



# TOWN OF APPLE VALLEY

## TOWN COUNCIL STAFF REPORT

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To: Honorable Mayor and Town Council Date: July 26, 2016

From: Frank Robinson, Town Manager Item No: 9  
Town Manager's Office

Subject: **CONSIDER ADOPTION OF RESOLUTION TO PLACE A VOTER-INITIATED BALLOT MEASURE ON THE NOVEMBER 8, 2016 MUNICIPAL ELECTION TO AMEND THE APPLE VALLEY MUNICIPAL CODE TO REQUIRE VOTER APPROVAL BEFORE THE TOWN CAN ISSUE PUBLIC DEBT OF MORE THAN \$10,000,000 IN CONNECTION WITH THE ACQUISITION, CONSTRUCTION, IMPROVEMENT, OR FINANCING OF AN ENTERPRISE WHEN THE DEBT IS TO BE REPAYED BY FEES COLLECTED BY THE TOWN AND NOT FROM THE TOWN'S GENERAL PROPERTY TAX REVENUES**

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

Budgeted Item:  Yes  No  N/A

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### RECOMMENDED ACTION:

Staff recommends that the Town Council takes the following action:

A. Adopt the following Resolution:

Resolution No. 2016-24 - A Resolution of the Town Council of the Town of Apple Valley Calling And Giving Notice Of A General Municipal Election to Be Held on November 8, 2016 for the Purpose of Submitting to the Qualified Voters of Said Town A Proposed Measure Requiring Voter Approval Before the Town Can Issue Public Debt of More Than \$10,000,000 In Connection With the Acquisition, Construction, Improvement, or Financing of An Enterprise When the Debt is to Be Repaid by Fees Collected By the Town and Not From the Town's Taxpayer Revenues, Requesting that the San Bernardino County Board of Supervisors Consolidate this Election With the Statewide General Election to Be Held on November 8, 2016, And Setting Rules for Direct Arguments and Rebuttals Concerning the Proposed Measure.

## **SUMMARY:**

Staff recommends that the Town Council consider the adoption of the attached Resolution placing a voter-initiated measure on the November 8, 2016 municipal election ballot to amend the Apple Valley Municipal Code to require voter approval before the Town can issue public debt of more than \$10,000,000 in connection with the acquisition, construction, improvement, or financing of an enterprise (as that term is defined in state law) when the debt is to be repaid by fees collected by the Town and not from the Town's taxpayer revenues (the "Measure")

## **BACKGROUND:**

On December 21, 2015, the Town received a Notice of Intent to circulate an initiative petition for the Measure.

In accordance with the Elections Code, the Town Attorney's office prepared a ballot title and summary, which was received by the proponents on January 6, 2016. On January 15, 2016, the proponents published the Notice of Intent along with the ballot title and summary in the Apple Valley News. The proponents then had six (6) months to gather enough signatures to qualify the Measure for the ballot. On May 10, 2016, the proponents submitted a signed petition to the Town Clerk's Office. The petition contained 5,348 raw signatures.

On June 21, 2016, the Town Clerk's Office, with assistance from the Elections Office of the Registrar of Voters for San Bernardino County, verified that the petition contained 3,873 valid signatures to qualify the Measure for the ballot. Under the Elections Code, 3,172 valid signatures were required.

On June 28, 2016, the Town Council received, filed, and accepted the Certificate of Sufficiency of Initiative Petition issued by the Town Clerk for an initiative petition proposing the adoption of an ordinance amending the Apple Valley Municipal Code by requiring voter approval before the Town can issue public debt of more than \$10,000,000 in connection with the acquisition, construction, improvement, or financing of an enterprise (as that term is defined in state law) when the debt is to be repaid by fees collected by the Town and not from the Town's taxpayer revenues (the "Water Company Measure"). The Town Council directed staff to prepare an impartial and informational report analyzing the impact of the Measure on the Town's finances, its ability to provide public services, and the like.

Under the California Elections Code, the Town Council must take one of the following options at tonight's meeting:

1. Adopt the Measure outright as an ordinance, without alteration; or
2. Submit the Measure to the voters at the November 8, 2016 general municipal election.

**PROPOSED ACTION:**

Town staff recommends the Town Council submit the voter-initiated measure to its qualified voters at the November 8, 2016 general municipal election. In order to do so, the Town Council must adopt a resolution calling the election, requesting consolidation with the County election, setting forth the procedures for the filing of written arguments, and setting forth the procedures for the filing of rebuttal arguments. The Town Attorney's Office has prepared the attached Resolution to fulfill these requirements.

Town staff proposes that the following question be put to voters at the November election:

Shall an ordinance be adopted requiring voter approval before the Town of Apple Valley can issue public debt of more than \$10,000,000 to pay for acquiring, improving, or financing a project, such as the acquisition of the Town's water system, which is currently owned by a private company, when the debt is to be repaid by fees collected by the Town and not from the Town's taxpayer revenues?

**FISCAL IMPACT:**

The Town will incur the costs normally associated with placing a measure on the ballot in San Bernardino County.

**ATTACHMENT:**

Resolution No. 2016-24 - A Resolution Of The Town Council Of The Town Of Apple Valley Calling And Giving Notice Of A General Municipal Election To Be Held On November 8, 2016 For The Purpose Of Submitting To The Qualified Voters Of Said Town A Proposed Measure Requiring Voter Approval Before The Town Can Issue Public Debt Of More Than \$10,000,000 In Connection With The Acquisition, Construction, Improvement, Or Financing Of An Enterprise When The Debt Is To Be Repaid By Fees Collected By The Town And Not From The Town's Taxpayer Revenues, Requesting That The San Bernardino County Board Of Supervisors Consolidate This Election With The Statewide General Election To Be Held On November 8, 2016, And Setting Rules For Direct Arguments And Rebuttals Concerning The Proposed Measure

**RESOLUTION NO. 2016-24**

**A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF APPLE VALLEY CALLING AND GIVING NOTICE OF A GENERAL MUNICIPAL ELECTION TO BE HELD ON NOVEMBER 8, 2016 FOR THE PURPOSE OF SUBMITTING TO THE QUALIFIED VOTERS OF SAID TOWN A PROPOSED MEASURE REQUIRING VOTER APPROVAL BEFORE THE TOWN CAN ISSUE PUBLIC DEBT OF MORE THAN \$10,000,000 IN CONNECTION WITH THE ACQUISITION, CONSTRUCTION, IMPROVEMENT, OR FINANCING OF AN ENTERPRISE WHEN THE DEBT IS TO BE REPAYED BY FEES COLLECTED BY THE TOWN AND NOT FROM THE TOWN'S TAXPAYER REVENUES, REQUESTING THAT THE SAN BERNARDINO COUNTY BOARD OF SUPERVISORS CONSOLIDATE THIS ELECTION WITH THE STATEWIDE GENERAL ELECTION TO BE HELD ON NOVEMBER 8, 2016, AND SETTING RULES FOR DIRECT ARGUMENTS AND REBUTTALS CONCERNING THE PROPOSED MEASURE**

**WHEREAS**, pursuant to authority provided by law, petitions have been filed with the Town Council of the Town of Apple Valley, signed by at least ten (10%) percent of the number of registered voters of the Town, to submit to the qualified electors a proposed ordinance amending the Apple Valley Municipal Code by requiring voter approval before the Town can issue public debt of more than \$10,000,000 in connection with the acquisition, construction, improvement, or financing of an enterprise (as that term is defined in state law) when the debt is to be repaid by fees collected from the Town's customers and not from the Town's taxpayer revenues (the "Measure"); and

**WHEREAS**, the Town Clerk's office with assistance from the Elections Office of the Registrar of Voters for San Bernardino County examined the records of registration and ascertained that pursuant to California Elections Code Section 9215 the petitions are signed by the requisite number of voters, and has so certified; and

**WHEREAS**, on June 28, 2016, the Town Council received, filed, and accepted the Certificate of Sufficiency of Initiative Petition issued by the Town Clerk and directed Town staff to prepare a report on the Measure; and

**WHEREAS**, the Town Council has not voted in favor of the adoption of the Measure but is required by California statute to place it before Apple Valley's voters; and

**WHEREAS**, the Town Council is authorized and directed by the California Elections Code to submit the Measure to the voters.

**NOW, THEREFORE, THE APPLE VALLEY TOWN COUNCIL DOES HEREBY RESOLVE:**

**SECTION 1.** The recitals stated above are true and correct and are incorporated herein by reference.

**SECTION 2.** Pursuant to the California Elections Code and any other applicable requirements of the laws of the State of California relating to general law cities, the Town Council hereby calls and orders to be held in the Town of Apple Valley on Tuesday, November 8, 2016, a General Municipal Election for the purpose of submitting the Measure attached hereto as Exhibit "A" and incorporated herein by this reference to the qualified electors.

**SECTION 3.** The Town Council, pursuant to the California Elections Code, hereby orders that the following question be submitted to the qualified electors of the Town of Apple Valley at the election to be held on November 8, 2016:

Shall an ordinance be adopted requiring voter approval before the Town of Apple Valley can issue public debt of more than \$10,000,000 to pay for acquiring, improving, or financing a project, such as the acquisition of the Town's water system, which is currently owned by a private company, when the debt is to be repaid by fees collected by the Town and not from the Town's taxpayer revenues?	<b>YES</b>
	<b>NO</b>

**SECTION 4.** Approval of the Measure shall require a majority vote of the total number of valid ballots cast and counted

**SECTION 5.** Notice of the time and place of the election is hereby given. The Town Clerk is authorized, instructed, and directed to give further or additional notice of the election, in time, form and manner as required by law.

**SECTION 6.** The Town Clerk is authorized, instructed and directed to procure and furnish any and all official ballots, notices, printed matter and all supplies, equipment, and paraphernalia that may be necessary in order to properly and lawfully conduct the election. The ballots to be used at the election shall be in form and content as required by law.

**SECTION 7.** Town staff is hereby authorized and directed to appropriate the necessary funds to pay for the Town's cost of placing the Measure on the election ballot.

**SECTION 8.** the polls shall open at seven o'clock a.m. Of the day of the election and shall remain open continuously from that time until eight o'clock p.m. of the same day when the polls shall be closed.

**SECTION 9.** the Town Council requests that the Board of Supervisors of San Bernardino County consolidate the election on the Measure with the established Statewide General Election to be held the same day and the Registrar of Voters of San Bernardino County conduct the election in the manner provided by law. Pursuant to California Elections Code Section 10400 et seq., the Town Clerk is directed to file a certified copy of this Resolution with the Board of Supervisors of San Bernardino County and the Registrar of Voters of San Bernardino County on or before **August 12, 2016**. Pursuant to California Elections Code Sections 10403 and 10418, the election will be held and conducted in accordance with the provisions of law regulating the Statewide General Election.

**SECTION 10.** the Town Clerk is hereby directed to transmit a copy of the Measure set forth in Section 2 above to the Town Attorney, who shall prepare an impartial analysis of the Measure in accordance with Section 9280 of the Elections Code not to exceed 500 words in length. The impartial analysis shall show the effect of the Measure on existing law and the operation of the Measure. It shall also include a statement indicating whether the Measure was placed on the ballot by a petition signed by the requisite number of voters or by the Town Council. In the event the entire text of the Measure is not printed on the ballot, or in the voter information portion of the sample ballot, there shall be printed immediately below the impartial analysis, in no less than 10-font bold type, the following: **“the above statement is an impartial analysis of Ordinance or Measure \_\_\_\_\_. If you desire a copy of the ordinance or measure, please call the election official’s office at (760) 240-7000, ext. 7800 and a copy will be mailed at no cost to you.”** The impartial analysis shall be filed no later than the deadline for direct arguments.

**SECTION 11.** Pursuant to California Elections Code Sections 9282 and 9286, the persons who filed the petition may file a written argument in favor of the Measure and the Town Council, or any member(s) of the Town Council so designated by the Town Council, may file a written argument against the Measure. Such persons may change the argument until and including the date fixed below by the Town Clerk, after which no arguments for or against the Measure or any changes thereto may be submitted to the Town Clerk.

The deadline to submit arguments for or against the Town Measure pursuant to this Resolution is declared by the Town Clerk to be 5:30 p.m. on **August 25, 2016**.

the arguments shall be filed with the Town Clerk, signed, with the printed name(s) and signature(s) of the author(s) submitting it, or if submitted on behalf of an organization, the name of the organization, and the printed name and signature of at least one of its principal officers who is the author of the argument.

**SECTION 12.** Pursuant to California Elections Code Section 9285, when the elections official has selected the arguments for and against the Measure which will be printed and distributed to the voters, the elections official shall send a copy of an argument in favor of the Measure to the authors of any argument against the Measure and a copy of an argument against the Measure to the authors of any argument in favor of the Measure immediately upon receiving the arguments.

The author or a majority of the authors of an argument relating to the Measure may prepare and submit a rebuttal argument not exceeding 250 words or may authorize in writing any other person or persons to prepare, submit, or sign the rebuttal argument. A rebuttal argument may not be signed by more than five authors.

A rebuttal argument shall be filed with the Town Clerk, signed, with the printed name(s) and signature(s) of the author(s) submitting it, or if submitted on behalf of an organization, the name of the organization, and the printed name and signature of at least one of its principal officers, not later than August 30, 2016.

Rebuttal arguments shall be printed in the same manner as the direct arguments. Each rebuttal argument shall immediately follow the direct argument which it seeks to rebut.

**SECTION 13.** In all particulars not recited in this resolution, the election shall be held and conducted as provided by law for holding municipal elections.

**SECTION 14.** the Town Council finds that this Resolution is not subject to the California Environmental Quality Act (CEQA) pursuant to Sections 15060(c)(2) (the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment), and 15060(c)(3) (the activity is not a project as defined in Section 15378) of the CEQA Guidelines, California Code of Regulations, Title 14, Chapter 3, because it has no potential for resulting in physical change to the environment, directly or indirectly.

**SECTION 15.** Severability. The provisions of this Resolution are severable and if any provision of this Resolution is held invalid, that provision shall be severed from the Resolution and the remainder of this Resolution shall continue in full force and effect, and not be affected by such invalidity.

**SECTION 16.** This Resolution shall become effective upon its adoption.

**SECTION 17.** The Town Clerk shall certify to the adoption of this Resolution.

PASSED, APPROVED, AND ADOPTED this 26th day of July, 2016.

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Mayor Barb Stanton

ATTEST:

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LaVonda M-Pearson, Town Clerk

## **EXHIBIT "A"**

### **BALLOT MEASURE**

The people of the Town of Apple Valley do ordain as follows: Chapter 3.35 of Title 3 of the Municipal Code is added to read:

#### **3.35 VOTER APPROVAL PRIOR TO ISSUANCE OF PUBLIC DEBT SECURED BY FEES OR CHARGES ON SERVICES**

(a) No ordinance or resolution authorizing the issuance of bonds or other forms of public debt in an amount exceeding ten million dollars (\$10,000,000) to provide funds for the acquisition, construction, improving, or financing of an enterprise, secured by revenues derived from the operation of the enterprise, shall become effective unless approved by the voters, as provided herein.

(b) For purposes of this section:

- (1) The terms "bonds," "enterprise," "charges," and "revenues" shall have the same meaning as provided for the in the Revenue Bond Law of 1941 (Chapter 6 of Division 2 (commencing with section 54300) of the Government Code);
- (2) The term "public debt" includes, but is not limited to, certificates of participation, or public leaseback, secured by revenues derived from the operation of the enterprise, or lease payments made by or to advance the purpose of the enterprise.

(c) The election required shall comply with the provisions of Article 3 of Chapter 6 of Division 2 (commencing with section 54380) of the Government Code.

(d) No ordinance or resolution that authorized the issuance of bonds or public debt that would have been subject to the voter approval requirement of this section, enacted by the council after the date the notice of intent to circulate petitions was filed by the proponents proposing enactment of this section, but before its adoption by the voters, shall be implemented or enforced unless and until the voters approve that ordinance or resolution pursuant to this section.

(e) is any provision of this section, or any part thereof, is for any reason held to be invalid or unconstitutional, the remaining provisions shall not be affected, but shall remain in full force and effect, and to this end, the provisions of this section are severable.