



TOWN OF APPLE VALLEY TOWN COUNCIL STAFF REPORT

To: Honorable Mayor and Town Council **Date:** August 13, 2013

From: Lori Lamson **Item No:** 13
Community Development Director
Community Development Department

Subject: A REQUEST TO CONSIDER AN AMENDMENT TO THE DEVELOPMENT CODE AS IT PERTAINS TO INTERNET-CAFE'S, AND HOOKAH BAR AND LOUNGES AS REGULATED USES SUBJECT TO APPROVAL OF A SPECIAL USE PERMIT

Applicant: Town of Apple Valley

Location: Town-wide for the Municipal and Development Code Amendment

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

RECOMMENDED ACTION:

Move to open the public hearing and take testimony;

Close the public hearing; then

1. **Determine** that, based upon the State Guidelines to Implement the California Environmental Quality Act (CEQA), an Exemption Declaration has been prepared in compliance with the California Environmental Quality Act (CEQA) and State Guidelines for the Implementation of CEQA for a request to consider an amendment to Title 9 of the Development Code pertaining to Internet-Cafes, and Hookah Bars/Lounges as regulated uses, subject to approval of a Special Use Permit within the Town of Apple Valley; and
2. **Determine** that 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.
3. **Find** the facts presented within the staff report, including the attached Planning Commission staff report for May 15, 2013, support the required Findings for approval to amend Title 9 of the Development Code pertaining to Internet-Cafes, and Hookah Bars/Lounges as regulated uses, subject to approval of a Special Use Permit and adopt the required findings;
4. **Approve** Town Council Ordinance No. 450, amendment to Title 9 of the Development Code as it pertains to Internet-Cafes, and Hookah Bars/Lounges as regulated uses subject to approval of a Special Use Permit;

5. **Move** to waive the reading of Ordinance No. 450, in its entirety and read by title only.
7. **Introduce** Ordinance No. 450, approving Development Code Amendment No. 2013-01; and
8. **Direct** staff to file a Notice of Determination and Exemption with the San Bernardino County Clerk of the Board of Supervisors.

Summary Statement:

The Planning Commission, held public hearing workshops on April 17th, and May 15, 2013, and conducted a thorough discussion on an amendment to the Development Code to allow Internet-Cafes, and Hookah Bars/Lounges as Special Uses permitted in the Town. The Commission recommended some criteria changes to their resolution, and the Resolution was brought back for final review and approval on May 15, 2013.

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 described the business operations in writing, and indicates 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 -

A couple of months ago, 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 of 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 earns 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 is 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 business. 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 the 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, staff 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. The Commission's proposed ordinance to the Town Council is proactive, and regulates Hookah Bar/Lounge uses, 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 Bar/Lounge 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.

Typically, some Hookah Bar/Lounges are 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 under 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.

The following describes the amendment per Resolution No. 2013-003 to Title 9 of the Development Code by the Commission, pertaining to Internet-Cafes and Hookah Bar/Lounges:

PROPOSED NEW DEFINITIONS.

9.08 DEFINITIONS

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.

Internet-Cafe

An Internet-Cafe is a bona-fide business establishment that sells Internet time, which allows 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-themed games for cash, magnetic sliding cards (or similar card), credits, monetary gifts or similar winnings or prizes (excluding California lottery sales by licensed California Lottery vendors).

Table 9.35.030-A Permitted Uses

TYPE OF USE	DISTRICT					
	O-P	C-G	C-S	C-R	C-V	M-U
<i>C. Commercial Retail</i>						
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

9.36.055 INTERNET-CAFE

- A. Purpose. The purpose of this Section is to provide standards for Internet Cafes so that such a use is operated in a manner that is compatible with the surrounding neighborhood. The conditions set forth in the findings made by the Town in adopting these regulations, are 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. The Planning Commission may also revoke the Special Use Permit if the use is not operated in accordance with the standards and requirements set forth in this Section 9.36.055.
 - c. The business shall not operate sweepstakes, gaming-related computer, or machine device that promote or allow 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-Cafes 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. The premises shall be maintained and operated, at all times, in accordance with all applicable local, state and federal laws, rules and regulations, and in a manner so as not to constitute a nuisance within the Town.
 - 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.

9.36.210 HOOKAH BAR/LOUNGE

- A. Purpose. The purpose of this Section is to provide standards for Hookah Bar/Lounge use so it is operated in a manner that 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. The Planning Commission may also revoke the Special Use Permit if the use is not operated in accordance with the standards and requirements set forth in this Section 9.36.210.
 - 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 and future exemptions as required by the state:
 - 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) or other legal tobacco products purchased on site may be smoked on the premises. No outside substance may be smoked on onsite;
 - ii. Outdoor smoking is permitted, in conformance with state law, in a designated and enclosed patio area. Smoking is prohibited in non-designated areas;
 - iii. Business must be at least 1,000 feet from another Hookah Bar/Lounge;
 - iv. All Hookah Bars\Lounges 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. The premises shall be maintained and operated, at all times, in accordance with all applicable local, state and federal laws, rules and regulations, and in a manner so as not to constitute a nuisance within the Town;
 - 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; and
 - vii. Except as otherwise limited by state law, coffee, tea, juices, soft drinks and water may be served on the premises. 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.

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.

RECOMMENDATION:

It is recommended that the Town Council amend Title 9 of the Development Code as it pertains to Internet-Cafes and Hookah Bars/Lounges of the Development Code by adopting Ordinance No. 450.

ATTACHMENTS:

1. Draft Ordinance No. 450
2. Planning Commission Resolution No. 2013-003
3. Minute Excerpt of Planning Commission Workshop Meetings of April 7th and May 15, 2013.

ORDINANCE NO. 450

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF APPLE VALLEY, CALIFORNIA, AMEND TITLE 9 OF THE "DEVELOPMENT CODE," BY AMENDING THE CODE AS IT PERTAINS TO INTER-CAFES, AND HOOKAH BARS/LOUNGES AS REGULATED USES SUBJECT TO APPROVAL OF A SPECIAL USE PERMIT 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 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 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

(iv) On 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

(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 August 13, 2013 the Town Council of the Town of Apple Valley conducted a duly noticed and advertised the public hearing on Development Code Amendment No. 2013-001, receiving testimony from the public and adopted Planning Commission Resolution No. 2013-003 recommending adoption of this Ordinance; and

(vii) Development Code Amendment No. 2013-001 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. 2013-001 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) 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; and

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

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.

Internet-Cafe

An Internet-Cafe is a bona-fide business establishment that sells Internet time, which allows 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-themed games for cash, magnetic sliding cards (or similar card), credits, monetary gifts or similar winnings or prizes (excluding California lottery sales by licensed California Lottery vendors).

(v) 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

(vi) 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 Cafes so that such use is operated in a manner that is compatible with the surrounding neighborhood, and to address the conditions set forth in the findings made by the Town in adopting these regulations, 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. The Planning Commission may also revoke the Special Use Permit if the use is not operated in accordance with the standards and requirements set forth in this Section 9.36.055.

- c. The business shall not operate sweepstakes, gaming-related computer, or machine device that promote or allow 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-Cafes 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. The premises shall be maintained and operated, at all times, in accordance with all applicable local, state and federal laws, rules and regulations, and in a manner so as not to constitute a nuisance within the Town.
- 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.

(vii) 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 use so it is operated in a manner that 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. The Planning Commission may also revoke the Special Use Permit if the use is not operated in accordance with the standards and requirements set forth in this Section 9.36.210.
 - 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 and future exemptions as required by the state:
 - 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:
 - iv. Only Shisha (flavored tobacco) or other legal tobacco products purchased on site may be smoked on the premises. No outside substance may be smoked on onsite;

- v. Outdoor smoking is permitted, in conformance with state law, in a designated and enclosed patio area. Smoking is prohibited in non-designated areas;
 - vi. Business must be at least 1,000 feet from another Hookah Bar/Lounge;
 - iv. All Hookah Bars\Lounges 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. The premises shall be maintained and operated, at all times, in accordance with all applicable local, state and federal laws, rules and regulations, and in a manner so as not to constitute a nuisance within the Town;
 - 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; and
 - vii. Except as otherwise limited by state law, coffee, tea, juices, soft drinks and water may be served on the premises. 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.

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 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 August, 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