



TOWN OF APPLE VALLEY TOWN COUNCIL STAFF REPORT

To: Honorable Mayor and Town Council **Date:** January 8, 2012
From: Lori Lamson **Item No:** 5
Director of Community Development
Community Development Department
Subject: ADOPT ORDINANCE NO. 444 - AN ORDINANCE OF THE TOWN OF APPLE VALLEY AMENDING TITLE 5, CHAPTER 5 "BUSINESS LICENSES" REGARDING ITINERATE VENDORS OF THE MUNICIPAL CODE AND TITLE 9 OF THE DEVELOPMENT CODE ADDING CHAPTER 9.79 "MOBILE FOOD FACILITIES (MFFS)".

Applicant: Town of Apple Valley

Location: Town-wide

T.M. Approval: _____ **Budgeted Item:** Yes No N/A

RECOMMENDED ACTION:

Adopt Ordinance No. 444

SUMMARY:

At its December 11, 2012 meeting, the Town Council reviewed and introduced Ordinance No. 444, amending Title 5, Chapter 5 "Business Licenses" regarding to itinerate vendors of the Municipal Code and Title 9 of the Development Code adding Chapter 9.79 "Mobile Food Facilities (MFFs)". Town Council directed staff that Ordinance No. 444 include a catch-all criteria pertaining to public health and safety and is underlined in the attached Ordinance No. 444.

FISCAL IMPACT:

Not Applicable

Attachments:

Ordinance No. 444

ORDINANCE NO. 444

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF APPLE VALLEY, CALIFORNIA, AMENDING TITLE 5 REGARDING TO ITINERATE VENDORS OF THE MUNICIPAL CODE AND TITLE 9 OF THE "DEVELOPMENT CODE," ADDING CHAPTER 9.79, REGULATIONS FOR MOBILE FOOD FACILITIES OF THE TOWN OF THE APPLE VALLEY MUNICIPAL CODE.

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 5 of the Municipal Code and 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) Specific changes to Title 5 "Municipal Code" of the Town of Apple Valley Municipal Code include adding Chapter 9.79 to the Development Code.

(iv) On October, 11, 2012, Municipal Code and Development Code Amendment No. 2012-001 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 September 19, 2012 the Planning Commission of the Town of Apple Valley conducted a duly noticed and advertised the public hearing on Development Code Amendment No. 2012-001, receiving testimony from the public and adopted Planning Commission Resolution No. 2008-008 recommending adoption of this Ordinance; and

(vii) Development Code Amendment No. 2012-001 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. 2012-001 are consistent with the Goals and Policies of the Town of Apple Valley adopted General Plan.

(ii) Find 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

(iii) Replace subsection (g) of Section 9.02.010 "Definitions" of Chapter 5.02 "Business Licenses" of Title 5 "Business Regulations" of the Town of Apple Valley Municipal Code to read as follows

(iv) Find that the changes proposed by Development Code Amendment No. 2012-001 are consistent with the Goals and Policies of the Town of Apple Valley adopted General Plan.

(v) Replace subsection (g) of Section 9.02.010 "Definitions" of Chapter 5.02 "Business Licenses" of Title 5 "Business Regulations" of the Town of Apple Valley Municipal Code to read as follows;

(g) "Solicitor" means hawker, or other person who, without appointment, goes from house to house, place to place, or in or along the streets of the Town selling and making immediate delivery, or offering for sale and immediate delivery, any goods, wares, merchandise, or anything of value excluding Mobile Food Facility (MFFs). (Section 5.02.010 amended per Ordinance 270 – August 12, 2003); and

(vi) Replace Section 5.02.260 of Chapter 5.02 "Business Licenses" of Title 5 "Business Regulations" of the Town of Apple Valley Municipal Code to read as follows;

5.02.260 Solicitor

The business of peddling, or hawking, is prohibited, and a business license shall not be issued therefore. Businesses that have a valid Town business license may solicit orders for later delivery. (Section 5.02.260 amended per Ordinance 270 dated 8-12-03).

(vii) Add Chapter 9.79 "Mobile Food Facilities (MFFs)" to Title 9 "Development Code" of the Town of Apple Valley Municipal Code in its entirety to read as follows

Chapter 9.79 MOBILE FOOD FACILITIES (MFFs)

9.79.010 PURPOSE

The purpose of this Chapter is to provide regulations for the establishment, operation, removal, and cleanup Mobile Food Facilities (MFFs) in the Town of Apple Valley, which does not constitute a "land use" of sufficient magnitude or longevity to require permanent land use approval.

This Chapter is intended to establish regulations and procedures for the review of any MFFs proposed within the Town of Apple Valley.

9.79.020 APPLICABILITY

Application for a MFFs permit shall be filed with the Planning Division on a form prescribed by the Community Development Director (Director) and shall contain such information and reports as may be required by the application submittal package or by other applicable ordinances or by the Director in order to review and take action on the application.

9.79.030 ADMINISTRATION

A. Administration. The Director is authorized by the Town Council to administer and enforce the provisions of this Chapter, unless otherwise provided in this Chapter. The Director may designate a representative to act in his/her place.

B. Interpretation

1. This Chapter shall be interpreted in a manner which best fulfills the intent of its provisions.
2. Questions arising from the application of the Chapter shall be interpreted by the Director. If any inconsistency still exists in the interpretation, an appeal application shall be referred to the Planning Commission for its determination.

C. Appeals

1. Any decision or determination by the Director may be appealed to the Planning Commission in accordance with the provisions of this Development Code.
2. Any decision of the Planning Commission may be appealed to the Town Council in accordance with the provisions of this Development Code.

9.79.040 DEFINITIONS

A Mobile Food Facility (MFFs) is a truck-like vehicle used in conjunction with a commissary or other permanent food facility upon which food is sold or distributed for public consumption. Catering trucks (from which pre-packaged food is sold) and hot food trucks (on which the food is prepared and then sold) and Ice Cream vehicle's are MFFs.

9.79.050 PERMIT REQUIRED FOR MFFs

A. Permit Required. Except as otherwise provided by the Municipal Code or state or federal law, no person or entity shall advertise, conduct, maintain, operate, or provide admission for any MFFs within the incorporated areas of the Town without possessing an unexpired, unsuspended, and unrevoked MFFs permit from the Community Development Director/or designee.

1. Zoning compliance decal, business license, and County health permit must be displayed during hours of operation; and
2. The zoning permit(s) issued for the MFFs vendor's (the annual permit held by vendor and/or the permit held by the owner of the zoning lot) may be revoked if the Director determines the MFFs prepared food vendor's operations are causing parking, traffic congestion, noise, or litter problems either on or on adjacent properties.

B. Closure if no Permit. A MFFs conducted without the required permit is subject to closure at any time during the business operations. It shall be the responsibility of the applicant to have the permit approval letter on-site during the business hours. The applicant, business owner, and/or landowner may be liable for the costs of the agencies participating in the closure of the business.

9.79.060 CONTENT AND COMPLIANCE CRITERIA OF APPLICATION

The applicant shall supply a site plan application and other related information to the Planning Department may reasonably require based upon the location, intensity, and level of services required for each proposed MFFs. The applicant must show, provide and comply with the following criteria:

1. Submit a site plan depicting location staging area;
2. Operate on commercial and industrial property and must have the approval of the property owner and/or designee;
3. Operate only on the property for which the permit is granted;
4. Notation of land uses must be depicted on the site plan as well as adjacent properties;
5. Facility shall be operated within 200 feet travel distance of an approved and readily available toilet and hand washing facility;
6. One MFFs truck per permit;
7. Site lighting must be provided for safety purposes and spot lights are not permitted, and lighting must not impact adjacent property owners;
8. Fire protection, including location of fire hydrants and supplemental water sources;
9. Medical/first aid facilities to be provided on site;
10. MFFs vendors shall not operate the vehicle as a drive-in window business;

11. Only a menu board sign on the vehicle is permitted and no portable or other display signs and similar like advertising are permissible;
12. No outdoor seating and tables shall be provided on site;
13. The MFFs must have a Town approved annual sticker visibly displayed prominently on the vehicle;
14. Any sale of alcohol must have approval from the Alcohol and Beverage Control (ABC);
15. No MFFs are permitted on a vacant unimproved lot; and
16. The noise level from the food truck motor and generator must comply with the Town's Noise Ordinance.
17. Any damaged landscaping shall require immediate restoration;
18. Additional and reasonable criteria could also be applicable pertaining to any public health and safety issues.

9.79.070 TRAFFIC REGULATION

Traffic regulations issues such as operation in parking and congestion.

1. No ingress/egress shall be blocked or impeded;
2. No onsite required parking for the existing primary existing use or uses shall be used for the MFFs operation; and
3. At least five (5) parking spaces adjacent to the MFF must be provided for customers.

9.79.080 SAFETY AND UTILITIES

1. MFFs vendors shall provide documentation of San Bernardino County Health Department approval.
2. Temporary connections to potable water is prohibited.
3. Grease shall be disposed of in a grease trap at an existing restaurant, commissary or food preparation facility (not disposed in a dumpster or storm drains).

9.79.090 MFFs AT CONSTRUCTION SITES AND ICE CREAM TRUCKS

MFFs are permitted to operate in the Town on an annual basis at "construction sites" located in residential, commercial, office professional, and industrial districts. This also includes "ice cream truck routes" located in residential areas.

Applicant(s) must comply with provisions contained in Chapter 9.79.060 (with the exception of conditions 4 and 5) and the applicant must show, provide and comply, with the following criteria for MFFs:

1. Operate at construction sites within residential, commercial, office professional, and industrial zoning districts;
2. Ice cream trucks are only permitted in approved routes within residential zoning districts;
3. Obtain application permit for a Mobile Food Facility;
4. Operate during normal business hours (24-7 hour operation is not permitted);
5. Facility must not exceed noise levels permissible within residential, commercial professional office and industrial zoning districts;
6. One MFF truck per permit;
7. Medical/first aid facilities to be provide;
8. Any damaged landscaping shall require immediate restoration;
9. MFFs vendors shall not operate the vehicle as a drive-in window business;
10. Only a menu board sign on the vehicle is permitted, and no portable or other display signs and similar like advertising is permissible;
11. No outdoor seating and tables shall be provided on site;
12. The MFFs must have a Town approved annual sticker visibly displayed prominently on the vehicle;
13. Any sale of alcohol must have approval from the Alcohol and Beverage Control (ABC); and
14. A request to play or broadcast music from ice cream trucks must be in compliance with Development Code noise regulations as permitted within the residential districts.
15. Additional and reasonable criteria could also be applicable pertaining to any public health and safety issues.

9.79.100 TRAFFIC REGULATION

Traffic regulations issues such as operation in parking and congestion.

1. No ingress/egress shall be blocked or impeded; and
2. No ice cream truck shall park in the travel lane on any residential street to conduct business.

9.79.110 FEES, BONDING AND INSURANCE

1. Fees. All estimated total fees and charges shall be deposited by the applicant with the affected department(s) at least 30 days before the scheduled occurrence of the MFFs.
2. Bonding and insurance. The applicant may be required to provide sufficient liability insurance naming the Town as an additional named insured. The insurance shall be sufficient to protect, defend, and indemnify the Town, its agents, employees, officers, servants, and volunteers from and against any claim, damage, injury, liability, and loss of any nature arising out of, or in any way connected to, the MFFs. The amount, quality, and type of the insurance shall be determined in compliance with the policy established by the Risk Management Department. The Town may require a bond to be posted before the MFFs to ensure that all conditions are met, including the cleanup and restoration of landscape.

9.79.120 BUSINESS LICENSE AND PERMIT

1. The MFFs vendors shall comply with all local, county and state retail sales tax regulation, including food and beverage tax regulations;
2. An annual Mobile Food Vehicle and Business License permits shall be obtained from the Town; and
3. Permitting license can be revoked per violation of the Municipal and Development Codes and other related County health and safety Code issues.
4. Coordinated complaint response and enforcement of regulations for MFFs truck operations is within the jurisdiction of the County of San Bernardino Division of Environmental Health Services (DEHS) would remain responsible for investigation and resolution of health related issues; The Town is responsible for investigation and resolution of alleged violation of local safety regulations).

9.79.130 APPLICATION REVIEW PROCESS

1. Upon receipt of a completed application, site plan, and all related fees, the Department shall review the application for completeness and review the application for approval or denial.
2. The MFF shall comply with the California Environmental Quality Act (CEQA). A review will determine whether the categorical exemptions in Sections 15301 and 15304 of the CEQA Guidelines are applicable. If the MFF has the potential to cause adverse environmental impacts, an environmental review of the proposed event shall be conducted in compliance with the County Code and CEQA, and an additional environmental review fee will be required.
3. After an environmental determination has been made, or if one is not required, the Director:
 - a. May approve or deny the application; and/or
 - b. May refer the application directly to the Planning Commission for consideration;

9.79.140 SUSPENSION AND REVOCATION OF PERMIT

1. A permit may be suspended or revoked to protect the public health, safety and welfare, as well as the rights to due process of permit holders per the Community Development Director.
2. Any decision by the Community Development Director to revoke the permit or to amend the permit can be appealed per Development Code 979.030 C.

Section 3. 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 4. 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 5. Effective Date. This Ordinance shall become effective thirty (30) days after the date of its adoption.

Section 6. 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, 2013.

Curt Emick, Mayor

ATTEST:

La Vonda M-Pearson, Town Clerk

APPROVED AS TO FORM:

APPROVED AS TO CONTENT:

John Brown, Town Attorney

Frank Robinson, Town Manager