds.

1. A Local Preference credit will be given to businesses with their principal place of operation located within the High Desert/Victor Valley region. Residency, as determined by this section, will apply to those local businesses that have established a place of operation within the High Desert/Victor Valley region for at least six (6) months prior to the publication of the call for bids that qualify under the local preference guidelines set forth.
2. Bidders who qualify as a local business shall be given a credit equal to five (5) percent of the total points used to determine the most advantageous quote or

proposal; this credit will be given in addition to "Credit for Sales and Use Tax" outlined in section 3.12.212.

- (a) "High Desert/Victor Valley region" means inclusion of the following municipalities: Adelanto, Apple Valley, Barstow, Helendale, Hesperia, Hodge, Lenwood, Lucerne Valley, Nebo Center, Oak Hills, Oro Grande, Phelan, and Victorville."

SECTION 2. Amend in its entirety, Section 3.12.230 "Open Market or Informal Bid Procedure" of Chapter 3.12 "Purchases" of Title 3 Municipal Code to read as follows:

"Purchases of supplies and equipment of an estimated value in the amount of fifty thousand dollars or less may be made by the purchasing agent in the open market pursuant to the procedures prescribed in Sections 3.12.240 through 3.12.260 with consideration given to the guidelines for Local Preference under Section 3.12.290, and without observing the procedure prescribed in Sections 3.12.120 through 3.12.215; provided, however, all bidding may be dispensed with for purchases of supplies and equipment having a total estimated value of less than one thousand dollars."

SECTION 3. Amend in its entirety, paragraph 5 of Section 3.12.270 "Exceptions to Competitive Bidding Requirement" of Chapter 3.12 "Purchases" of the Title 3 Municipal Code to read as follows:

5. The Town Manager is authorized to enter into contracts for personal services, for professional and consulting services and for other contractual services without observing the bidding procedure provided herein where the amount of the contract does not exceed the amount of fifty thousand dollars, and falls within the guidelines for Local Preference as specified under Section 3.12.290 in instances where the contract does not involve a public works project, and does not exceed five thousand dollars (\$5,000).

SECTION 4. Invalidation. The amendment by this Ordinance of the Title 3 "Revenue and Finance 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.

APPROVED and **ADOPTED** by the Town Council and signed by the Mayor and attested by the Town Clerk this 13th day of December, 2011.

Scott Nassif, Mayor

ATTEST:

Ms. La Vonda M-Pearson, Town Clerk

Approved as to form:

Approved as to content:

John Brown, Town Attorney

Frank Robinson, Town Manager