



# TOWN OF APPLE VALLEY TOWN COUNCIL STAFF REPORT

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**To:** Honorable Mayor and Town Council

**Date:** August 27, 2013

**From:** Lori Lamson  
Community Development Director  
Community Development Department

**Item No:** 3

**Subject:** ADOPT ORDINANCE NO. 450 - AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF APPLE VALLEY AMENDING TITLE 9 OF THE "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

**Applicant:** Town of Apple Valley

**Location:** Town-wide

**T.M. Approval:** \_\_\_\_\_

**Budgeted Item:**  Yes  No  N/A

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## RECOMMENDED ACTION:

That the Town Council adopt Ordinance No. 450.

## Summary Statement:

At its August 13, 2013 meeting, the Town Council reviewed and introduced Ordinance No. 450, amending Title 9 of the "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. Town Council directed staff that Ordinance No. 450 Section 9.36.055 B. include a final sentence to specify that a Special Use Permit for Internet-Cafes shall not be subject to certain health, safety and welfare findings in Section 9.16.090 of the Municipal Code. The sentence is underlined in the attached Ordinance No. 450.

## FISCAL IMPACT:

Not Applicable

## ATTACHMENT:

Ordinance No. 450

**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
<b>C. Commercial Retail</b>						
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. A Special Use Permit for an Inter-Cafe shall not be subject to the following findings set forth in Section 9.16.090 of the Municipal Code: Findings 92), (5), (9) or (10).
- 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:
    - 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.

**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 27th day of August, 2013.

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Curt Emick, Mayor

**ATTEST:**

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La Vonda M-Pearson, Town Clerk

**APPROVED AS TO FORM:**

**APPROVED AS TO CONTENT:**

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John Brown, Town Attorney

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Frank Robinson, Town Manager