



# TOWN OF APPLE VALLEY

## TOWN COUNCIL STAFF REPORT

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To: Honorable Mayor and Town Council Date: September 22, 2015

From: Lori Lamson Item No: 15  
Assistant Town Manager

Subject: AN AMENDMENT TO TITLE 9 "DEVELOPMENT CODE" OF THE TOWN OF APPLE VALLEY MUNICIPAL CODE, AS IT PERTAINS TO REGULATIONS FOR FENCING VACANT LAND AND VACANT DEVELOPED PARCELS.

T.M. Approval: \_\_\_\_\_ Budgeted Item:  Yes  No  N/A

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### RECOMMENDED ACTION:

**Move to open the public hearing and take testimony.**

**Close the public hearing. Then:**

1. **Determine** that, pursuant to Section 15061(b)(3) of the State Guidelines to Implement the California Environmental Quality Act (CEQA), the project is exempt from environmental review because 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.
2. **Find** the facts presented within the staff report support the required Findings for approval of an amendment to the Development Code, and adopt the Findings.
3. **Find** that the proposed Town Council Ordinance is consistent with the Goals and Objectives of the adopted Town of Apple Valley General Plan and that it is necessary to preserve the health, safety and general welfare of the citizens of Apple Valley.
4. **Move** to waive the reading of Ordinance No. 476 in its entirety and read by title only.
5. **Introduce** Ordinance No. 476, amending Title 9 of the "Development Code" as it pertains to regulations for fencing vacant land and vacant developed parcels.
6. **Direct** staff to file a Notice of Exemption.

## **BACKGROUND:**

On May 26, 2015, the Town Council initiated a Development Code Amendment to address the regulations for fencing vacant lots. The current regulations of the Development Code prohibit fencing of an undeveloped lot. In reviewing regulations for fencing in neighboring communities, it was found that Hesperia does not regulate fencing on vacant lots. However, Victorville does not allow chain link fencing on commercial lots, but does allow wrought iron. Victorville does not allow fencing on vacant residential property, but has a provision in the Code that provides an exception. The exception applies to the following...

### ***Section 16-3.24.090...***

(4) On vacant property, a fence is needed to fulfill environmental mitigation or security requirements imposed by the City, State and/or Federal Government;

(5) It can be demonstrated that a continued security problem exists which exceeds those same problems incurred by similar properties in the vicinity. In such cases, the fence height, location and materials shall be subject to the review and approval of the Zoning Administrator;

Victorville and Hesperia allow for the fencing of vacant developed property for the purpose of protecting the structure or securing it from vandals.

The Planning Commission considered this language and expanded the concept of allowing exceptions to the regulations and considered different types of fencing and barricades, to be used for differing situations.

## **DISCUSSION:**

The proposed changes include prohibiting the fencing of vacant property in any zone. There are exceptions to this restriction that are consistent with, and expand upon, Victorville's exemptions. The use of organic materials and the type of fencing allowed is included in the exception pertaining to vacant property. The proposal addresses fencing of vacant developed property in any zone and follows the same criteria as Victorville, allowing for fencing for the purpose of protecting the structure or securing it from vandals. The exceptions also address Single-Family residential vacant lots adjacent to residences controlled by the same ownership and enclosed with the same decorative fencing as what surrounds the adjacent single-family residence.

(1) On vacant property, a fence is needed to fulfill required environmental mitigation or security requirements imposed by the Town, State and/or Federal Government. In such cases, the fence height, location and materials shall be subject to the review and approval of the Community Development Director. The Community Development Director should utilize organic types of barriers (i.e. boulders, logs placed horizontally, incremental placement of wood posts vertically to block vehicular movement), when possible, rather than traditional fencing. If fencing is used it should be wrought iron (or

equivalent) or vinyl/plastic coated chain link. Wind protection material or slats (plastic, metal or redwood) shall not be used, unless used at a construction site.

(2) On vacant or developed property, it can be demonstrated that a continued security problem exists which exceeds those same problems incurred by similar properties in the vicinity.

(3) On vacant property zoned single-family residential adjacent to a developed single-family residence of the same ownership. The fencing must be decorative fencing using wrought iron or similar, masonry wall or a combination of masonry and wrought iron, vinyl or wood fencing.

**FISCAL IMPACT:**

Not Applicable

**Attachments:**

1. Draft Ordinance No. 476
2. Planning Commission Resolution No. 2015-007
3. Minute Excerpt from Planning Commission meeting on 8-19-15

**ORDINANCE NO. 476**

**AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF APPLE VALLEY, CALIFORNIA, ADOPTING DEVELOPMENT CODE AMENDMENT NO. 2015-004 AMENDING TITLE 9 “DEVELOPMENT CODE” OF THE TOWN OF APPLE VALLEY MUNICIPAL CODE, AS IT PERTAINS TO REGULATIONS FOR FENCING VACANT LAND AND VACANT DEVELOPED PARCELS**

**WHEREAS**, Title 9 “Development Code” of the Municipal Code of the Town of Apple Valley was adopted by the Town Council on April 27, 2010; 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 comprehensively amending Sections 9.31.030, 9.31.050, 9.37.070, 9.47.070 and 9.57.060 to include provisions related to fencing of vacant land and vacant developed parcels; and,

**WHEREAS**, on July 1, 2015 and August 19, 2015 the Planning Commission held a duly noticed and advertised public hearing on Development Code Amendment No. 2015-004, receiving testimony from the public, and adopted Planning Commission Resolution No. 2015-007.

**WHEREAS**, on September 11, 2015, Development Code Amendment No. 2015-004 was duly noticed in the Apple Valley News, a newspaper of general circulation within the Town of Apple Valley; and

**WHEREAS**, 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; and

**WHEREAS**, Development Code Amendment No. 2015-004 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. 2015-004 are consistent with the Goals and Policies of the Town of Apple Valley adopted General Plan.

**Section 2.** 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.

**Section 3.** Amend Section 9.31.030 "Single Family Architectural Design Standards" of Chapter 9.31 "Residential Design Standards" of Title 9 "Development Code" of the Municipal Code, by adding subsection E. to read as follows:

***E. Fencing of Vacant Property***

Fencing of vacant residentially zoned property is prohibited. Exceptions to this include the following:

1. On vacant property, a fence is needed to fulfill required environmental mitigation or security requirements imposed by the Town, State and/or Federal Government. In such cases, the fence height, location and materials shall be subject to the review and approval of the Community Development Director. Organic types of barriers (i.e. boulders, logs placed horizontally, incremental placement of wood posts vertically to block vehicular movement), should be used when possible, rather than traditional fencing. If fencing is used it should be wrought iron (or equivalent) or vinyl/plastic coated chain link. Wind protection material or slats (plastic, metal or redwood) shall not be used, unless used at a construction site. All fencing must be maintained or replaced due to dilapidation or unsightliness in accordance with Section 6.30.030 F(15) of the Town's Municipal Code.

2. On vacant or developed property, it can be demonstrated for review and approval by the Director that a continued security problem exists which exceeds those same problems incurred by similar properties in the vicinity.
3. On vacant property zoned single-family residential adjacent to a developed single-family residence of the same ownership. The fencing must be decorative fencing using wrought iron or similar, masonry wall or a combination of masonry and wrought iron, vinyl or wood fencing as reviewed and approved by the Director.

**Section 4.** Amend Section 9.31.050 "Multi-Family Architectural Design Standards" of Chapter 9.31 "Residential Design Standards" of Title 9 "Development Code" of the Municipal Code, by adding subsection N. to read as follows:

***N. Fencing of Vacant Property***

Fencing of vacant residentially zoned property is prohibited. Exceptions to this include the following:

1. On vacant property, a fence is needed to fulfill required environmental mitigation or security requirements imposed by the Town, State and/or Federal Government. In such cases, the fence height, location and materials shall be subject to the review and approval of the Director. Organic types of barriers (i.e. boulders, logs placed horizontally, incremental placement of wood posts vertically to block vehicular movement), should be used when possible, rather than traditional fencing. If fencing is used it should be wrought iron (or equivalent) or vinyl/plastic coated chain link. Wind protection material or slats (plastic, metal or redwood) shall not be used, unless used at a construction site. All fencing must be maintained or replaced due to dilapidation or unsightliness in accordance with Section 6.30.030 F(15) of the Town's Municipal Code.
2. On vacant or developed property, it can be demonstrated for review and approval by the Director that a continued security problem exists which exceeds those same problems incurred by similar properties in the vicinity.

**Section 5.** Amend Section 9.37.070 "Walls and Fences" of Chapter 9.37 "Commercial and Office Districts Design Standards" of Title 9 "Development Code" of the Municipal Code, by adding subsection C. to read as follows:

***C. Fencing of Vacant Property***

Fencing of vacant commercially zoned property is prohibited. Exceptions to this include the following:

1. On vacant property, a fence is needed to fulfill required environmental mitigation or security requirements imposed by the Town, State and/or Federal Government. In such cases, the fence height, location and materials shall be subject to the review and approval of the Director. Organic types of barriers (i.e. boulders, logs placed horizontally, incremental placement of wood posts vertically to block vehicular movement), should be used when possible, rather than traditional fencing. If fencing is used it should be wrought iron (or equivalent) or vinyl/plastic coated chain link. Wind protection material or slats (plastic, metal or redwood) shall not be used, unless used at a construction site. All fencing must be maintained or replaced due to dilapidation or unsightliness in accordance with Section 6.30.030 F(15) of the Town's Municipal Code.
2. On vacant or developed property, it can be demonstrated for review and approval by the Director that a continued security problem exists which exceeds those same problems incurred by similar properties in the vicinity.

**Section 6.** Amend Section 9.47.070 "Walls and Fences" of Chapter 9.47 "Industrial Design Standards" of Title 9 "Development Code" of the Municipal Code, by adding subsection C. to read as follows:

***C. Fencing of Vacant Property***

Fencing of vacant industrially zoned property is prohibited. Exceptions to this include the following:

1. On vacant property, a fence is needed to fulfill required environmental mitigation or security requirements imposed by the Town, State and/or Federal Government. In such cases, the fence height, location and materials shall be subject to the review and approval of the Director. Organic types of barriers (i.e. boulders, logs placed horizontally, incremental placement of wood posts vertically to block vehicular movement), should be used when possible, rather than traditional fencing. If fencing is used it should be wrought iron (or equivalent) or vinyl/plastic coated chain link. Wind protection material or slats (plastic, metal or redwood) shall not be used, unless used at a construction site. All fencing must be maintained or replaced due to dilapidation or unsightliness in accordance with Section 6.30.030 F(15) of the Town's Municipal Code.
2. On vacant or developed property, it can be demonstrated for review and approval by the Director that a continued security problem exists which exceeds those same problems incurred by similar properties in the vicinity.

**Section 7.** Amend subsection B. "Fencing" of Section 9.57.060 "Design Standards" of Chapter 9.57 "Public Facilities" of Title 9 "Development Code" of the Municipal Code, to add the following to the existing subsection:

***B. Fencing***

...Fencing of vacant residentially zoned property is prohibited. Exceptions to this include the following:

1. On vacant property, a fence is needed to fulfill required environmental mitigation or security requirements imposed by the Town, State and/or Federal Government. In such cases, the fence height, location and materials shall be subject to the review and approval of the Director. Organic types of barriers (i.e. boulders, logs placed horizontally, incremental placement of wood posts vertically to block vehicular movement), should be used when possible, rather than traditional fencing. If fencing is used it should be wrought iron (or equivalent) or vinyl/plastic coated chain link. Wind protection material or slats (plastic, metal or redwood) shall not be used, unless used at a construction site. All fencing must be maintained or replaced due to dilapidation or unsightliness in accordance with Section 6.30.030 F(15) of the Town's Municipal Code.
2. On vacant or developed property, it can be demonstrated for review and approval by the Director that a continued security problem exists which exceeds those same problems incurred by similar properties in the vicinity.

**Section 8.** Amend subsection C. "Design Standards" of Section 9.28.120 "Fences, Walls and Hedges" of Chapter 9.28 "Residential Districts" of Title 9 "Development Code" of the Municipal Code, to add the following to the to the end of the existing subsection:

***C. Design Standards*** ... Vacant Single-Family zoned parcels are subject to the fencing regulations in 9.31.030 E.

**Section 9.** 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 10.** Effective Date. This Ordinance shall become effective thirty (30) days after the date of its adoption.

**Section 11.** 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.

Adopted by the Town Council and signed by the Mayor and attested to by the Town Clerk this 27th day of October, 2015.

ATTEST:

\_\_\_\_\_  
Honorable Larry Cusack, Mayor

\_\_\_\_\_  
Ms. La Vonda M. Pearson, Town Clerk

Approved as to form:

Approved as to content:

\_\_\_\_\_  
Mr. John Brown, Town Attorney

\_\_\_\_\_  
Mr. Frank Robinson, Town Manager

**PLANNING COMMISSION RESOLUTION NO. 2015-007**

**A RESOLUTION OF THE PLANNING COMMISSION OF THE TOWN OF APPLE VALLEY, CALIFORNIA, RECOMMENDING THAT THE TOWN COUNCIL ADOPT DEVELOPMENT CODE AMENDMENT NO. 2015-004 AMENDING TITLE 9 “DEVELOPMENT CODE” OF THE TOWN OF APPLE VALLEY MUNICIPAL CODE, AS IT PERTAINS TO REGULATIONS FOR FENCING VACANT LAND AND VACANT DEVELOPED PARCELS**

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**WHEREAS**, specific changes are proposed to Title 9 “Development Code” of the Town of Apple Valley Municipal Code by comprehensively amending Sections 9.31.030, 9.31.050, 9.37.070, 9.47.070 and 9.57.060 to include provisions related to fencing of vacant land and vacant developed parcels; and,

**WHEREAS**, on June 19, 2015, Development Code Amendment No. 2015-004 was duly noticed in the Apple Valley News, a newspaper of general circulation within the Town of Apple Valley; and

**WHEREAS**, 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; and

**WHEREAS**, on July 1 and August 19, 2015 the Planning Commission of the Town of Apple Valley conducted a duly noticed and advertised the public hearing on Development Code Amendment No. 2015-004, receiving testimony from the public; and

**WHEREAS**, Development Code Amendment No. 2015-004 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. 2015-004 are consistent with the Goals and Policies of the Town of Apple Valley adopted General Plan.

**Section 2.** 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.

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2. On vacant or developed property, it can be demonstrated for review and approval by the Director that a continued security problem exists which exceeds those same problems incurred by similar properties in the vicinity.
3. On vacant property zoned single-family residential adjacent to a developed single-family residence of the same ownership. The fencing must be decorative fencing using wrought iron or similar, masonry wall or a combination of masonry and wrought iron, vinyl or wood fencing as reviewed and approved by the Director.

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2. On vacant or developed property, it can be demonstrated for review and approval by the Director that a continued security problem exists which exceeds those same problems incurred by similar properties in the vicinity.

**Section 5.** Amend Section 9.37.070 "Walls and Fences" of Chapter 9.37 "Commercial and Office Districts Design Standards" of Title 9 "Development Code" of the Municipal Code, by adding subsection C. to read as follows:

***C. Fencing of Vacant Property***

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**Section 6.** Amend Section 9.47.070 "Walls and Fences" of Chapter 9.47 "Industrial Design Standards" of Title 9 "Development Code" of the Municipal Code, by adding subsection C. to read as follows:

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2. On vacant or developed property, it can be demonstrated for review and approval by the Director that a continued security problem exists which exceeds those same problems incurred by similar properties in the vicinity.

**Section 7.** Amend subsection B. "Fencing" of Section 9.57.060 "Design Standards" of Chapter 9.57 "Public Facilities" of Title 9 "Development Code" of the Municipal Code, to add the following to the existing subsection:

***B. Fencing***

...Fencing of vacant residentially zoned property is prohibited. Exceptions to this include the following:

1. On vacant property, a fence is needed to fulfill required environmental mitigation or security requirements imposed by the Town, State and/or Federal Government. In such cases, the fence height, location and materials shall be subject to the review and approval of the Director. Organic types of barriers (i.e. boulders, logs placed horizontally, incremental placement of wood posts vertically to block vehicular movement), should be used when possible, rather than traditional fencing. If fencing is used it should be wrought iron (or equivalent) or vinyl/plastic coated chain link. Wind protection material or slats (plastic, metal or redwood) shall not be used, unless used at a construction site. All fencing must be maintained or replaced due to dilapidation or unsightliness in accordance with Section 6.30.030 F(15) of the Town's Municipal Code.
2. On vacant or developed property, it can be demonstrated for review and approval by the Director that a continued security problem exists which exceeds those same problems incurred by similar properties in the vicinity.

**Section 8.** Amend subsection C. "Design Standards" of Section 9.28.120 "Fences, Walls and Hedges" of Chapter 9.28 "Residential Districts" of Title 9 "Development Code" of the Municipal Code, to add the following to the to the end of the existing subsection:

***C. Design Standards*** ... Vacant Single-Family zoned parcels are subject to the fencing regulations in 9.31.030 E.

Approved and Adopted by the Planning Commission of the Town of Apple Valley  
this 19th day of August, 2015.

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Chairman Bruce Kallen

ATTEST:

I, Yvonne Rivera, Secretary to the Planning Commission of the Town of Apple Valley, California, do hereby certify that the foregoing resolution was duly and regularly adopted by the Planning Commission at a regular meeting thereof, held on the 19th day of August, 2015 by the following vote, to-wit:

AYES:

NOES:

ABSENT:

ABSTAIN:

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Ms. Yvonne Rivera, Planning Commission Secretary

**Town of Apple Valley Planning Commission**  
**Minute Excerpt**  
**August 19, 2015**

5. **Development Code Amendment No. 2015-004** (Continued from the July 1, 2015 meeting). An amendment to the Development Code as it pertains to fencing of vacant parcels.  
**Applicant:** Town of Apple Valley  
**Location:** Town-wide

Chairman Kallen opened the public hearing at 7:22 p.m.

Ms. Lori Lamson, Assistant Town Manager, presented the staff report as filed with the Planning Division. Ms. Lamson explained, for the benefit of the Planning Commission, the rationale of the location of the proposed amendment within the Development Code.

Ms. Lamson read into record the following changes to Section 8 of the Development Code as provided by the Town Attorney:

Under "Exceptions" on Page 5-5, the language has been modified in the second sentence to begin as follows:

*"Organic types of barriers (i.e. boulders, logs placed horizontally, incremental placement of wood post vertically to block vehicular movement; and then insert "should be used when possible".*

In addition, Number 2 in the first sentence it should read as follows:

*"On vacant or developed property, it can be demonstrated for review and approval by the Community Development Director that the continued security problem exists, etc."*

Modifications were also made to Number 3 to read as follows:

*"Vinyl or wood fencing as reviewed and approved by the Director."*

Ms. Lamson answered questions by the Planning Commission regarding whether or not the Ordinance would prohibit an owner from putting a chained link fence around their lots.

Discussion ensued regarding chained link fences, security risks, maximum height requirements, and the possibility of fencing permits.

Chairman Kallen, with the consensus of the Commission, would like to see provisions throughout the code that clarify that the owner is responsible for maintaining their fence.

Chairman Lamoreaux thanked staff for bringing this item forward.



Commissioner Tinsley expressed concern regarding the implementation of the Ordinance. He would like the code to mention that the Planning Commission may adjust the Ordinance as needed.

Ms. Lori Lamson noted that the Ordinance would provide a tool that is defensible for Code Enforcement when issuing citations and would defend the Town against any legal challenges.

### **PUBLIC COMMENT**

John Laraway, Apple Valley, spoke in opposition of the project.

Chairman Kallen closed the public hearing at 7:57 p.m.

### **MOTION**

Motion by Commissioner Lamoreaux, Seconded by Vice-Chairman Qualls, that the Planning Commission move to:

1. Approve a resolution to amend the Development Code as it pertains to fencing of vacant parcels as amended.

### **ROLL CALL VOTE**

Ayes:           Commissioner Lamoreaux  
                  Commissioner Shoup  
                  Commissioner Tinsley  
                  Vice-Chairman Qualls  
                  Chairman Kallen

Noes:           None

Abstain:       None

Absent:        None

The motion carried by a 5-0-0-0 vote.