



TOWN OF APPLE VALLEY

TOWN COUNCIL STAFF REPORT

To: Honorable Mayor and Town Council **Date:** June 24, 2014

From: John Brown, Town Attorney **Item No:** 7
Best, Best & Krieger

Subject: ADOPT ORDINANCE NO. 463 – AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF APPLE VALLEY REPEALING CHAPTER 11.54 OF THE APPLE VALLEY MUNICIPAL CODE REGARDING LOITERING BY REGISTERED SEX OFFENDERS

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

RECOMMENDED ACTION

Adopt Ordinance No. 463.

Summary

At the Town Council Meeting of June 5, 2014, the Town Council reviewed and introduced Ordinance No. 463, an ordinance repealing Chapter 11.54 of the Apple Valley Municipal Code regarding loitering by registered Sex Offenders. Adoption of this ordinance will bring the Town's code into compliance with controlling authority and reduce the risk of civil lawsuits. As part of the requirements to adopt a new ordinance, Ordinance 463 has been scheduled for adoption at the June 24, 2014 meeting.

Based on the foregoing staff recommends adoption of Ordinance No. 463.

ATTACHMENT

Ordinance No. 463

ORDINANCE NO. 463

**ORDINANCE OF THE TOWN COUNCIL REPEALING CHAPTER
11.54 OF THE APPLE VALLEY MUNICIPAL CODE
REGARDING LOITERING BY REGISTERED SEX OFFENDERS**

WHEREAS, the Town Council of the Town of Apple Valley ("Town Council") has adopted Ordinance No. 328 in 2006 adding Chapter 11.54 to the Apple Valley Municipal Code pertaining to registered sex offender loitering within the Town of Apple Valley ("Town"); and

WHEREAS, Chapter 11.54 of the Town's Municipal Code prohibits registered sex offenders from loitering on or within five hundred feet of a public or private school for children, a center or facility that provides day care or children's services, a video arcade, a playground, park, amusement center, library or museum; and

WHEREAS, this January, a California Court of Appeal held that the California Legislature had established a comprehensive scheme for regulating the daily lives of sex offenders thereby prohibiting local legislation on the subject unless it is expressly permitted by a statute. The decision, *People v. Nguyen*, undermines the ability of municipalities to restrict where a sex offender may go and what a sex offender may do; and

WHEREAS, this April, the California Supreme Court declined to review the ruling in *Nguyen*, leaving the decision intact; and

WHEREAS, as a result, provisions of the Town's Municipal Code purporting to regulate where a registered sex offender may go are in violation of current law; and

WHEREAS, in order to remove the risk of civil suit, the Town now wishes to repeal Chapter 11.54 in its entirety because it may subject the Town to civil suit.

NOW, THEREFORE, the Town Council of the Town of Apple Valley hereby ordains as follows:

SECTION 1. Chapter 11.54 of the Town's Municipal Code is hereby repealed in its entirety.

SECTION 2. The Town Council finds, under Title 14 of the California Code of Regulations, Section 15061(b)(3), that this Ordinance 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 3. 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 4. Effective Date. This ordinance shall become effective thirty (30) days after the date of its adoption.

SECTION 5. 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 24th day of June.

Art Bishop, Mayor

ATTEST:

La Vonda M-Pearson, Town Clerk

APPROVED AS TO FORM:

APPROVED AS TO CONTENT:

John E. Brown, Town Attorney

Frank Robinson, Town Manager