



Get a Slice of the Apple.

TOWN OF APPLE VALLEY PLANNING COMMISSION

Staff Report

AGENDA DATE:	May 15, 2013 (Continued from April 17, 2013)
CASE NUMBER:	Development Code Amendment No. 2013-001
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, by modifying the Development Code as it pertains to Internet-Cafes, and Hookah Bars/Lounges as regulated uses, subject to approval of a Special Use Permit, to operate within the Town of Apple Valley.
LOCATION:	Town-wide (Commercial Designated Sites)
EXISTING GENERAL PLAN DESIGNATION:	Commercial/Office Professional Land Use Designations/Town-wide
EXISTING ZONING:	Commercial/Office Professional Zoning Designations/Town-wide
ENVIRONMENTAL DETERMINATION:	Pursuant to Section 15061(b)(3) of the State Guidelines to implement the California Environmental Quality Act (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:	Mr. Douglas Fenn, Senior Planner
RECOMMENDATION:	Adopt Planning Commission Resolution No. 2013-003

UPDATE AND BACKGROUND

The Planning Commission, at its April 17th, hearing conducted a thorough discussion regarding an amendment to the Development Code to allow Internet-Cafes, and Hookah Bars/Lounges as Special Use permitted in the Town. The Commission recommended that some of the proposed criteria be either deleted or modified and that the item be brought back for review. Some of the concerns to be addressed were as follows:

1. Replace the definition of Internet-Cafe as proposed in the Resolution to be replaced by the Internet-Cafe definition in the staff report;
2. Include some of the existing Arcade provisions in Section 9.36.050C of the Development Code regarding security, lighting, hours of operation and adult supervision be required;
3. Delete the recommended criteria that Internet-Cafe establishments shall not be permitted within seven hundred (700) feet of any parcel boundary containing any school, whether public or privately operated;
4. Modify a proposed condition for Hookah Bar/Lounge, which reads as: *Marijuana and other illegal substances, herbs, chemicals or other similar paraphernalia shall "not" be smoked, consumed, sold, or injected by the patrons;* to be replaced with: *Only Shisha (flavored tobacco) is to be smoked, and no outside substance shall be smoked onsite;* and
5. A Special Use Permit issued for either the Internet-Cafe or Hookah Bar/Lounge may be revoked by the Planning Commission, instead of by the Community Development Director or Police Chief.

Additionally, the Commission requested that the Town Attorney also follow up to investigate if coffee, tea and water are permissible, as proposed in the staff report, and if non-permitted "beverages" relates to only alcoholic drinks. The additional information provided by the Town Attorney, as depicted below, is in concert with the information provided for in the first staff report, and some additional information is as follows:

1. Business and Professions Code No. 22962 arguably prohibits the sale of alcohol or food for consumption on-site at a tobacco store;
2. Labor Code No. 6404.5 prohibits smoking in enclosed working spaces. Exemptions include "tobacco shops/smoking lounges" where the main purpose is the sale of tobacco/accessories and workplaces with less than five (5) employees; and
3. The Attorney General clarified sale of alcohol at smoking lounges as a prohibited use.

The Commission also wanted further direction regarding outdoor smoking (in a patio area) to permit outdoor smoking for the proposed Hookah Bar/Lounge use.

1. Health and Safety Code No. 118915 prohibits smoking tobacco in any retail food production and marketing establishment during the hours the establishment is open to the public;

2. California Assembly Bill No 846 prohibits smoking within twenty (20)-feet of entryways and windows of all city, county or state owned or leased buildings in the state;
3. Many cities ban Hookah Bar/Lounges entirely; and
4. Other cities place bans on certain categories of smoking activities.

Lastly, the Town Attorney submitted findings for necessity - First Amendment criteria related to Inter-Cafes are included under the Findings heading.

As with past amendments to the Development Code, the proposed Code sections below depict new Code language in underline as directed by the Planning Commission from the April 17th meeting; whereas language proposed to be deleted is shown as a ~~striketrough~~.

Internet-Cafe -

Recently, the San Bernardino County Sheriff's Department seized more than 200 illegal gaming machines from four (4) Internet-Cafes in Hesperia. The raid was conducted after a four (4)-month investigation into complaints of illegal gambling and gaming machines. The San Bernardino Sheriff's Department had been working with the Department of Justice Bureau of Gaming Control where the agencies conducted surveillance and monitoring of the alleged Internet-Cafes and determined the cafes were operating as gaming establishments using on-line "sweepstakes," games. Since then, three (3) Internet-Cafe operations in Apple Valley have closed. And, one (1) potential Internet-Cafe operator withdrew its application after staff had required that the applicant submit a letter from the Bureau of Gaming Control, confirming that the proposed Internet-Cafe is not considered to be a gaming operation. Internet-Cafe is not a listed use on the Town's Commercial Land Use Table, but has been permitted as a retail establishment, with the caveat that the applicant describe the business operations in writing, and indicate that it is not a gambling operation and does not provide cash prizes. The fact that these businesses have closed after the recent raids in Hesperia, leads staff to believe the cafes were not operating the business as described in its business outline submitted to the Town.

Hookah Bars/Lounges -

Within the past couple of weeks, staff has received multiple inquiries if a Hookah Bar/Lounge business is permitted in the Town. There is no listed use on the Town's Commercial Land Use table as to whether a Hookah Bar is permitted; however, Hookah Bar/Lounge has been considered a service retail business. Other cities have experienced law enforcement issues related to Hookah Bar/Lounge use, and have regulated such a use through either a Conditional Use Permit or Special Use Permit process. Some cities do not permit Hookah Bar/Lounge uses in their jurisdiction because of law enforcement issues and public health concerns.

ANALYSIS

Internet-Cafe -

The first Internet-Cafe business that applied for a Business License was in August 2012. Staff received two (2) conflicting written descriptions regarding the Internet-Cafe business model. Staff inquired if the proposed use was for typical Internet web-surfing and emailing along with secondary food service. First, the business was described as an Internet sweepstake business where the clients win prizes and earn points for more Internet time and the games were like online games. Staff was credulous and informed the applicant that it would need further information to clarify what the type of business because it seemed similar to on-line gaming. The following day, the other owner/operator explained that the Internet-Cafe would provide services for online surfing and the sweepstakes' portion of the business was subordinate in

nature to the primary Internet web surfing. The applicant also informed staff there is no cash exchanged in the sweepstakes' portion of the business and only prizes were earned by the customer. Before approving on permit, staff asked that a letter be submitted, from the applicant confirming that the Internet-Cafe business was for web surfing and that no gaming was involved in the business.

In January 2013, staff received a Law Enforcement Advisory letter from the Bureau of Gambling Control regarding the increasing frequency of so-called Internet-Cafes that sell Internet time or phone cards in conjunction with a "promotional sweepstake," which are operating throughout California. The sweepstake aspect of the Internet-Cafe permits customers to play gambling-themed games on computers to win cash prizes. According to the Bureau of Gambling Control (Bureau), Internet-Cafes, that offer these types of sweepstakes, are considered to be illegal gambling operations.

These sweepstakes operate where the customer will purchase Internet time or phone time using a magnetic striped card through a card reader at a computer terminal or station to play gambling-themed games. Customers receive sweepstakes "entries" or credit. The customers select one of the several gambling-themed games and make bets with the credits. Cash prizes range from \$1.00 to as much as \$4,000 paid out daily.

According to the Bureau, computers that offer the sweepstakes generally described above are illegal "slot machine[s] or device[s]" prohibited by Penal Code section 330b, subdivision (d), and other similar provision in the Penal Code. Section 335 a of the Penal Codes states, "Any and all money seized in or in connection with such a machine or device shall, immediately after such a machine or device has been destroyed, be paid into the treasury of the city or county."

Because of the recent law enforcement action, staff and the Town Attorney, determined that modifications addressing these businesses should be added to the Development Code which would define an Internet-Cafe as a legal web-surfing computer business.

Hookah Bars/Lounges -

As stated previously, within recently staff has received multiple inquiries if a Hookah Bar/Lounge business is permitted in the Town. Other cities in California have experienced law enforcement issues related to Hookah Bar/Lounge. It is an ideal time for the Town to be proactive and regulate Hookah Bar/Lounge use, since the Town may soon be reviewing such a request.

California Labor Code Section 6404.5, state law prohibits smoking in nearly all enclosed workplaces. Smoking is prohibited in a Hookah Bar/Lounge, unless the establishment comes within one of the Labor Code's established exemptions such as:

1. An owner-operated business (and thus has absolutely no employees); or
2. A small business with five (5) or fewer employees.

Under the second exemption, in order for a hookah establishment to operate as a small business, the establishment must have five (5) or fewer employees and meet all the following four (4) conditions under Labor Code Section 6404.5(d)(14):

1. The smoking area must not be accessible to minors;
2. All employees who enter the smoking area must consent to the patron's smoking;

3. Air from the smoking area must be exhausted directly to the outside by an exhaust fan;
and
4. The employer must comply with all applicable State and Federal ventilation standards.

Additionally, a Hookah establishment may not arbitrarily exclude children as a way of meeting the first condition. Typically, a Hookah Bar/Lounge is part of a restaurant or snack bar. Bars, restaurants, and other establishments cannot prohibit a minor from entering those places, because under the State's Civil Rights Act (Civil Code Section 51), minors have a statutory right to enter a business, unless it can legally be designated as an "Adult Only" establishment. (79 Ops. Cal. Atty. Gen. 8 (1996). Consequently, if children can legally access a Hookah Bar/Lounge or restaurant to purchase food or a non-alcoholic beverage, then the business will not qualify for the small business exception to the Labor Code. The Town cannot adopt an ordinance that otherwise contradicts State law by authorizing or exempting smoking in prohibited places or establishments.

Enforcement of State tobacco laws falls to the local jurisdiction. Police/Sheriff Officers already have authority to enforce State law. A business can only allow indoor smoking if no food is prepared and consumed in the same space. That means Hookah Bar/Lounges can't sell food or alcoholic beverages. The same law applies to food being brought into the lounge from outside sources.

Listed below are proposed criteria standards for Internet-Cafes and Hookah Bar/Lounges. One of the conditions under Hookah Bar/Lounge is highlighted, which conditions outdoor smoking. The Commission should discuss this issue and provide direction to staff for modified language.

PROPOSED MODIFICATIONS TO THE DEVELOPMENT CODE

9.08 DEFINITIONS

Internet-Cafe

An Internet-Cafe is a bona-fide business establishment that sells Internet time, which allow customers to surf the web and use computers for personal use. An Internet-Cafe can also have ancillary use of food and refreshments for patrons. Internet-Cafes are not permitted to allow promotional sweepstakes or any other gambling-theme games to win cash, magnetic sliding cards (or similar card), credits, monetary gifts or similar winnings (excluding licensed California Lotto vendors).

Hookah Bar/Lounge

A Hookah Bar/Lounge is an establishment where patrons share flavored tobacco (Shisha - a smokable mixture of tobacco, dried fruits and molasses) or a non-tobacco based substitute from a communal Hookah (a water pipe device for smoking). A hookah, is a water pipe of Middle Eastern origin that is used to smoke sweet, often flavored, tobacco. The smoke is filtered through water at the base of the Hookah's pipe. Live Belly Dancing can be affiliated with the experience of a Hookah Bar/Lounge.

9.35.030 PERMITTED USE TABLE

Table 9.35.030-A Permitted Uses

TYPE OF USE	DISTRICT					
	O-P	C-G	C-S	C-R	C-V	M-U
C. Commercial Retail						
19. Internet Cafe	-	SUP	SUP	SUP	SUP	SUP
17. Hookah Bar/Lounge ⁽¹⁴⁾	-	SUP	SUP	SUP	SUP	SUP

Footnote (14) – A Belly Dancer entertainer is permitted to perform on a 100-square-foot dance area

9.36.055 INTERNET CAFE

- A. Purpose. The purpose of this Section is to provide standards for Internet Cafes so that they are compatible with the surrounding neighborhood, all in accordance with the goals, objectives and policies of the Town General Plan.
- B. 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 Internet-Cafe within the incorporated areas of the Town without possessing an unexpired, unsuspended, and unrevoked Internet-Cafe and Hookah Bar/Lounge permit as identified on the “Permitted Uses” Table 9.35.030-A.
- C. Development Standards. Internet Cafes are subject to a Special Use Permit and the following standards:
 - 1. Internet Cafe:
 - a. An approval letter of the Bureau of Gambling Control must be posted on site next the Town of Apple Valley’s business license, and County health permit (if serving food and non alcoholic drinks) must be displayed during hours of operation.
 - b. The Special Use Permit issued for the Internet-Cafe may be revoked by the Planning Commission if the Community Development Director or Police Chief determine receive excessive complaints from the public related to that the business is causing parking, noise, excessive calls for service or other related conditions required for the approved use.
 - c. The business shall not operate sweepstakes, gaming-related computer, or machine device that promotes or allows any electronic or non electronic gaming style entertainment for prizes or cash prizes and credits for additional game play or possession consumption, with the exception of licensed California Lottery vendors
 - d. ~~Internet-Cafe establishment shall not be permitted within seven hundred (700) feet of any parcel boundary containing any school, whether public or privately operated.~~

- e. ~~Internet-Cafe business shall provide lockable storage areas for bicycles and skateboards at the location for which the permit is required. This is required to prevent an accumulation of bicycles and skateboards on public property in such a manner as to interfere with the public use of sidewalks or streets by members of the public.~~
- f. ~~Internet-Cafe establishments where Internet-Cafe devices are operated, shall prohibit persons under the age of sixteen (16) years from using or playing any Internet-Cafe device after the hours of (10:00 P.M.) daily, unless accompanied by a parent or guardian.~~
- g. ~~Internet-café's shall provide sufficient security measures to regulate interior and exterior loitering, parking congestion, disturbing noise and light, loud conversations and criminal activities.~~
- f. The adult supervisor shall be present at all times during the hours of operation, and, if the number of internet stations exceeds forty (40), there shall be two (2) adult supervisors.
- g. Bicycle storage racks shall be provided in accordance with Chapter 9.72, Off-Street Parking and Loading Regulations, of this Code.
- h. The hours of operation of Internet-Cafe shall be limited to between the hours of 8:00 a.m. and 12:00 a.m. Sunday through Thursday and 8:00 a.m. to 2:00 a.m. Friday and Saturday. Hours may be more restrictive adjacent to residential districts.
- i. All Internet-Cafes shall be fully lighted to the extent that all areas of the premises are easily observable.
- j. The premises shall be continuously maintained in a safe, clean and orderly condition with trash receptacles provided.
- k. The sound created by any Internet-Cafe or by its patrons shall not be detectable from outside the arcade or from adjacent uses. and shall comply with the provisions of Chapter 9.70, Performance Standards, of this Code.
- l. "No Loitering" signs shall be posted at the entrance of the business.

9.36.210 HOOKAH BAR/LOUNGE

- A. Purpose. The purpose of this Section is to provide standards for Hookah Bar/Lounge so it is compatible with the surrounding neighborhood, all in accordance with the goals, objectives and policies of the Town General Plan.
- B. 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 Internet-Cafe within the incorporated areas of the Town without possessing an unexpired, unsuspended, and unrevoked Hookah Bar/Lounge permit as identified on the "Permitted Uses" Table 9.35.030-A.

- C. Development Standards. Hookah Bar/Lounge is subject to a Special Use Permit and the following standards:
1. Hookah Bar/Lounge:
 - a. The Special Use Permit issued for the Hookah Bar/Lounge may be revoked by the Planning Commission if the Community Development Director or Police Chief determine receive excessive complaints from the public related to that the business is causing parking, noise, excessive calls for service or other related conditions required for the approved use.
 - b. California Labor Code Section 6404.5, state law prohibits smoking in nearly all enclosed workplaces. Smoking is prohibited in a Hookah Bar/Lounge, unless the establishment comes within one of the Labor Codes established exemptions such as:
 - i. An owner-operated business (and thus has absolutely no employees); or
 - ii. A small business with five (5) or fewer employees.
 - c. Under exemption ii above, in order for a Hookah establishment to operate as a small business, the establishment must have five (5) or fewer employees and meet all the following four (4) conditions under Labor Code Section 6404.5(d)(14):
 - i. The smoking area must not be, ~~not~~ accessible to minors;
 - ii. It is the responsibility of the owner/operator that all employees who enter the smoking area must consent to the patron's smoking;
 - iii. Air from the smoking area must be exhausted directly to the outside by an exhaust fan; and,
 - iv. The employer must comply with all applicable State and Federal ventilation standards.
 - d. Illegal smoking in an enclosed building area and outdoors is not permissible and public disturbance shall be self-regulated and enforced by the Town described as below:
 - i. ~~Marijuana and other illegal substances, herbs, chemicals or other similar paraphernalia shall be "not" smoked, consumed, sold, or injected by the patrons~~ Only Shisha (flavored tobacco) is to be smoked onsite, and no outside substance shall be smoked on onsite;
 - ii. No outdoor smoking is permitted related to the business (outdoor smoking is permissible in non government places; and the Commission can decide if outdoor smoking in a Hookah establishment is allowed in an outdoor patio area);
 - iii. Business must be at least ~~250~~ 1,000 feet from another Hookah Bar/Lounge;

- iv. ~~The owner/operator shall provide sufficient security measures to regulate exterior loitering, parking congestion, disturbing noise and light, loud conversations and internal and external criminal activities; All internet-Cafes shall be fully lighted to the extent that all areas of the premises are easily observable.~~
 - v. The premises shall be continuously maintained in a safe, clean and orderly condition with trash receptacles provided.
 - vi. The sound created by any Hookah Bar/Lounge or by its patrons shall not be detectable from outside the arcade or from adjacent uses. and shall comply with the provisions of Chapter 9.70, Performance Standards, of this Code.
 - vii. With the exception of coffee, tea, juices, soft drinks and water, no food and/or alcoholic beverages are to be prepared and/or served on-site to customers.
- D. Bonding and Insurance. The applicant ~~may~~ shall 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 Internet-Cafe or Hookah Bar/Lounge business. The amount, quality, and type of the insurance shall be determined in compliance with the policy established by the Risk Management Division.

FINDINGS

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

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 proposed Code Amendment shall establish development standards for Internet-Cafe and Hookah Bar/Lounge. The changes proposed to the Development Code, in the development standards for such establishments, are consistent with the General Plan and promote convenient entertainment service for the community.

- 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 Development Code Amendment No. 2013-001 will amend the Town's Development Code by adding regulations for Internet-Cafes and Hookah Bar/Lounge. The proposal provides specific restrictions and criteria for Internet-Cafe and Hookah Bar/Lounge. The Amendment complies with the General Plan goals and policies and is consistent with applicable California and County Code provisions. Thus, the Amendment proposed shall result in a change to the Code that addresses the community's living environment while providing for the health, safety and general welfare of the citizens of the Town of Apple Valley.

Findings for necessity - First Amendment criteria associated to Inter-Cafes:

- A. There is documentation of a link between Internet Cafes and criminal behavior and related detrimental neighborhood effects, including incidents of robbery, illegal drug use and sales, public intoxication, vandalism, property damage, and loitering; and
- B. Internet Cafes also often have local minors as their target market, and thereby may encourage the assembly of significant numbers of minors without supervision by parents or guardians at late hours of the day; and
- C. The Town Code does not currently provide adequate standards and regulations concerning the review, approval and operation of Internet-Cafés. As a result, the Town may be vulnerable to the detrimental impacts that have become frequently associated with the activities of Internet-Cafes; and
- D. Regulation of Internet-Cafes is sought in an effort to promote the protection of the public from the dangers of fire and hazards to health, to ensure the full protection of minors, and for the general preservation of the peace and welfare of the Town community; and
- E. The intent of the regulation of Internet-Cafes is to protect the Town, its neighborhoods, and its inhabitants from the detrimental effect of Internet-Cafes, while allowing for their establishment as consistent with State and federal laws and regulations; and
- F. Regulation of Internet-Cafes constitutes a matter of Town-wide importance and is not directed towards or targeted at any particular parcel of property, any particular business or any proposed occupant or development.

NOTICING

Development Code Amendment No. 2013-003 was advertised as a public hearing in the Apple Valley News newspaper on April 5, 2013, as required under Development Code Section 9.13.030 "Notice of Public Hearings".

RECOMMENDATION

Following receipt of public input and discussion by the Commission, it is recommended that the Commission move to approve Planning Commission Resolution No. 2013-003, forwarding a recommendation that the Town Council modify Title 9 of the Development Code as it pertains to Internet-Cafes and Hookah Bars/Lounges.

Prepared By:

Reviewed By:

Douglas Fenn
Senior Planner

Lori Lamson
Community Development Director

Attachments:
Draft Planning Commission Resolution No. 2013-003
Minutes April 17, 2013

PLANNING COMMISSION RESOLUTION No. 2013-003

A RESOLUTION OF THE PLANNING COMMISSION OF THE TOWN OF APPLE VALLEY, CALIFORNIA, RECOMMENDING THAT THE TOWN COUNCIL AMEND TITLE 9 OF THE "DEVELOPMENT CODE," BY MODIFYING THE CODE AS IT PERTAINS TO INTER-CAFES, AND HOOKAH BARS/LOUNGES AS REGULATED USES SUBJECT TO APPROVAL OF 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 October 24, 2000; 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 various sections of the Code as they relate to the regulations for Internet-Cafes and Hookah Bars/Lounges; and

WHEREAS, on April 5, 2013, Development Code Amendment No. 2013-003 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 April 17 and May 15, 2013, the Planning Commission of the Town of Apple Valley conducted a duly noticed and advertised public hearing on Development Code Amendment No. 2013-003, receiving testimony from the public; and

WHEREAS, Development Code Amendment No. 2013-003 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. 2013-001 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. 2013-001 will have a significant effect on the environment and, therefore, the Amendment is EXEMPT from further environmental review.

Section 3. Amend Chapter 9.08, "Definitions", to add, alphabetically, the definitions of Internet-Cafe and Hookah Bar/Lounge to read as follows:

Internet-Cafe

An Internet-Cafe is a bona-fide business establishment that sells Internet time, which allow customers to surf the web and use computers for personal use. An Internet-Cafe can also have ancillary use of food and refreshments for patrons. Internet-Cafes are not permitted to allow promotional sweepstakes or any other gambling-theme games to win cash, magnetic sliding cards (or similar card), credits, monetary gifts or similar winnings (excluding licensed California Lotto vendors).

Hookah Bar/Lounge

A Hookah Bar/Lounge is an establishment where patrons share flavored tobacco (Shisha - a smokable mixture of tobacco, dried fruits and molasses) or a non-tobacco based substitute from a communal Hookah (a water pipe device for smoking). A hookah, is a water pipe of Middle Eastern origin that is used to smoke sweet, often flavored, tobacco. The smoke is filtered through water at the base of the Hookah's pipe. Live Belly Dancing can be affiliated with the experience of a Hookah Bar/Lounge.

Section 4. Add paragraphs 17 and 19 and sequentially renumber the existing paragraphs and add footnote (14) in the Permitted Use Table of Subsection "C" of Table 9.35.030-A "Permitted Uses" within Section 9.35.030 "Commercial Districts" of the Town of Apple Valley Development Code to read as follows:

Table 9.35.030-A Permitted Uses

TYPE OF USE	DISTRICT					
	O-P	C-G	C-S	C-R	C-V	M-U
C. Commercial Retail						
19. Internet Café	-	SUP	SUP	SUP	SUP	SUP
17. Hookah Bar/Lounge ⁽¹⁴⁾	-	SUP	SUP	SUP	SUP	SUP

Footnote (14) – A Belly Dancer entertainer is permitted to perform on a 100-square-foot dance area

Section 5. Add Section 9.36.055 "Internet-Café" to Chapter 9.36, to Title 9 "Development Code" of the Town of Apple Valley Development Code to read as follows:

9.36.055 INTERNET-CAFE

- A. Purpose. The purpose of this Section is to provide standards for Internet Cafe's so it is compatible with the surrounding neighborhood, all in accordance with the goals, objectives and policies of the Town General Plan.
- B. 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 Internet-Cafe within the incorporated areas of the Town without possessing an unexpired, unsuspended, and unrevoked Internet-Cafe permit as identified on the "Permitted Uses" Table 9.35.030-A.
- C. Development Standards. Internet Cafe's is subject to a Special Use Permit and the following standards:
 - 1. Internet Cafe:
 - a. An approval letter of the Bureau of Gambling Control must be posted on site next the Town of Apple Valley's business license, and County health permit (if serving food and non alcoholic drinks) must be displayed during hours of operation.
 - b. The Special Use Permit issued for the Internet-Cafe may be revoked by the Planning Commission if the Community Development Director or Police Chief receive excessive complaints from the public related to parking, noise, or other related conditions required for the approved use.
 - c. The business shall not operate sweepstakes, gaming-related computer, or machine device that promotes or allows any electronic or non electronic gaming style entertainment for prizes or cash prizes and credits for additional game play or possession consumption, with the exception of licensed California Lottery vendors
 - d. The adult supervisor shall be present at all times during the hours of operation, and, if the number of internet stations exceeds forty (40), there shall be two (2) adult supervisors.
 - e. Bicycle storage racks shall be provided in accordance with Chapter 9.72, Off-Street Parking and Loading Regulations, of this Code.
 - f. The hours of operation of Internet-Cafe shall be limited to between the hours of 8:00 a.m. and 12:00 a.m. Sunday through Thursday and 8:00 a.m. to 2:00 a.m. Friday and Saturday. Hours may be more restrictive adjacent to residential districts.
 - g. All Internet-Cafes shall be fully lighted to the extent that all areas of the premises are easily observable.
 - h. The premises shall be continuously maintained in a safe, clean and orderly condition with trash receptacles provided.
 - i. The sound created by any Internet-Cafe or by its patrons shall not be detectable from outside the arcade or from adjacent uses. and shall comply with the provisions of Chapter 9.70, Performance Standards, of this Code.

- j. "No Loitering" signs shall be posted at the entrance of the business.

Section 6. Add Section 9.36.210 "Hookah Bar/Lounge" to Chapter 9.36, to Title 9 "Development Code" of the Town of Apple Valley Development Code to read as follows:

9.36.210 HOOKAH BAR/LOUNGE

- A. Purpose. The purpose of this Section is to provide standards for Hookah Bar/Lounge so it is compatible with the surrounding neighborhood, all in accordance with the goals, objectives and policies of the Town General Plan.
- B. 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 Internet-Cafe within the incorporated areas of the Town without possessing an unexpired, unsuspended, and unrevoked Hookah Bar/Lounge permit as identified on the "Permitted Uses" Table 9.35.030-A.
- C. Development Standards. Hookah Bar/Lounge is subject to a Special Use Permit and the following standards:
 - 1. Hookah Bar/Lounge:
 - a. The Special Use Permit issued for the Hookah Bar/Lounge may be revoked by the Planning Commission if the Community Development Director or Police Chief receive excessive complaints from the public related to parking, noise, or other related conditions required for the approved use.
 - b. California Labor Code Section 6404.5, state law prohibits smoking in nearly all enclosed workplaces. Smoking is prohibited in a Hookah Bar/Lounge, unless the establishment comes within one of the Labor Codes established exemptions such as:
 - i. An owner-operated business (and thus has absolutely no employees); or
 - ii. A small business with five (5) or fewer employees.
 - c. Under exemption ii above, in order for a Hookah establishment to operate as a small business, the establishment must have five (5) or fewer employees and meet all the following four (4) conditions under Labor Code Section 6404.5(d)(14):
 - i. The smoking area must not be, accessible to minors;
 - ii. It is the responsibility of the owner/operator that all employees who enter the smoking area must consent to the patron's smoking;
 - iii. Air from the smoking area must be exhausted directly to the outside by an exhaust fan; and,

- iv. The employer must comply with all applicable State and Federal ventilation standards.
- d. Illegal smoking in an enclosed building area and outdoors is not permissible and public disturbance shall be self-regulated and enforced by the Town described as below:
 - i. Only Shisha (flavored tobacco) is to be smoked onsite, and no outside substance shall be smoked on onsite;
 - ii. No outdoor smoking is permitted related to the business (outdoor smoking is permissible in non government places; and the Commission can decide if outdoor smoking in a Hookah establishment is allowed in an outdoor patio area);
 - iii. Business must be at least 1,000 feet from another Hookah Bar/Lounge;
 - iv. All internet-Cafes shall be fully lighted to the extent that all areas of the premises are easily observable.
 - v. The premises shall be continuously maintained in a safe, clean and orderly condition with trash receptacles provided.
 - vi. The sound created by any Hookah Bar/Lounge or by its patrons shall not be detectable from outside the arcade or from adjacent uses. and shall comply with the provisions of Chapter 9.70, Performance Standards, of this Code.
 - vii. With the exception of coffee, tea, juices, soft drinks and water, no food and/or alcoholic beverages are to be prepared and/or served on-site to customers.
- D. Bonding and Insurance. The applicant shall 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 Internet-Cafe or Hookah Bar/Lounge business. The amount, quality, and type of the insurance shall be determined in compliance with the policy established by the Risk Management Division.

Approved and adopted by the Planning Commission of the Town of Apple Valley this 15th day of May, 2013

Chairman

ATTEST:

I, Debra Thomas, Secretary to the Planning Commission of the Town of Apple Valley, California, do hereby certify that the foregoing Planning Commission Resolution No. 2013-003 was duly and regularly adopted by the Planning Commission at a regular meeting thereof, held

*Development Code Amendment No. 2013-001
May 15, 2013 (Continued from April 17, 2013)*

on the 15th day of May, 2013, 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
Wednesday, April 17, 2013**

CALL TO ORDER

At 6:03 p.m., the Regular Meeting of the Planning Commission of the Town of Apple Valley for April 17, 2013, was called to order by Commissioner Shoup.

ROLL CALL

Planning Commission

Roll call was taken with the following members present: Commissioner Bruce Kallen, Commissioner Doug Qualls and Commissioner Mark Shoup. Absent: Commissioner B.R. "Bob" Tinsley and Chairman Jason Lamoreaux.

STAFF PRESENT

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

- 3. Development Code Amendment No. 2013-03.** A request to consider an Amendment to Title 9 "Development Code" of the Town of Apple Valley Municipal Code by adding Chapter 9.80 of the Development Code as it relates to Internet Cafes/Hookah Bars within the Town of Apple Valley.

Applicant: Town of Apple Valley
Location: Town-wide

Commissioner Shoup opened the public hearing at 6:17 p.m.

Mr. Douglas Fenn, Senior Planner, presented the staff report as filed by the Planning Division.

Ms. Haviva Shane, Town Attorney, had several concerns, corrections and suggestions, as it related to the language contained within the proposed Development Code Amendment Resolution, and described those to staff and Planning Commission members.

A lengthy discussion ensued with Planning Commission members making numerous changes and suggestions to the definitions and criteria. It was agreed that more research needed to be performed by the Town's attorneys and staff to address the Commissioner's.

Ms. Shane was going to make some inquiries and email staff her findings with respect to the Development Code Amendment.

PUBLIC COMMENTS

Ms. Carolyn Walton, Apple Valley, CA, believed that Hookah Bars are just a prelude to smoking marijuana legally. She expressed concern and her belief that once a Hookah Bar begins conducting business in the Town of Apple Valley, it will open its doors next to a medical marijuana dispensary.

Commissioner Shoup closed the public hearing at 7:44 p.m.

MOTION:

Motion by Commissioner Qualls, seconded by Commissioner Kallen, that the Planning Commission move to:

1. Continue Development Code Amendment No. 2013-03 to the Planning Commission meeting scheduled for May15, 2013.

ROLL CALL VOTE:

Ayes: Commissioner Kallen
Commissioner Qualls
Commissioner Shoup

Noes: None

Abstain: None

Absent: Commissioner Tinsley
Chairman Lamoreaux

The motion carried by a 3-0-0-2 vote