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TOWN OF APPLE VALLEY PLANNING COMMISSION

Staff Report

AGENDA DATE:	July 17, 2013
CASE NUMBER:	Development Code Amendment No. 2013-004
APPLICANT:	Town of Apple Valley
PROPOSAL:	Amend Development Code Section 9.29.160 for compliance with federal and state fair housing laws
LOCATION:	Town-wide
EXISTING GENERAL PLAN DESIGNATIONS:	All Residential Land Use Designations
EXISTING ZONING:	All Residential Zoning Designations
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:	Parish Knox, Deputy Town Attorney
RECOMMENDATION:	Approve a Planning Commission Resolution No.2013-006 recommending the Town Council amend Development Code Section 9.29.160 for compliance with federal and state fair housing laws

SUMMARY:

The federal Fair Housing Amendments Act of 1988 and the California Fair Employment and Housing Act (“Acts”) prohibit discrimination in housing against individuals with disabilities and require that cities take affirmative action to eliminate regulations, policies, practices, and procedures that deny housing opportunities to individuals with disabilities. (42 U.S.C. § 3604; California Gov. Code §§ 12927 and 12955.) The Acts require that cities provide individuals with disabilities, their representatives, or developers of housing for people with disabilities flexibility in the application of land use and zoning regulations, policies, practices, and procedures. Additionally, in 2001, the California Attorney General recommended that cities adopt procedures for handling requests for reasonable accommodation made pursuant to these fair housing laws.

This Resolution seeks to bring Development Code § 9.29.160 into compliance with state and federal fair housing laws by making it explicitly clear that any persons with disabilities are eligible to apply for a reasonable accommodation under Development Code § 9.29.190.

DISCUSSION:

Over the years, the Town adopted a series of ordinances targeted at residential facilities and parolee group homes. Under the Town’s prior Development Code § 9.29.160, the Town had defined “group homes” as any residential structure or unit, whether operated by an individual for profit or by a non-profit entity, which is not licensed by the State of California. As a result, this definition of group homes by default included all persons with disabilities.

This Resolution revises this definition of group home to make it clear that any individuals with disabilities are specifically entitled to seek a reasonable accommodation from any of the requirements and obligations contained in Development Code § 9.29.160.

A request for reasonable accommodation may be made by any person with a disability, a representative of a person with a disability, or a developer or provider of housing for one or more persons with disability, when the application of a particular land use or zoning regulation, policy, practice, or procedure acts a barrier to fair housing opportunities. The reasonable accommodation process is set forth in Development Code § 9.29.190. This Resolution also makes one additional minor clean up change to Development Code § 9.29.160 D (2).

ENVIRONMENTAL:

The Town is the lead agency concerning the Resolution pursuant to the California Environmental Quality Act (codified as Public Resources Code Sections 21000 *et seq.*) (“CEQA”) and the State CEQA Guidelines. Town staff has determined that the Resolution is exempt from CEQA, pursuant to CEQA Guidelines Section 15061(b)(3), 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 Resolution, may have a significant effect on the environment, the activity is not subject to CEQA.

Prepared By:

Reviewed By:

Parish Knox
Deputy Town Attorney

Lori Lamson
Community Development Director

Attachment:

Planning Commission Resolution No. 2013-006

RESOLUTION NO. 2013-006

**RESOLUTION OF THE PLANNING
COMMISSION RECOMMENDING THE TOWN
COUNCIL AMEND DEVELOPMENT CODE
SECTION 9.29.160 FOR COMPLIANCE WITH
FEDERAL AND STATE FAIR HOUSING LAWS**

WHEREAS, the federal Fair Housing Amendments Act of 1988 and the California Fair Employment and Housing Act (“Acts”) prohibit discrimination in housing against individuals with disabilities and require that cities take affirmative action to eliminate regulations, policies, practices, and procedures that deny housing opportunities to individuals with disabilities; and

WHEREAS, the Acts require that cities provide individuals with disabilities, their representatives, or developers of housing for people with disabilities flexibility in the application of land use and zoning regulations, policies, practices, and procedures; and

WHEREAS, the Attorney General of the State of California has recommended that cities adopt reasonable accommodation ordinances to provide flexibility in the application of zoning and land use regulations, policies, practices, and procedures; and

WHEREAS, the proposed ordinance is exempt from the California Environmental Quality Act (CEQA) under California Code of Regulations, title 14, section 15061(b)(3) because it does not have the potential for causing a significant effect on the environment; and

WHEREAS, the Town Council has previously adopted a reasonable accommodation ordinance as set forth in Development Code Section 9.29.190.

NOW, THEREFORE, the Planning Commission of the Town of Apple Valley hereby recommends as follows:

SECTION 1. The definition of “group home” in Development Code § 9.29.160 B. of the Apple Valley Development Code is hereby amended to read as follows:

Group Homes – means any residential structure or unit, whether operated by an individual for profit or by a nonprofit entity, which is not licensed by the State of California. This definition shall not include any person with a disability, a representative of a disability, or a developer or provider of housing for one or more people with a disability that is eligible to receive and has requested a reasonable accommodation as set forth in Development Code § 9.29.190.

SECTION 2. Section 9.29.160 D. of the Apple Valley Development Code is hereby amended to read as follows:

A Conditional Use Permit shall be required for the new establishment of any type of land use permitted below:

- (1) Group homes licensed by the State of California that were established without local permit approval prior to the effective date of this Ordinance (May 8, 2007).
- (2) Group homes licensed by the State of California that were established without local permit approval upon or after the effective date of this Ordinance (May 8, 2007).
- (3) Any change in the operating conditions or facility type of existing Group Homes lawfully established prior to, or after, the effective date of this Ordinance.
- (4) Sale, transfer, or new lease agreement of a Group Home to another individual, entity, and the like.
- (5) An existing Group Home discontinued for a consecutive period of thirty (30) days is deemed abandoned and shall be required to obtain a new Conditional Use Permit.
- (6) The new construction or remodel of a Group Home to expand the square footage of a residential structure or unit.
- (7) The Conditional Use Permit granted and permitted by this section for a Group Home is non-transferable and terminates if the structure is devoted to any use other than as a residential facility for the elderly or if the structures fails to comply with the applicable health, safety, zoning and building codes.

SECTION 3. CEQA. The Town Council finds, under Title 14 of the California Code of Regulations, Section 15061(b)(3), that this Resolution is exempt from the requirements of the California Environmental Quality Act (“CEQA”) in that the activity is covered by the general rule that CEQA applies only to projects which 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 not subject to CEQA.

SECTION 4. Custodian of Records. The documents and materials that constitute the record of proceedings on which these findings are based are located at the Town Clerk’s office located at 14955 Dale Evans Parkway, Apple Valley, CA 92307. The custodian for these records is the Town Clerk.

SECTION 5. Severability. If any provision of this Resolution or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of this Resolution which can be given effect without the invalid provision or application, and to this end the provisions of this Resolution are severable. The Town Council hereby declares that it would have adopted this Resolution irrespective of the invalidity of any particular portion thereof.

SECTION 6. Effective Date. This Resolution shall become effective immediately upon its adoption.

MOVED, PASSED, AND ADOPTED at a regular meeting of the Town Planning Commission on the 17th day of July, 2013, by the following vote:

AYES:

NAYS:

ABSENT:

ABSTAIN:

Town of Apple Valley:

Jason Lamoreaux, Chairman

ATTEST:

Debra Thomas, Planning Commission Secretary