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**TOWN OF APPLE VALLEY
PLANNING COMMISSION AGENDA**

WEDNESDAY, AUGUST 3, 2016

Regular Meeting 6:00 p.m.

Town Council Chambers
14955 Dale Evans Parkway

PLANNING COMMISSION MEMBERS

Doug Qualls, Chairman
Mark Shoup, Vice-Chairman
Jason Lamoreaux, Commissioner
Bruce Kallen, Commissioner
B. R. "Bob" Tinsley, Commissioner

PLANNING DIVISION OFFICE: (760) 240-7000 Ext. 7200
www.AVPlanning.org

Monday - Thursday 7:30 a.m. to 5:30 p.m.
Alternating Fridays 7:30 a.m. to 4:30 p.m.



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**TOWN OF APPLE VALLEY
PLANNING COMMISSION AGENDA
REGULAR MEETING
WEDNESDAY August 3, 2016 – 6:00 P.M.**

PUBLIC PARTICIPATION IS INVITED. Planning Commission meetings are held in the Town Council Chambers located at 14955 Dale Evans Parkway, Apple Valley, California. If you wish to be heard on any item on the agenda during the Commission’s consideration of that item, or earlier if determined by the Commission, please so indicate by filling out a "REQUEST TO SPEAK" form at the Commission meeting. Place the request in the Speaker Request Box on the table near the Secretary, or hand it to the Secretary at the Commission meeting. (G.C. 54954.3 {a}).

Materials related to an item on this agenda, submitted to the Commission after distribution of the agenda packet, are available for public inspection in the Town Clerk’s Office at 14955 Dale Evans Parkway, Apple Valley, CA during normal business hours. Such documents are also available on the Town of Apple Valley website at www.applevalley.org subject to staff’s ability to post the documents before the meeting.

The Town of Apple Valley recognizes its obligation to provide equal access to those individuals with disabilities. Please contact the Town Clerk’s Office, at (760) 240-7000, two working days prior to the scheduled meeting for any requests for reasonable accommodations.

REGULAR MEETING

The Regular meeting is open to the public and will begin at 6:00 p.m.

CALL TO ORDER

ROLL CALL

Commissioners: Lamoreaux _____; Kallen _____; Tinsley _____
Vice-Chairman Shoup _____; and Chairman Qualls _____

PLEDGE OF ALLEGIANCE

APPROVAL OF MINUTES

1. Minutes for the Regular Meeting of June 15, 2016.

PUBLIC HEARING ITEMS

2. **Conditional Use Permit No. 2016-01.** A request for approval of a Conditional Use Permit to construct improvements necessary for the long-term maintenance and security of a recently completed groundwater production well. Improvements will include two (2) buildings, a perimeter block wall and landscaping.

Applicant: Greg Miles, representing Liberty Utilities
Location: 12691 Apple Valley Road; APN 3087-161-02

Project Planner: Ms. Pam Cupp, Associate Planner
Recommendation: Approval

3. **Development Code Amendment No 2016-003.** To Amend the Town Municipal Code to Repeal Provisions Regulating and Referring to Sex Offender Residency

Applicant: Town of Apple Valley
Location: Town-wide
Presenter: Thomas Rice, Town Attorney
Recommendation: Adopt Planning Commission Resolution No. 2016-007 Recommending that the Town Council Amend Various Sections of Title 9 of the Apple Valley Municipal Code to Repeal Provisions Regulating and Referring to Sex Offender Residency

4. **Development Code Amendment No 2016-002.** To Amend the Town Municipal Code to add Section 9.36.230 Prohibiting Cannabis Dispensaries, Cannabis Manufacturers, and the Cultivation and Delivery of Cannabis and to Remove Redundancies in the Apple Valley Municipal Code

Applicant: Town of Apple Valley
Location: Town-wide
Presenter: Thomas Rice, Town Attorney
Recommendation: Amend the Town Municipal Code to add Section 9.36.230 Prohibiting Cannabis Dispensaries, Cannabis Manufacturers, and the Cultivation and Delivery of Cannabis and to Remove Redundancies in the Apple Valley Municipal Code

PUBLIC COMMENTS

Anyone wishing to address an item not on the agenda, or an item that is not scheduled for a public hearing at this meeting, may do so at this time. California State Law does not allow the Commission to act on items not on the agenda, except in very limited circumstances. Your concerns may be referred to staff or placed on a future agenda.

PLANNING COMMISSION COMMENTS

STAFF COMMENTS

OTHER BUSINESS

5. **Subdivision Map Act Violations** – Opportunity to Present Evidence to Legislative Body Per Government Code§ 66499.36 Prior to Recordation of Notice of Violation.

ADJOURNMENT

The Planning Commission will adjourn to its next regularly scheduled Planning Commission meeting on August 17, 2016.

MINUTES

TOWN OF APPLE VALLEY PLANNING COMMISSION Regular Meeting Wednesday, June 15, 2016

CALL TO ORDER

Chairman Qualls called to order the Regular Meeting of the Planning Commission of the Town of Apple Valley for June 15, 2016 at 6:00 p.m.

ROLL CALL

Planning Commission

Roll call was taken with the following members present: Commissioner Bruce Kallen, Commissioner Jason Lamoreaux, and Chairman Doug Qualls. Absent: Commissioner B.R. "Bob" Tinsley, and Vice-Chairman Mark Shoup.

STAFF PRESENT

Carol Miller, Principal Planner; Pam Cupp, Associate Planner; Thomas Rice, Town Attorney; and, Yvonne Rivera, Planning Commission Secretary.

PLEDGE OF ALLEGIANCE

Commissioner Kallen led the Pledge of Allegiance.

1. APPROVAL OF MINUTES

Minutes for the Regular Meeting of June 1, 2016.

Motion by Commissioner Kallen, and seconded by Commissioner Lamoreaux, to approve the Minutes for the Regular Meeting of June 1, 2016.

Motion carried by the following vote: Ayes: Commissioner Kallen, Commissioner Lamoreaux, and Chairman Qualls. Noes: None. Absent: Commissioner Tinsley, and Vice-Chairman Shoup. Abstain: None.

PUBLIC HEARING ITEMS

- 2. Tentative Tract Map No. 17872, Extension of Time No. 1 (continued from May 4 and June 1, 2016).** This is a request for a time extension for a previously approved tentative tract map to subdivide twenty (20) acres into thirty-six (36) lots for the future development of single-family homes. The lots will range from 18,007 to 23,883 square feet in size.

Applicant: Mr. Dilip Sheth, representing Shree Properties, Inc.

Location: The project site is generally located one-half (1/2) mile east of Dale Evans Parkway and one-half mile north of Otoe Road; APNs 0441-011-20 and 21.

Chairman Qualls opened the public hearing at 6:01 p.m.

Pam Cupp, Associate Planner, presented the staff report as filed with the Planning Division.

Ms. Cupp commented on the recommended changes to the staff report as provided by the Town Attorney, to file a Notice of Determination rather than a Notice of Exemption. She also noted that the changes do not affect the required findings for approval, nor are there any modifications to the conditions of approval. Ms. Cupp stated that the Applicant is not present; however, he provided an email acknowledging that they agreed with all Conditions of Approval.

VICE-CHAIRMAN SHOUP ARRIVED TO THE PLANNING COMMISSION MEETING AT 6:03 P.M.

Discussion ensued regarding the State's legislative actions regarding time extensions, as well as the Biological Assessment listed under Item D on Page 2.

Chairman Qualls reiterated the statement by Ms. Cupp, on behalf of the Applicant, that they are in agreement with all Conditions of Approval.

PUBLIC COMMENTS:

None.

Chairman Qualls closed the public hearing at 6:09 p.m.

MOTION

Motion by Commissioner Lamoreaux, seconded by Vice-Chairman Shoup, that the Planning Commission move to:

1. Determine that, pursuant to the California Environmental Quality Act (CEQA), Section 15162, the proposed Time Extension is exempt and does not require further environmental review (although the map is still required to fulfill all environmental requirements stipulated within the map's initial approval).
2. Find that the facts presented in the staff report support the required Findings for approval and adopt the Findings.
3. Approve a three (3)-year extension of time for Tentative Tract Map 17872, subject to the attached, Conditions of Approval, as amended by the Town Attorney.
4. Direct Staff to file the Notice of Determination.

ROLL CALL VOTE

Ayes: Commissioner Kallen
Commissioner Lamoreaux
Vice-Chairman Shoup
Chairman Qualls
Noes: None
Abstain: None
Absent: Commissioner Tinsley

The motion carried by a 4-0-0-1 vote.

- 3. Development Code Amendment No. 2016-001.** This is a request to consider an amendment to Title 9 “Development Code” of the Town of Apple Valley Municipal Code amending Section 9.74.110.G “Digital Advertising Displays”.
Applicant: Town of Apple Valley
Location: Town-wide

Chairman Qualls opened the public hearing at 6:10 p.m.

Pam Cupp, Associate Planner, presented the staff report as filed with the Planning Division.

Commissioner Kallen expressed his dislike for digital signs and further commented that digital signs should not be added to any existing sign structure, and all digital signs should require newly designed and built sign structures.

Commissioner Shoup expressed his dislike of digital signs.

Chairman Qualls commented that he was not in support of allowing a digital sign every 100 feet.

Commissioner Lamoreaux is in support of allowing additional sign area for digital and expressed that the separation distance.

Discussion ensued regarding the Commission's original recommendation to Council for minimum lot widths and separation distances between digital signs.

Ms. Carol Miller, Principal Planner, commented on the Town Council's position on lot width and that the Commission recommendation was modified to allow 100-foot lot widths.

PUBLIC COMMENT

None.

Chairman Qualls closed the public hearing at 6:40 p.m.

MOTION

Motion by Commissioner Kallen, seconded by Chairman Qualls, that the Planning Commission move to:

1. Approve Planning Commission Resolution No. 2016-005, forwarding a recommendation that the Town Council amend Title 9 “Development Code” of the Town of Apple Valley Municipal Code as outlined within the staff report, and with a strong emphasis, recommend that the Town Council consider increasing the minimum lot width, apply a separation distance, and to ask the Council to review the Planning Commission’s original Planning Commission Resolution.

ROLL CALL VOTE

Ayes:	Commissioner Kallen Commissioner Lamoreaux Chairman Qualls
Noes:	Vice-Chairman Shoup
Abstain:	None
Absent:	Commissioner Tinsley

The motion carried by a 3-1-0-1 vote.

PUBLIC COMMENTS:

None.

PLANNING COMMISSION COMMENTS

None.

STAFF COMMENTS

None.

OTHER BUSINESS

None.

ADJOURNMENT

Motion by Commissioner Kallen, seconded by Commissioner Lamoreaux, and unanimously carried to adjourn the meeting of the Planning Commission at 6:50 p.m. to the Regular Meeting on July 20, 2016.

Respectfully Submitted by:

Yvonne Rivera
Planning Commission Secretary

Approved by:

Chairman Doug Qualls



TOWN OF APPLE VALLEY PLANNING COMMISSION

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Staff Report

- AGENDA DATE:** August 3, 2016
- CASE NUMBER:** Conditional Use Permit No. 2016-001
- APPLICANT:** Greg Miles, representing Liberty Utilities
- PROPOSAL:** A request for approval to construct improvements necessary for the long-term maintenance and security of a recently completed groundwater production well. Improvements will include two (2) buildings, a perimeter block wall and landscaping.
- LOCATION:** 12691 Apple Valley Road; APN 3087-161-02
- ENVIRONMENTAL DETERMINATION:** Pursuant to the State Guidelines to Implement the California Environmental Quality Act (CEQA), Section 15332, Class 32, the proposed request is Exempt from further environmental review since project is characterized as an in-fill site that is consistent with the General Plan and zoning district and the site has no value as habitat for any endangered species.
- CASE PLANNER:** Pam Cupp, Associate Planner
- RECOMMENDATION:** Approval

PROJECT SITE AND DESCRIPTION

- A. Project Size:
The project site is 0.7 acres in size.
- B. General Plan Designations:
Project Site - General Commercial (C-G)
North - Office Professional (O-P)
South - General Commercial (C-G)
East - General Commercial (C-G)
West - Single Family Residential (R-SF)

C. Surrounding Zoning and Land Use:

- Project Site - General Commercial (C-G), Vacant
- North - Office Professional (O-P), Vacant
- South - General Commercial (C-G), Vacant
- East - General Commercial (C-G), Single Family Home
- West - Single Family Residential (R-SF), Single Family Homes

D. Site Characteristics:

The project site is a vacant parcel with no significant slopes or vegetation.

E. Building Height:

- Permitted Maximum Thirty-five (35) Feet
- Proposed Maximum: Fourteen (14) Feet

F. Setback Analysis:

	<u>Required</u>	<u>Proposed</u>
Front	45 ft.	137 ft.
Rear	0 ft.	80 ft.
North Side	0 ft.	40 ft.
South Side	0 ft.	16 ft.

G. Landscaping:

- Required Minimum: 10%
- Proposed: 10%

H. F.A.R.:

- Permitted Maximum Fifty (50) percent
- Proposed Maximum: Five (5) percent

ANALYSIS

A. General:

Pursuant to the Development Code, Planning Commission approval of a Conditional Use Permit is required for all public utility installations within any commercial zone. The Conditional Use Permit process allows the Commission an opportunity to consider certain uses which may have potential adverse impacts upon surrounding property or the general public. The applicant is requesting Planning Commission approval to install improvements necessary for the long-term maintenance and security of a recently completed groundwater production well.

B. Site Analysis:

The project site is 0.7 acres in size and is located within the General Commercial (C-G) zoning designation. The site has ninety (90) feet of frontage along Apple Valley Road. Liberty Utilities has recently completed well drilling activities on the subject site. For security reasons, a six (6)-foot high, chain link and barbed wire fence surrounds the recently completed well. The applicant will be removing the existing, noncompliant fence in favor of this development. The fence will be replaced by a six (6)-foot high, decorative block wall. A

six (6)-foot tall combination wall consisting of three (3) feet of block and three (3) feet of wrought iron will be installed within the required front yard setback along Apple Valley Road. The remaining perimeter wall will incorporate pilasters every forty (40) feet to break-up and enhance the long expanse of wall face. The submitted site plan illustrates a plain concrete masonry block wall. Condition of Approval No. P11 requires all perimeter walls, and the proposed wrought iron and block combination wall, to be decorative and constructed of split-face/slump stone block or stucco finished, consistent with the commercial design standards for block walls.

The project will include the construction of two (2) utility buildings. The well house will be 1,030 square feet in size with a maximum height of thirteen (13) feet, four (4) inches. The well house will contain the water pump in addition to other controls and equipment necessary for water production. The applicant will also construct a 560 square foot building that will house the emergency generator. The generator building will have a maximum height of fourteen (14) feet. Both structures will be block wall construction with tile roofs, consistent with, and complementary to, the perimeter block wall.

Access to the site is from Apple Valley Road through a twenty-seven (27)-foot wide driveway along the northern boundary of the project site. The applicant will pave a twenty-four (24)-foot wide, 309-foot long, portion of the access drive. There will be two (2), seventeen (17)-foot wide, sliding gates that will provide access to the compound.

The project will connect to the Town's sewer system and a Wastewater Discharge Permit through Victor Valley Wastewater Reclamation Authority may be required.

A minimum of ten (10) percent of the project site will be landscaped. The project will provide a thirty-five (35)-foot landscape buffer along Apple Valley Road. The plant palette consists of trees, shrubs and groundcover consistent with the existing Apple Valley Road landscape. Additionally, and as required by Code, the project will be required to have trees planted at thirty (30)-foot intervals along the project's northern boundary, adjacent to the access drive.

C. Environmental Assessment:

Pursuant to the State Guidelines to Implement the California Environmental Quality Act (CEQA), Section 15332, Class 32, the proposed request is Exempt from further environmental review since project is characterized as an in-fill site that is consistent with the General Plan and zoning district and the site has no value as habitat for any endangered species.

D. Noticing:

The public hearing for Conditional Use Permit No. 2016-001 was noticed in the Apple Valley News, and mailed to all property owners within a 300-foot radius, on July 22, 2016.

E. Findings:

CONDITIONAL USE PERMIT FINDINGS:

As required under Section 9.16.090 of the Development Code, prior to approval of a Conditional Use Permit, the Planning Commission must make specific Findings. The Findings, and a suggested comment to address each, are presented below:

1. That the proposed location, size, design and operating characteristics of the proposed use is consistent with the General Plan, the purpose of this Code, the purpose of the zoning district in which the site is located, and the development policies and standards of the Town;

Comment: The proposed public utility installation is allowed within any commercial zoning district with the review and approval of a Conditional Use Permit by the Planning Commission. The site plan and architectural design is in compliance with all development standards. Therefore, the proposal is in compliance with the Development Code of the Town of Apple Valley and adopted General Plan.

2. That the location, size, design and operating characteristics of the proposed use will be compatible with, and will not adversely affect, nor be materially detrimental to adjacent uses, residents, buildings, structures or natural resources;

Comment: The proposed public utility installation is allowed at this location with a Conditional Use Permit approved by the Planning Commission. The site will have two (2), small-scale buildings used to house equipment and a 6-foot decorative block wall to screen the facility. The operation is quiet in nature. Therefore, the project is compatible with, and will not adversely affect or be detrimental to adjacent uses, residents, buildings, structures or natural resources.

3. That the proposed use is compatible in scale, bulk, lot coverage, and density with adjacent uses;

Comment: The site is within the General Commercial (C-G) zone and is surrounded with mostly vacant land. The proposed public utility installation will include two (2), small-scale buildings and a decorative, perimeter wall. The project is compatible in scale, bulk lot coverage and density with the existing legal non-conforming single family home located to the north.

4. That there are public facilities, services and utilities available at the appropriate levels or that these will be installed at the appropriate time to serve the project as they are needed;

Comment: The proposed public utility installation will require electricity, which is already available at the site.

5. That there will not be a harmful effect upon desirable neighborhood characteristics;

Comment: The proposal will not be harmful to the neighborhood characteristics because the site has been designed with the appropriate screening and the manner in which it will be operated is mostly silent and unmanned.

6. That the generation of traffic will not adversely impact the capacity and physical character of surrounding streets;

Comment: The proposed utility installation will be mostly unmanned, except for days of routine maintenance. The use is not anticipated to generate traffic and therefore, will not adversely impact the capacity or physical character of surrounding streets.

7. That traffic improvements and/or mitigation measures are provided in a manner adequate to maintain the existing service level or a Level of Service (LOS) C or better on arterial roads and are consistent with the Circulation Element of the General Plan;

Comment: The proposed utility installation will be mostly unmanned, except for days of routine maintenance. The use is not anticipated to generate and will not adversely impact the surrounding area.

8. That there will not be significant harmful effects upon environmental quality and natural resources;

Comment: The public utility installation and the manner in which it operates will not have any significant harmful effects upon the environment.

9. That there are no other relevant negative impacts of the proposed use that cannot be reasonably mitigated;

Comment: There are no relevant negative impacts associated with the proposed public utility installation.

10. That the impacts, as described in paragraphs 1 through 9 above, and the proposed location, size, design and operating characteristics of the proposed use and the conditions under which it would be maintained will not be detrimental to the public health, safety or welfare, nor be materially injurious to properties or improvements in the vicinity, nor be contrary to the adopted General Plan;

Comment: The proposed public utility installation is allowed within any commercial zoning district with the review and approval of a Conditional Use Permit by the Planning Commission. The site plan and architectural design is in compliance with all development standards. Therefore, the proposal is in compliance with the Development Code of the Town of Apple Valley and adopted General Plan.

11. That the proposed conditional use will comply with all of the applicable provisions of this title.

Comment: The proposed public utility installation can operate in conformance to the Development Code, subject to approval of a Conditional Use Permit and adherence to the recommended Conditions of Approval.

12. That the materials, textures and details of the proposed construction, to the extent feasible, are compatible with the adjacent and neighboring structures;

Comment: The proposed public utility installation will include the construction of a perimeter wall in compliance with the design standards applicable to walls

and fences within the General Commercial (C-G) zone. The block wall construction and tile roof of the proposed buildings are materials, textures and details that will be compatible with adjacent structures and future commercial development within the general facility.

13. That the development proposal does not unnecessarily block public views from other buildings or from public ways, or visually dominate its surroundings with respect to mass and scale to an extent unnecessary and inappropriate to the use;

Comment: The proposed public utility installation includes a six (6)-foot high block wall surrounding the utility compound. The buildings proposed will have a maximum height of fourteen (14) feet. The General Commercial (C-G) zone allows a maximum height of thirty-five (35) feet. Therefore, the use will not block public views or dominate its current or future surroundings.

14. That quality in architectural design is maintained in order to enhance the visual environment of the Town and to protect the economic value of existing structures;

Comment: The proposed public utility installation will include the construction of a perimeter wall in compliance with the design standards applicable to walls and fences within the General Commercial (C-G) zone. The block wall construction and tile roof of the proposed buildings are materials, textures and details that will be compatible with adjacent structures and future commercial development within the general facility.

15. That access to the site and circulation on- and off-site is safe and convenient for pedestrians, bicyclists, equestrians and motorists.

Comment: The proposed public utility installation will not be accessible to the general public. Scheduled maintenance will be performed by employees of the water company that will have safe and convenient access via a paved driveway and access gates. Access to the site is from Apple Valley which has existing improvements providing safe and convenient circulation for pedestrians, bicyclist, equestrians and motorists.

RECOMMENDATION

Based upon the information contained within this report, and any input received from the public at the hearing, it is recommended that the Planning Commission move to:

1. Find that, pursuant to the California Environmental Quality Act (CEQA), Section 15332, Class 32, the proposed request is Exempt from further environmental review.
2. Find the Facts presented in the staff report support the required Findings for approval and adopt the Findings.
3. Approve Conditional Use Permit No. 2016-001, subject to the attached Conditions of Approval.

4. Direct Staff to file the Notice of Exemption.

Prepared By:

Reviewed By:

Pam Cupp
Associate Planner

Carol Miller
Principal Planner

ATTACHMENTS:

1. Recommended Conditions of Approval
2. Site Plan
3. Elevations
4. Zoning/Location Map

TOWN OF APPLE VALLEY

RECOMMENDED CONDITIONS OF APPROVAL
Conditional Use Permit No. 2016-001

Please note: Many of the suggested Conditions of Approval presented herewith are provided for informational purposes and are otherwise required by the Municipal Code. Failure to provide a Condition of Approval herein that reflects a requirement of the Municipal Code does not relieve the applicant and/or property owner from full conformance and adherence to all requirements of the Municipal Code.

Planning Division Conditions of Approval:

- P1. This project shall comply with the provisions of State law and the Town of Apple Valley Development Code and the General Plan. This conditional approval, if not exercised, shall expire three (3) years from the date of action of the reviewing authority, unless otherwise extended pursuant to the provisions of application of State law and local ordinance. The extension application must be filed, and the appropriate fees paid, at least sixty (60) days prior to the expiration date. The Conditional Use Permit becomes effective ten (10) days from the date of the decision unless an appeal is filed as stated in the Town's Development Code.
- P2. The applicant shall defend at its sole expense (with attorneys approved by the Town), hold harmless and indemnify the Town, its agents, officers and employees, against any action brought against the Town, its agents, officers or employees concerning the approval of this project or the implementation or performance thereof, and from any judgment, court costs and attorney's fees which the Town, its agents, officers or employees may be required to pay as a result of such action. The Town may, at its sole discretion, participate in the defense of any such action, but such participation shall not relieve the applicant of this obligation under this condition.
- P3. The filing of a Notice of Exemption requires the County Clerk to collect a documentary handling fee of fifty dollars (\$50.00). The fee must be paid in a timely manner in accordance with Town procedures. No permits may be issued until such fee is paid.
- P4. The approval of Conditional Use Permit No. 2016-001 by the Planning Commission is recognized as acknowledgment of Conditions of Approval by the applicant, unless an appeal is filed in accordance with Section 9.12.250, *Appeals*, of the Town of Apple Valley Development Code.
- P5. The rendering(s) presented to and approved by the Planning Commission at the public hearing shall be the anticipated and expected appearance of the structure upon completion.
- P6. All signs shall have a separate permit and are subject to final approval by the Town Planning Division.
- P7. All outdoor mechanical and electrical equipment whether rooftop, side of structure, or on the ground, shall be screened from view from the public street.

- P8. Lighting fixtures shall be of a type and be located in such a manner that no light or reflected glare is directed off-site and shall provide that no light is directed above a horizontal plane passing through the bottom of the fixture. All glare shall be directed onto the site and away from adjacent properties.
- P9. If hazardous substances are used and/or stored, a technical report, identifying any hazards presented by project must be mitigated. This report shall be prepared by a qualified person, firm, or corporation and submitted to the Building and Safety Division. This report shall also explain the proposed facility's intended methods of operation and list all of the proposed materials, their quantities, classifications, and the effects of any chemical (material) inter-mixing in the event of an accident or spill.
- P10. Any outdoor storage must occur on the rear one-half (1/2) of the project site and not be visible from Apple Valley Road or other adjacent properties.
- P11. Perimeter wall shall be constructed of decorative block (split face/slump stone) or stucco, in accordance to Development Code Section 9.37.070 "Walls and Fences" and subject to the review and approval of the Planning Division.
- P12. Final landscape and irrigation plans shall be submitted prior to building permit issuance and installed prior to issuance of occupancy permits, subject to approval by the Planning Division.
- P13. Landscaping shall be installed with appropriate combinations of drought-tolerant trees, shrubs, and ground cover, consistent with Development Code Chapter 9.75, Water Conservation Landscape Regulations.
- P14. All required and installed landscaping shall incorporate and maintain a functioning automatic sprinkler system, and said landscaping shall be maintained in a neat, orderly, disease and weed free manner at all times.

Environmental and Transit Services Conditions of Approval

- ET1. The project must provide adequate areas for collecting and loading recyclable materials in compliance with AB 341. The trash enclosure must comply with the newly adopted recycling standards. **Public Resource Code Section 42910-42912**
- ET2. The developer shall complete and submit a Waste Management Plan ("WMP"), on a WMP form approved by the Town for this purpose as part of the application packet for the building or demolition permit. The completed WMP shall indicate all of the following:
 - a. The estimated volume or weight of project C&D debris to be generated;
 - b. The estimated volume or weight of such materials that can feasibly be diverted via reuse or recycling;
 - c. The vendor or facility that the Developer proposes to use to collect or receive that material; and
 - d. The estimated volume or weight of C&D materials that will be landfilled.**Town of Apple Valley Municipal Code Section 8.19.020(a)**

ET3. Compliance with Condition of Approval No. ER2 shall be met by any of the following:

- a. Contract for hauling services with Town's franchise hauler, with all Project debris delivered to San Bernardino County self-haul landfill diversion program, provided the diversion program is currently operating; and provide acceptable proof of recycling to the Town in the form of receipts and/or weigh tickets, in conformance with the WMP
- b. Self-haul all project debris to San Bernardino County self-haul landfill diversion program, provided the diversion program is currently operating; and provide acceptable proof of recycling to the Town in the form of receipts and/or weigh tickets, in conformance with the WMP
- c. Self-haul all project debris to a construction material recycling facility, and provide acceptable proof of recycling to the Town in the form of receipts and/or weigh tickets, in conformance with the WMP
- d. Contract with a construction site cleanup company to recycle at least fifty (50) percent of the Project construction debris, and provide acceptable proof of recycling to the Town in the form of receipts and/or weigh tickets, in conformance with the WMP.

Town of Apple Valley Municipal Code Section 8.19.030

ET4. Prior to issuance of Certificate of Occupancy, the developer shall submit to the WMP Compliance Official documentation proving that it has met the Diversion Requirement for the Project. The Diversion Requirement shall be that the developer has diverted at least fifty percent (50%) of the total C&D debris generated by the Project via reuse or recycling. This documentation shall include all of the following:

- a. Receipts from the vendor or facility that collected or received each material showing the actual weight or volume of that material;
- b. A copy of the previously submitted WMP for the Project adding the actual volume or weight of each material diverted and landfilled;
- c. Any additional information the Developer believes is relevant to determining its efforts to comply in good faith with this Chapter 8.19.

Town of Apple Valley Municipal Code Section 8.19.050

ET5. The developer shall make reasonable efforts to ensure that all C&D debris diverted or landfilled are measured and recorded using the most accurate method of measurement available. To the extent practical, all C&D debris shall be weighed by measurement on scales. Such scales shall be in compliance with all regulatory requirements for accuracy and maintenance. For C&D debris for which weighing is not practical due to small size or other considerations, a volumetric measurement shall be used. For conversion of volumetric measurements to weight, the developer shall use the Standardized Conversion Rates approved by the Town for this purpose.

Building and Safety Division Conditions of Approval

BC1. Provide approval from the Regional Water Board for discharge (floor drains).

BC2. Grading and drainage plans must be submitted to and approved by the Building Official, Planning Department and Town Engineer prior to permit issuance.

BC3. Submit plans and obtain permits for all structures and retaining walls, signs.

- BC4. A pre-construction permit and inspection are required prior to any land disturbing activity to verify requirements for erosion control, flood hazard native plant protection and desert tortoise habitat.
- BC5. A Notice of Intent (NOI) and Storm Water Prevention Plan (SWPP) must be submitted to and approved by the Engineering and Building Departments prior to issuance of a grading permit and or any land disturbance.
- BC6. All utilities shall be placed underground in compliance with Town Ordinance No. 89.
- BC7. All cross lot drainage requires easements and may require improvements at the time of development.
- BC8. Comply with the State of California Disability Access requirements.
- BC9. A pre-grading meeting is required prior to beginning any land disturbance. This meeting will include the Building Inspector, General Contractor, Grading Contractor, soils technician and any other parties required to be present during the grading process such as a Biologist and/or Paleontologist.
- BC10. A dust palliative or hydro seed will be required on those portions of the site graded but not constructed (phased construction)
- BC11. Page two (2) of the submitted building plans will be conditions of approval.
- BC12. Construction must comply with 2013 California Building Codes and green Building Code.
- BC13. Best Management Practices (BMP's) are required for the site during construction.
- BC14. Provide Water Quality Management Plan (WQMP) or Alternative Compliance Plan

Public Works Division Conditions of Approval

- PW1. Sewage disposal shall be by connection to the Town of Apple Valley sewer system. Financial arrangements, plans and improvement agreements must be approved by the Town of Apple Valley Public Works Department.
- PW2. Sewer connection fees required.
- PW3. Fill out Victor Valley Wastewater Reclamation Authority (VWRA) Pre-Treatment Questionnaire form to determine if VWRA will require a Wastewater Discharge Permit. This form can be obtained from the Town's Building and Safety Department and must be completed and returned to them.

Engineering Division Conditions of Approval

None.

Apple Valley Fire Protection District Conditions of Approval

- FD1. The above referenced project is protected by the Apple Valley Fire Protection District. Prior to construction occurring on any parcel, the owner shall contact the Fire District for verification of current fire protection development requirements.
- FD2. All new construction shall comply with applicable sections of the California Code, California Building Code, and other statutes, ordinances, rules, and regulations regarding fires and fire prevention adopted by the State, County, or Apple Valley Fire Protection District.
- FD3. All combustible vegetation, such as dead shrubbery and dry grasses, shall be removed from each building site a minimum distance of thirty (30) feet from any combustible building material, including the finished structure. This does not apply to single specimens of trees, ornamental shrubbery, or similar plants, which are used as ground cover if they do not form a means of transmitting fire.
- FD4. Fire Extinguishers with a minimum rating of 2A10BC shall be provided, as per inspection, prior to Certificate of Occupancy.

END OF CONDITIONS

SECTION B
NOT TO SCALE

PARTICIPANTS:

OWNER:	CIVIL ENGINEER:
LIBERTY UTILITIES-APPLE VALLEY 21760 OTTAWA ROAD APPLE VALLEY, CA 92307 PHONE (760) 247-6484 SITE ADDRESS: 12691 APPLE VALLEY ROAD APN 3087-161-02	CIVILTEC ENGINEERING 118 WEST LIME AVENUE MONROVIA, CA 91016 ATTENTION: DAVID SONG PHONE: (626) 303-7957 FAX: (626) 303-7957 EMAIL: dsong@civiltac.com
LANDSCAPE ARCHITECT:	STRUCTURAL CIVIL ENGINEER:
ARMSTRONG & WALKER 280 MEL CANYON ROAD QUARTE, CA 91010 ATTENTION: ANNA M. ARMSTRONG PHONE: (626) 357-4598 EMAIL: armstrongwalker@gmail.com	ANS CONSULTING ENGINEERS 229 N. CENTRAL AVE #600 GLENNDALE, CA 91201 ATTENTION: VAHE PETROSSIAN PHONE: (618) 500-1200 FAX: (618) 500-1242 EMAIL: vpetross@ans.com

INDEX OF SHEETS:

SHEET #	DESCRIPTION
1 OF G-2	SITE PLAN
2 OF C-1	SITE GRADING PLAN
3 OF L-1	CONCEPTUAL LANDSCAPE PLAN
4 OF M-2	WELL BUILDING PLAN
5 OF M-3	BACK-UP GENERATOR BUILDING PLAN
6 OF S-4	WELL BUILDING ELEVATIONS
7 OF S-5	GENERATOR BUILDING ELEVATIONS
8 OF A-1	WELL BUILDING ELEVATIONS
9 OF A-2	GENERATOR BUILDING ELEVATIONS

STATISTICAL INVENTORY:

GENERAL COMMERCIAL	UTILITIES:
1. CURRENT ZONING: 0.7231ac/31500sf	SOUTHWEST GAS CORPORATION (760) 951-4003
2. PROJECT AREA (AC/SF): 2-30'x20' and 30'-8"x20'-0" 1,269sf	SOUTHERN CALIFORNIA EDISON (760) 951-3242
3. NUMBER AND SIZE OF BUILDING UNITS: 1,269sf	VERIZON (760) 245-0502
4. STRUCTURE (SQ):	SAN BERNARDINO COUNTY FLOOD CONTROL DISTRICT (909) 387-8120
5. PERCENTAGE OF SITE COVERED BY BUILDING: 0%	TOWN OF APPLE VALLEY (SEWER) (760) 240-7000
6. LANDSCAPING (SF/TO): 3,150sf/10%	UNDERGROUND TECHNOLOGY INSTITUTE (UTI) (760) 245-8876
7. USABLE FLOOR AREA (SF): 1,071sf	(Electric, Telephone, Cable TV, Fiber Optic)
8. STRUCTURE HEIGHT: 12'-0"	APPLE VALLEY FIRE PROTECTION DISTRICT (760) 247-7618
9. CONSTRUCTION MATERIALS: CONCRETE MASONRY BLOCK WALL AND WOOD FRAME ROOFING	LIBERTY UTILITIES - APPLE VALLEY (760) 247-6484

VICINITY MAP
NOT TO SCALE

SECTION A
NOT TO SCALE

APPLE VALLEY TOWN APPLICATION: CUP 2016-001 **JOB NO. 41142014**

LEGEND:

- EXISTING A.C. PAVEMENT
- NEW A.C. PAVEMENT
- NEW LANDSCAPING
- NEW AGG. BASE

UNDERGROUND SERVICE ALERT

CALL BEFORE YOU DIG

CALL: 888.888.8888
1-800-422-4133

TWO WORKING DAYS BEFORE YOU DIG

PREPARED IN THE OFFICE OF:

CIVILTEC
engineering inc.

118 West Lime Avenue
Monrovia, CA 91016
Phone: 626.303.7957
Fax: 626.303.7957
Web: www.civiltac.com

**WELL NO. 35
EQUIPMENT, BUILDING AND PIPING PROJECT**

SITE PLAN

LIBERTY UTILITIES - APPLE VALLEY
21760 OTTAWA ROAD
APPLE VALLEY, CA 92307
(760) 247-6484

JOB NO. 41142014



EAST ELEVATION



NORTH ELEVATION



WEST ELEVATION



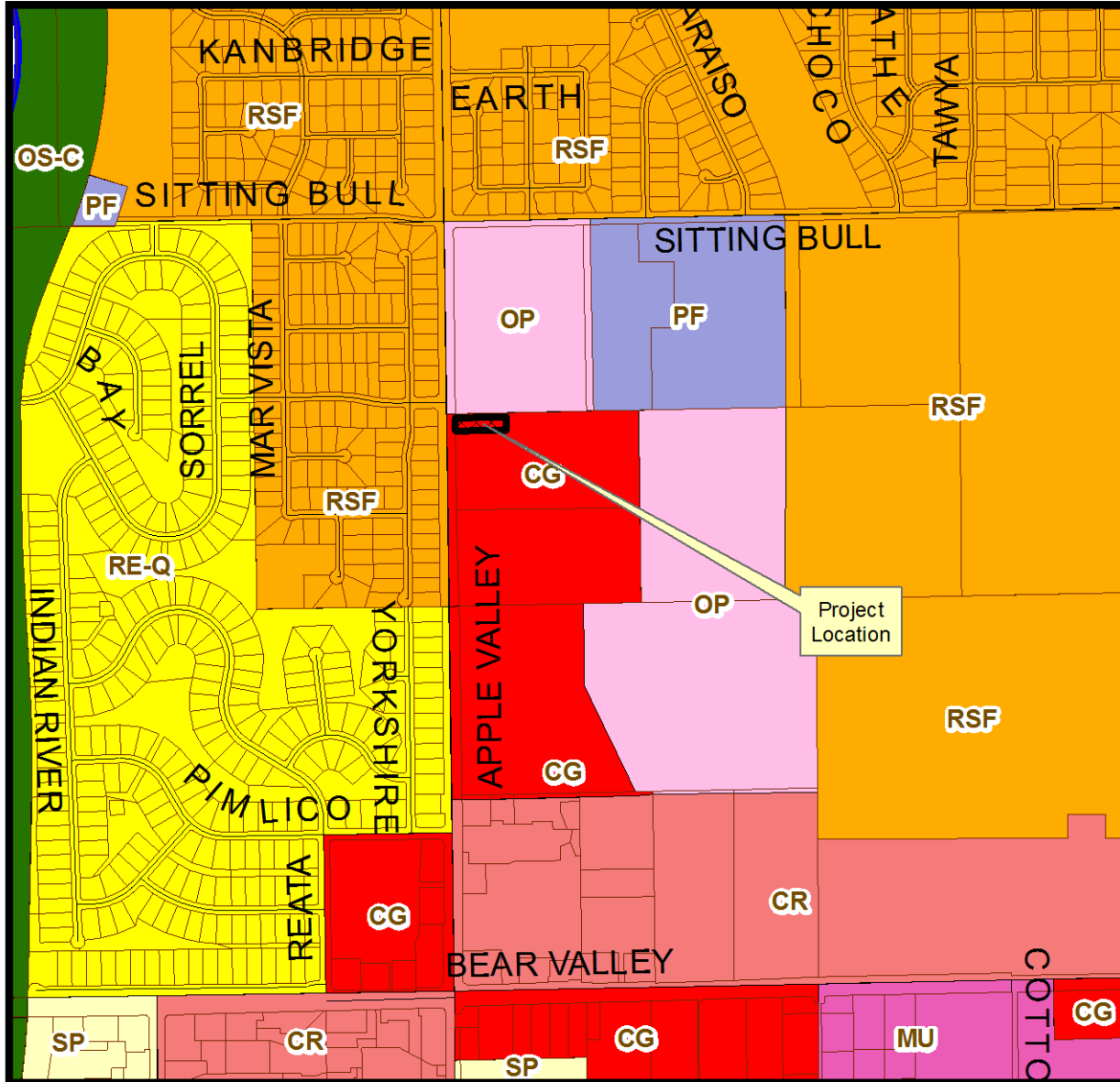
SOUTH ELEVATION

JOB NO. 41142014

SHEET PREPARED BY: ANB Consulting Structural Engineers, Inc. 229 North Central Avenue, Suite 600 Orange, California 92667 Tel: 818.500.1300 Fax 818.500.1342 vosemos@anbe.com		UNDERGROUND SERVICE ALERT  CALL (800) 888-4888 (951) 942-1111 (760) 833-8888 (760) 833-8888 (TDD)		PREPARED IN THE OFFICE OF:  118 West Lime Avenue Menlo Park, CA 94016 Phone: 650.327.0188 Fax: 650.303.7957 Web: www.civiltec.com Civil, Mechanical, Electrical Construction Management & Surveying California & Arizona				WELL NO. 35 EQUIPMENT, BUILDING AND PIPING PROJECT DWG: 35 DATE: 03/29/16 FILE: JOBNO: 016-77-00 SCALE: REF: A-1 SHEET X OF		SUBJECT: WELL BUILDING ELEVATIONS LIBERTY UTILITIES - APPLE VALLEY 21760 OTTAWA ROAD APPLE VALLEY, CA 92307 (760) 247-6484	
N.O.	REV	DESCRIPTION	APPROVED	DATE							

ZONING/LOCATION MAP

Conditional Use Permit No. 2016-001



12691 Apple Valley Road

APN 3087-161-02



Legend

- Conditional Use Permit 2016-001
- (R-EQ) Equestrian Residential (1 du/0.4 to 0.9 net acre)
- (R-SF) Single Family Residential (1du/0.4 to 0.9 net acre)
- (C-G) General Commercial
- (O-P) Office Professional
- (C-R) Regional Commercial
- (P-F) Public Facilities
- (OS-C) Open Space Conservation
- (M-U) Mixed Use
- (SP) Specific Plan

Date: 7/18/2016



Get a Slice of the Apple.

Agenda Item No. 3

TOWN OF APPLE VALLEY PLANNING COMMISSION

Staff Report

- AGENDA DATE:** August 3, 2016
- CASE NUMBER:** Development Code Amendment No. 2016-003
- APPLICANT:** Town of Apple Valley
- PROPOSAL:** To Amend the Town Municipal Code to Repeal Provisions Regulating and Referring to Sex Offender Residency
- LOCATION:** Town-wide
- ENVIRONMENTAL DETERMINATION:** 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.
- PRESENTER:** Thomas Rice, Town Attorney
- RECOMMENDATION:** Adopt Planning Commission Resolution No. 2016-007 Recommending that the Town Council Amend Various Sections of Title 9 of the Apple Valley Municipal Code to Repeal Provisions Regulating and Referring to Sex Offender Residency

BACKGROUND:

Under current California law, it is unlawful for any registered sex offender to reside within 2,000 feet of any public or private school, or park where children regularly gather. Pursuant to Penal Code Section 3003.5(c), cities in California, including the Town of Apple Valley, are authorized to enact local ordinances that restrict the residency of registered sex offenders beyond the limits established under California law.

In accordance with Penal Code Section 3003.5(c), the Town currently regulates the residency of registered sex offenders through several sections of Title 9 of the Apple Valley Municipal Code.

For example, Section 9.29.170 of the Apple Valley Municipal Code presently prohibits registered sex offenders from residing within 4,000 feet of the following sensitive uses: schools (public and private); parks (public and private); libraries; day care facilities (including family home day care); foster or juvenile residential care facilities or group homes; video arcades; movie theaters; religious institutions; museums; hospitals; private and public clubs and lodges; youth centers; places of assembly; dance/martial art studios; amusement parks; children play grounds; and educational/tutorial learning centers.

In 2014, in response to several decisions of the California Court of Appeal including *People v. Nguyen*, the Town Council adopted Ordinance No. 463 to repeal Chapter 11.54 of the Apple Valley Municipal Code to remove regulations restricting where sex offenders may travel or loiter.

In March 2015, the California Supreme Court, in *In re Taylor*, held that a blanket 2,000 foot residency restriction imposed on sex offenders in San Diego County was unconstitutional as applied in San Diego County because the restrictions essentially meant sex offenders could not live anywhere in the County.

Despite the explicit authorization provided by Penal Code Section 3003.5(c), several cities have been subjected to challenge on the basis that their residency restrictions violate the United States and California Constitutions.

DISCUSSION:

In light of the recent case law regarding residency restrictions, the Town Attorney's Office has recommended that the Town repeal its residency restrictions and instead rely on state law. The proposed resolution recommends that the Town Council repeal the residency restriction (section 9.29.170) in its entirety. The proposed resolution further recommends that the Town Council remove references to sex offenders contained in Chapter 9.08 and Chapter 9.29 (including sections 9.29.140, 9.29.150, 9.29.160, and 9.29.180) of the Apple Valley Municipal Code.

If the Town repeals its residency restrictions, sex offenders will remain subject to all state laws affecting sex offenders including, but not limited to, the following:

- Penal Code Section 290 et seq., which requires lifetime registration of sex offenders with law enforcement in the jurisdiction in which they reside;
- Penal Code Section 3003.5 (b), which prohibits sex offenders from residing within 2,000 feet of any public or private school or park where children regularly gather;
- Penal Code Section 3053.8 (a), which prohibits a paroled sex offender from “enter[ing] any park where children regularly gather without the express permission of his or her parole agent” if a victim of the underlying sex offense was under 14 years of age;
- Penal Code Section 626.81 (a), which prohibits sex offenders from entering any school building or school ground without “lawful business” and written permission from the school;
- Penal Code Section 653b, which provides enhanced penalties for any sex offender who remains at or returns to “any school or public place at or near which children attend or normally congregate” after a school or law enforcement official has asked the offender to leave; and
- Penal Code Section 653c, which prohibits a sex offender from entering or remaining at a day care or residential facility for elder or dependent adults without registering with the facility if the victim of the underlying sex offense was an elder or dependent adult.

NOTICING

Development Code Amendment No. 2016-003 was advertised as a public hearing in the Apple Valley News newspaper on June 22, 2016.

ENVIRONMENTAL REVIEW

Town staff has determined that the Ordinance is not a project within the meaning of Section 15378 of the State California Environmental Quality Act (“CEQA”) Guidelines, because it has no potential for resulting in physical change in the environment, directly or indirectly. Further, the Ordinance is exempt from CEQA under California Code of Regulations, title 14, section 15061(b)(3) because it does not 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 Ordinance, may have a significant effect on the environment, the activity is not subject to CEQA.

RECOMMENDATION:

Following receipt of public input and discussion by the Commission, it is recommended that the Commission move to approve Planning Commission Resolution No. 2016-007, forwarding a recommendation that the Town Council amend Title 9 “Development Code” of the Town of Apple Valley Municipal Code as outlined within the staff report.

ATTACHMENT:

Planning Commission Resolution No. 2016-007
Draft Town Council Ordinance

PLANNING COMMISSION RESOLUTION NO. 2016-007

A RESOLUTION OF THE TOWN OF APPLE VALLEY PLANNING COMMISSION RECOMMENDING TO THE TOWN COUNCIL ADOPTION OF AN ORDINANCE AMENDING VARIOUS SECTIONS OF TITLE 9 OF THE APPLE VALLEY MUNICIPAL CODE TO REPEAL PROVISIONS REGULATING SEX OFFENDER RESIDENCY

WHEREAS, under current state law, it is unlawful for any registered sex offender to reside within 2,000 feet of any public or private school, or park where children regularly gather; and

WHEREAS, the Town of Apple Valley is authorized, as recognized by Penal Code Section 3003.5(c), to enact local ordinances that restrict the residency of registered sex offenders beyond the limits established under California law; and

WHEREAS, in accordance with Penal Code Section 3003.5(c), the Town of Apple Valley currently regulates the residency of registered sex offenders through several sections of Title 9 of the Apple Valley Municipal Code; and

WHEREAS, notwithstanding Penal Code Section 3003.5(c), several cities have been subjected to challenge on the basis that certain residency restrictions violate the United States and California Constitutions; and

WHEREAS, the Planning Commission determines that state law restrictions protect children from registered sex offenders; and

WHEREAS, the Planning Commission recommends that the Town Council repeal the residency restriction for sex offenders listed in Section 9.29.170 of the Apple Valley Municipal Code in its entirety; and

WHEREAS, the Planning Commission further recommends that the Town Council remove references to sex offenders in Chapter 9.08 and Chapter 9.29 (including Sections 9.29.140, 9.29.150, 9.29.160, and 9.29.180) of the Apple Valley Municipal Code, while preserving the remaining terms of those provisions of the Apple Valley Municipal Code.

NOW, THEREFORE, the Planning Commission of the Town of Apple Valley does resolve as follows:

SECTION 1. Incorporation of Recitals. The above recitals are true and correct and are incorporated herein by this reference.

SECTION 2. Apple Valley Municipal Code Amendment. The Planning Commission hereby recommends that the Town Council adopt the attached Ordinance revising Title 9 of the Apple Valley Municipal Code to repeal the residency restriction for sex offenders in section 9.29.170 and remove references to sex offenders in Chapter 9.08 and Chapter 9.29 (including Sections 9.29.140, 9.29.150, 9.29.160, and 9.29.180).

SECTION 3. CEQA. The Planning Commission finds, under Title 14 of the California Code of Regulations, Section 15061(b)(3), that this Development Code Amendment 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 4. Consistency. The changes as proposed are consistent with the Goals and Policies of the Town of Apple Valley and the adopted General Plan.

Approved and Adopted by the Planning Commission of the Town of Apple Valley this 15th day of June, 2016.

Chairman Doug Qualls

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 3rd day of August, 2016 by the following vote, to-wit:

AYES:
NOES:
ABSENT:
ABSTAIN:

Ms. Yvonne Rivera ,
Planning Commission Secretary

ORDINANCE NO. _____

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF APPLE VALLEY AMENDING VARIOUS SECTIONS OF TITLE 9 OF THE APPLE VALLEY MUNICIPAL CODE TO REPEAL PROVISIONS REGULATING SEX OFFENDER RESIDENCY

WHEREAS, under current state law, it is unlawful for any registered sex offender to reside within 2,000 feet of any public or private school, or park where children regularly gather; and

WHEREAS, the Town of Apple Valley is authorized, as recognized by Penal Code Section 3003.5(c), to enact local ordinances that restrict the residency of registered sex offenders beyond the limits established under California law; and

WHEREAS, in accordance with Penal Code Section 3003.5(c), the Town of Apple Valley currently regulates the residency of registered sex offenders through several sections of Title 9 of the Apple Valley Municipal Code; and

WHEREAS, notwithstanding Penal Code Section 3003.5(c), several cities have been subjected to challenge on the basis that certain residency restrictions violate the United States and California Constitutions; and

WHEREAS, the Town Council determines that state law restrictions protect children from registered sex offenders; and

WHEREAS, the Town Council desires to amend the Apple Valley Municipal Code to repeal the residency restriction for sex offenders listed in section 9.29.170 of the in its entirety and to remove references to sex offenders from Chapter 9.08 and Chapter 9.29 (including sections 9.29.140, 9.29.150, 9.29.160, and 9.29.180) while preserving the remaining terms of those provisions; and

WHEREAS, any sex offenders within the Town shall remain subject to state law restrictions on their residency.

NOW, THEREFORE, THE TOWN COUNCIL OF THE TOWN OF APPLE VALLEY, CALIFORNIA, DOES ORDAIN AS FOLLOWS:

SECTION 1. Incorporation of Recitals. The Town Council hereby finds that all of the foregoing recitals and the staff report presented herewith are true and correct and are hereby incorporated and adopted as findings of the Town Council as if fully set forth herein.

SECTION 2. Apple Valley Municipal Code Amendments.

A. The definition of “transitional housing” listed in Chapter 9.08 is amended to remove the reference to “sex offenders.”

B. Subdivision B of Section 9.29.140 of the Apple Valley Municipal Code is hereby amended to remove the definition of “sex offender.”

C. Subdivision C.2. of Section 9.29.140 of the Apple Valley Municipal Code is hereby amended to read as follows:

“2. Group Homes of two (2) or more individuals on probation are prohibited.”

D. Subdivision C.3. of Section 9.29.140 of the Apple Valley Municipal Code is hereby amended to read as follows:

“3. Reserved.”

E. Subdivision F.5. of Section 9.29.140 of the Apple Valley Municipal Code is hereby amended to read as follows:

“5. The property owner or designated on-site manager, that is not on parole/probation, must live on the site of the Residential Care Facility for the Elderly. The name and a copy of legal identification of the property owner/on-site manager shall be provided to the Town of Apple Valley with the business license.”

F. Subdivision B of Section 9.29.150 of the Apple Valley Municipal Code is hereby amended to remove the definition of “sex offender.”

G. Subdivision C.2. of Section 9.29.150 of the Apple Valley Municipal Code is hereby amended to read as follows:

“2. Group Homes of two (2) or more individuals on probation are prohibited.”

H. Subdivision C.3. of Section 9.29.150 of the Apple Valley Municipal Code is hereby amended to read as follows:

“3. Reserved.”

I. Subdivision F.5. of Section 9.29.150 of the Apple Valley Municipal Code is hereby amended to read as follows:

“5. The property owner or designated on-site manager, that is not on parole/probation, must live on the site of the Large Residential Care Facility. The name and a copy of legal identification of the property owner/on-site manager shall be provided to the Town of Apple Valley with the business license.”

J. Subdivision B of Section 9.29.160 of the Apple Valley Municipal Code is hereby amended to remove the definition of “sex offender.”

K. Subdivision C.2. of Section 9.29.160 of the Apple Valley Municipal Code is hereby amended to read as follows:

“2. Group Homes of two (2) or more individuals on probation are prohibited.”

L. Subdivision C.3. of Section 9.29.160 of the Apple Valley Municipal Code is hereby amended to read as follows:

“3. Reserved.”

M. Subdivision F.5. of Section 9.29.160 of the Apple Valley Municipal Code is hereby amended to read as follows:

“5. The property owner or designated on-site manager, that is not on parole/probation, must live on the site of the Group Home. The name and a copy of legal identification of the property owner/on-site manager shall be provided to the Town of Apple Valley with the business license.”

N. Section 9.29.170 of the Apple Valley Municipal Code is hereby deleted in its entirety.

O. Subdivision B of Section 9.29.180 of the Apple Valley Municipal Code is hereby amended to remove the definition of “sex offender.”

P. Subdivision C.2. of Section 9.29.180 of the Apple Valley Municipal Code is hereby amended to read as follows:

“2. Group Homes of two (2) or more individuals on probation are prohibited.”

Q. Subdivision C.3. of Section 9.29.180 of the Apple Valley Municipal Code is hereby amended to read as follows:

“3. Reserved.”

R. Subdivision F.5. of Section 9.29.180 of the Apple Valley Municipal Code is hereby amended to read as follows:

“5. The property owner or designated on-site manager, that is not on parole/probation, must live on the site of the Transitional Housing Facility or Supportive Housing Facility. The name and a copy of legal identification of the property owner/on-site manager shall be provided to the Town of Apple Valley with the business license.”

SECTION 3. CEQA. The Town Council finds that this Ordinance is not subject to the California Environmental Quality Act (“CEQA”) pursuant to CEQA Guidelines Sections 15060(c)(3) because this activity is not a project as defined by Section 15378 of the CEQA Guidelines, California Code of Regulations, Title 14, Chapter 3, 15060(c)(3) (the activities are not “projects” as defined in Section 15378) of the CEQA Guidelines, California Code of Regulations, Title 14, Chapter 3, because they have no potential for resulting in physical change to the environment, directly or indirectly and pursuant to CEQA Guidelines Section 15061(b)(3) of the CEQA Guidelines, California Code of Regulations, Title 14, Chapter 3, because it can be seen with certainty that it will not have a significant effect or physical change to the environment. The Town Council, therefore, directs that a Notice of Exemption be filed with the County Clerk of the County of San Bernardino in accordance with CEQA Guidelines.

SECTION 4. Severability. If any section, subsection, subdivision, sentence, clause, phrase, or portion of this Ordinance for any reason is held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Code. The Town Council hereby declares that it would have adopted this Ordinance, and each section, subsection, subdivision, sentence, clause, phrase, or portion thereof, irrespective of the fact that any one or more sections, subsections, subdivisions, sentences, clauses, phrases, or portions thereof be declared invalid or unconstitutional.

SECTION 5. Publication. The Town Clerk shall certify as to the adoption of these amendments and shall cause it to be published within fifteen (15) days of the adoption and shall post a certified copy of this Ordinance, including the vote for and against the same, in the Office of the Town Clerk, in accordance with California Government Code Section 36933.

PASSED, APPROVED and ADOPTED this ____ day of _____, 2016.

Barb Stanton
Mayor

ATTEST:

La Vonda M-Pearson
Town Clerk

APPROVED AS TO FORM:

Best Best & Krieger LLP
Town Attorney



Get a Slice of the Apple.

Agenda Item No. 4

TOWN OF APPLE VALLEY PLANNING COMMISSION

Staff Report

AGENDA DATE:	August 3, 2016
CASE NUMBER:	Development Code Amendment No. 2016-002
APPLICANT:	Town of Apple Valley
PROPOSAL:	To Amend the Town Municipal Code to add Section 9.36.230 Prohibiting Cannabis Dispensaries, Cannabis Manufacturers, and the Cultivation and Delivery of Cannabis and to Remove Redundancies in the Apple Valley Municipal Code
LOCATION:	Town-wide
ENVIRONMENTAL DETERMINATION:	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.
PRESENTER:	Jordan Ferguson, Town Attorney Office
RECOMMENDATION:	Adopt Planning Commission Resolution No. 2016-006 recommending that the Town Council Amend the Town Municipal Code to add Section 9.36.230 Prohibiting Cannabis Dispensaries, Cannabis Manufacturers, and the Cultivation and Delivery of Cannabis and to Remove Redundancies in the Apple Valley Municipal Code

BACKGROUND:

On January 12, 2016, the Town Council held a public hearing regarding medical marijuana uses. At that meeting, the Town Council adopted an interim urgency ordinance prohibiting medical marijuana dispensaries, manufacturers, cultivation, and delivery. On February 23, 2016, the Town Council extended that interim urgency ordinance pending the completion of studies and the preparation of a permanent ordinance that would update the Town's Development Code to address these issues.

In the months since that extension was passed, staff has studied the potential effects of various medical marijuana uses in the Town, evaluated the potential risks and benefits of such uses, and is now proposing amendments to the Apple Valley Municipal Code. These amendments will codify the moratorium provisions, and also serve to clean up redundancies in the Code by removing other references to "medical marijuana dispensaries" so all regulations are housed in the same Code section.

Staff recommends that the Planning Commission adopt Planning Commission Resolution No. 2016-006 and recommend amendments to the Apple Valley Municipal Code to address these issues.

DISCUSSION:

In the fall of 2015, the California legislature adopted legislation identified as the Medical Marijuana Regulation and Safety Act (AB 243, AB 266, and SB 643) (MMRSA) to comprehensively regulate medical marijuana. MMRSA recognizes and preserves local control to regulate or ban medical cannabis cultivation, transportation, and distribution. MMRSA confirms and clarifies that, in addition to the complete land use control over retail dispensaries recognized in *City of Riverside v. Inland Empire Patients Health and Wellness Center, Inc.* (2013) 56 Cal. 4th 729, municipalities have the power to regulate or ban the cultivation and distribution of medical marijuana per *Maral v. City of Live Oak* (2013) 221 Cal.App.4th 975.

On June 28, 2016, the Secretary of State certified Proposition 64, the Control, Regulate, and Tax Adult Use of Marijuana Act ("AUMA") for the November 8, 2016 ballot.

If AUMA passes, some of its provisions will take effect on November 9, 2016. AUMA would immediately legalize possession, transport, purchase, use, and transfer of recreational marijuana for individuals 21 years of age or older. Under AUMA, adults could possess up to 28.5 grams of marijuana, up to 8 grams of marijuana in the form of concentrated cannabis, which may be present in marijuana products such as edibles, and up to six living marijuana plants, and any marijuana produced by those plants. It would also legalize the cultivation of marijuana, marijuana delivery services, and recreational marijuana retail services.

However, AUMA allows for local control of marijuana uses. It will allow local governments to:

- Ban all marijuana-related businesses outright, including marijuana dispensaries, delivery services, and any recreational marijuana retail services;
- Ban outdoor cultivation of marijuana, unless the California Attorney General determines marijuana is no longer illegal under federal law (If marijuana is federally legalized, outdoor cultivation could be regulated, but not prohibited); and
- Reasonably regulate indoor cultivation in private residences, but not ban it outright. AUMA would allow individuals to grow up to six marijuana plants in their home, and to possess all of the marijuana those plants provide.

If AUMA passes, it would allow for the development of many new marijuana-related businesses, including recreational dispensaries, recreational retail services, and recreational delivery. However, AUMA also gives local governments the authority to regulate these uses. While AUMA indicates a local government cannot prevent transportation of marijuana or marijuana products on public roads, AUMA authorizes cities to “reasonably regulate” indoor cultivation of marijuana in private residences, ban outdoor cultivation of marijuana entirely unless it is federally legalized, and prohibit any marijuana-related business entirely.

If AUMA becomes law, recreational use of marijuana will be legalized, as will recreational possession of marijuana and some level of indoor cultivation. The cultivation, transportation, and distribution of marijuana can create problems relating to public health and safety, crime, water and air quality, and energy consumption. Marijuana uses can create nuisance activity such as loitering and criminal activity in business and residential districts. Specifically mobile delivery can create issues relating to responsibility and resources to monitor and enforce state law, questions of patient qualification, and risks relating to the high use of large sums of cash for mobile transactions. Cultivation can create air quality, energy, and water quality damage and impair building maintenance and safety. For example, the increased moisture necessary to grow indoors can create excessive mold growth and structural damage. Additionally, the equipment utilized to grow indoors can pose a risk of fire and electrical hazards due to dangerous electrical alterations and use. Further, inadequate ventilation combined with the use of pesticides and fertilizers in an enclosed space can lead to chemical contamination within structures.

Staff recommends that the Planning Commission pass a resolution recommending the Town Council adopt an ordinance banning or regulating these uses.

Staff recommends the Ordinance regulate or ban to the extent allowable (1) personal marijuana use and cultivation, (2) medical marijuana uses, and (3) commercial marijuana uses.

1) Regulation of Personal Marijuana Uses

As indicated above, passage of AUMA would legalize recreational use of marijuana. However, the Ordinance staff recommends includes a provision banning personal recreational use of marijuana to the extent such use is illegal under California law. If AUMA fails, the proposed ordinance would continue to ban all personal recreational use of marijuana in the Town.

The Town is also allowed to ban outdoor cultivation of marijuana entirely. Alternatively, some cities are allowing outdoor cultivation with regulations such as:

- Outdoor, residential cultivation so long as plants are enclosed;
- Property owner must approve of cultivation on the property; and
- Limiting the number of plants.

If AUMA passes, the Town cannot ban indoor cultivation of marijuana in private residences outright, but it may “reasonably regulate” such cultivation. The Ordinance staff recommends bans all indoor cultivation entirely to the extent allowed by California law, and bans indoor cultivation in all structures that are not private residences entirely. It also allows for indoor cultivation in private residences only after the individual has obtained an Indoor Cultivation Permit, which will allow the Town to place building code, fire code, and public safety restrictions on cultivation occurring in private residences. Alternatively, the Town could decline to regulate indoor cultivation entirely, or propose other regulations, such as:

- Indoor cultivation for personal use only;

- Indoor cultivation for commercial use with a business license; and
- Indoor cultivation with an alternative set of public welfare regulations imposed, but no permit required.

2) Regulation of Medical Marijuana Uses

The Medical Marijuana Regulation and Safety Act (“MMRSA”) is left largely intact by AUMA, and so the potential for medical marijuana uses, including qualified patient or primary caregiver cultivation, still exists. The recommended ordinance would impose the same regulations on medical marijuana cultivation as on recreational cultivation and would ban all collectives, cooperatives, dispensaries, delivery services, operators, establishments, and providers. Alternatively, the Town could:

- Create looser regulations for those who have a verified medical need to cultivate marijuana indoors or outdoors;
- Allow dispensaries but limit the number allowed in the jurisdiction;
- Allow dispensaries but impose separation requirements from parks, schools, churches, and other dispensaries;
- Limit dispensaries to a specified zoning designation; and/or
- Impose security requirements including limiting the hours of operation of any dispensaries and prohibiting loitering.

3) Regulation of Commercial Marijuana Uses

If AUMA becomes law, it will likely lead to the creation of a variety of new commercial marijuana ventures, including recreational retail services. The Ordinance staff recommends bans all commercial marijuana activity, including commercial delivery, commercial cultivation, commercial manufacturing, commercial testing, and any commercial dispensaries or recreational retailers. Alternatively, the Town could allow some or all of these uses, with whatever regulations the Town sees fit. Some other options include:

- Allowing commercial cultivation with a local tax imposed on growth;
- Allowing some retailers with zoning limitations on location or number; and
- Allowing delivery to originate or terminate in the Town.

Town staff, in addition to the Town Police Department and the Town Attorney’s office, have studied the potential effects of various marijuana uses in the Town. Each particular marijuana use has been evaluated to determine the potential risks and benefits of allowing, regulating, or banning the use. Due to the various risks posed to the health, safety, and welfare of the citizens of the Town, staff is recommending enacting the restrictions present in the current moratorium, in addition to making alterations to prepare for the potential passage of AUMA, and amending the Apple Valley Municipal Code to regulate personal, medical, and commercial marijuana activities. Staff recommends that the Planning Commission hold a public hearing and adopt the attached Planning Commission Resolution No. 2016-006 recommending that the Town Council Amend the Town Municipal Code to add Section 9.36.230 dealing with marijuana uses in the Town.

ENVIRONMENTAL REVIEW

Town staff has determined that the Ordinance is not a project within the meaning of Section 15378 of the State California Environmental Quality Act (“CEQA”) Guidelines, because it has no potential for resulting in physical change in the environment, directly or indirectly. Further, the Ordinance is exempt from CEQA under California Code of Regulations, title 14, section 15061(b)(3) because it does not 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 Ordinance, may have a significant effect on the environment, the activity is not subject to CEQA.

NOTICING

Development Code Amendment No. 2016-002 was advertised as a public hearing in the Apple Valley News newspaper on June 22, 2016.

RECOMMENDATION:

Following receipt of public input and discussion by the Commission, it is recommended that the Commission move to approve Planning Commission Resolution No. 2016-006, forwarding a recommendation that the Town Council amend Title 9 "Development Code" of the Town of Apple Valley Municipal Code as outlined within the staff report.

ATTACHMENT:

Planning Commission Resolution No. 2016-006
Draft Town Council Ordinance

PLANNING COMMISSION RESOLUTION NO. 2016-006

A RESOLUTION OF THE TOWN OF APPLE VALLEY PLANNING COMMISSION RECOMMENDING TO THE TOWN COUNCIL ADOPTION OF AN ORDINANCE AMENDING THE TOWN MUNICIPAL CODE TO ADD SECTION 9.36.230 PROHIBITING CANNABIS DISPENSARIES, CANNABIS MANUFACTURERS, AND THE CULTIVATION AND DELIVERY OF CANNABIS AND TO REMOVE REDUNDANCIES IN THE APPLE VALLEY MUNICIPAL CODE

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, in 1996, the voters of the State of California approved Proposition 215 (codified as Health & Safety Code Section 11362.5 *et seq.* and entitled “The Compassionate Use Act of 1996” (“CUA”); and

WHEREAS, the intent of Proposition 215 was to enable seriously ill Californians to legally possess, use, and cultivate marijuana for medical use under state law; and

WHEREAS, in 2003, the California Legislature adopted SB 420, the Medical Marijuana Program (“MMP”), codified as Health and Safety Code Section 11362.7 *et seq.*, which permits qualified patients and their primary caregivers to associate collectively or cooperatively to cultivate marijuana for medical purposes without being subject to criminal prosecution under the Penal Code; and

WHEREAS, neither the CUA nor the MMP require nor impose an affirmative duty or mandate upon local governments to allow, authorize, or sanction the establishment of facilities that cultivate or process medical marijuana within its jurisdiction; and

WHEREAS, in May 2013, the California Supreme Court issued its decision in *City of Riverside v. Inland Empire Patients Health and Wellness Center, Inc.* (2013) 56 Cal. 4th 729, holding that cities have the authority to regulate or ban outright medical marijuana land uses; and

WHEREAS, under the Federal Controlled Substances Act, codified in 21 U.S.C. Section 801 *et seq.*, the use, possession, and cultivation of marijuana are unlawful and subject to federal prosecution without regard to a claimed medical need; and

WHEREAS, on October 9, 2015, California Governor Edmund G. Brown, Jr. signed the “Medical Marijuana Regulation and Safety Act” (“Act”) into law; and

WHEREAS, the Act becomes effective January 1, 2016 and contains provisions which allow for local governments to regulate licenses and certain activities thereunder, including allowing for a complete ban on dispensaries, cultivation, and delivery services; and

WHEREAS, several California cities have reported negative impacts of marijuana cultivation, processing, and distribution uses, including offensive odors, illegal sales, and distribution of marijuana, trespassing, theft, violent robberies and robbery attempts, fire hazards, and problems associated with mold, fungus, and pests; and

WHEREAS, marijuana plants, as they begin to flower and for a period of two months or more, produce a strong odor, and detectable far beyond property boundaries if grown outdoors; and

WHEREAS, the strong smell of marijuana creates an attractive nuisance, alerting persons to the location of the valuable plants, and creating a risk of burglary, robbery, or armed robbery; and

WHEREAS, the indoor cultivation of marijuana has potential adverse effects to the health and safety of the occupants; including structural damage to the building due to increased moisture and excessive mold growth which can occur and can pose a risk of fire and electrocution; additionally, the use of pesticides and fertilizers can lead to chemical contamination within the structure; and

WHEREAS, the Attorney General's August 2008 Guidelines for the Security and Non-Diversion of Marijuana Grown for Medical Use recognizes that the cultivation or other concentration of marijuana in any location or premises without adequate security increases the risk that nearby homes or businesses may be negatively impacted by nuisance activity such as loitering or crime; and

WHEREAS, based on the experiences of other cities, these negative effects on the public health, safety, and welfare are likely to occur, and continue to occur, in the Town due to the establishment and operation of marijuana cultivation, processing, and distribution uses; and

WHEREAS, the Town's Municipal Code ("Code") does not address the cultivation, processing, delivery and distribution of medical cannabis; and

WHEREAS, the Town adopted an interim urgency ordinance addressing these issues on January 12, 2016, and extended that ordinance on February 23, 2016 to allow Town staff, the Town Police Department, and the Town Attorney's office to study the potential effects of various medical marijuana uses in the Town; and

WHEREAS, that study has discovered the various risks posed to the health, safety, and welfare of the citizens of the Town by these uses and has determined that those risks outweigh any benefits of allowing these uses in the Town; and

WHEREAS, based on the findings above, the potential establishment of cannabis dispensaries, cultivation, cannabis manufacturers and delivery of cannabis uses in the Town without regulation poses a current and immediate threat to the public health, safety and welfare in the Town due to the negative land use and other impacts of such uses as described above; and

WHEREAS, the issuance or approval of business licenses, subdivisions, use permits, variances, building permits, or any other applicable entitlement for cannabis dispensaries, cultivation, cannabis manufacturers and delivery of cannabis will result in the aforementioned threat to public health, safety, or welfare; and

WHEREAS, on June 28, 2016, the Secretary of State certified Proposition 64, the Control, Regulate, and Tax Adult Use of Marijuana Act ("AUMA"), for the November 8, 2016 ballot; and

WHEREAS, the AUMA would become law if a majority of the electorate votes "Yes" on the proposition; and

WHEREAS, the AUMA would regulate, among other items, the use of marijuana for personal and commercial purposes, including the recreational use of marijuana by adults over 21 years of age; and

WHEREAS, to regulate personal use of marijuana the AUMA would add Section 11362.1 to the Health and Safety Code, which makes it “lawful under state and local law” for persons 21 years of age or older to “possess, process, transport, purchase, obtain, or give away to persons 21 years of age or older without any compensation whatsoever” up to 28.5 grams of marijuana in the form of concentrated cannabis or not more than eight grams of marijuana in the form of concentrated cannabis contained in marijuana products; and

WHEREAS, the AUMA would make it lawful for those individuals to “possess, plant, cultivate, harvest, dry, or process not more than six living marijuana plants and possess the marijuana produced by the plants; and

WHEREAS, the AUMA would make it lawful for those individuals to smoke or ingest marijuana or marijuana products; and

WHEREAS, should the AUMA pass, many of its provisions would take effect on November 9, 2016; and

WHEREAS, to regulate commercial use of marijuana, the AUMA would add Division 10 (Marijuana) to the Business & Professions Code, which grants state agencies “the exclusive authority to create, issue, renew, discipline, suspend, or revoke” licenses for businesses including the transportation, storage, distribution, sale, cultivation, manufacturing, and testing of marijuana; and

WHEREAS, the AUMA provides that the above state agencies shall promulgate rules and regulations and shall begin issuing licenses under Division 10 by January 1, 2018; and

WHEREAS, the AUMA states that a local jurisdiction shall not prevent transportation of marijuana or marijuana products on public roads by a licensee transporting marijuana or marijuana products in compliance with Division 10; and

WHEREAS, the AUMA would authorize cities to “reasonably regulate” without completely prohibiting cultivation of marijuana inside a private residence or inside an “accessory structure to a private residence located upon the grounds of a private residence that is fully enclosed and secure”; and

WHEREAS, the AUMA would authorize cities to completely prohibit outdoor cultivation on the grounds of a private residence, up to and until a “determination by the California Attorney General that nonmedical use of marijuana is lawful in the State of California under federal law”; and

WHEREAS, the AUMA would authorize cities to completely prohibit the establishment or operation of any marijuana business licensed under Division 10 within its jurisdiction, including marijuana dispensaries, marijuana retailers, and marijuana delivery services; and

WHEREAS, absent appropriate local regulation authorized by the AUMA, state regulations will control; and

WHEREAS, the Town has taken into account the potential effects of AUMA in formulating regulations surrounding marijuana uses.

NOW, THEREFORE, the Planning Commission of the Town of Apple Valley does resolve as follows:

SECTION 1. Incorporation of Recitals. The above recitals are true and correct and are incorporated herein by this reference.

SECTION 2. Apple Valley Municipal Code Amendment. The Planning Commission hereby recommends that the Town Council adopt the attached Ordinance revising Title 9 of the Apple Valley Municipal Code to add Section 9.36.230 prohibiting cannabis dispensaries, cannabis manufacturers, cultivation and delivery of cannabis in the Town, and to make other changes to the Apple Valley Municipal Code to eliminate redundancies.

SECTION 3. CEQA. The Town Council finds, under Title 14 of the California Code of Regulations, Section 15061(b)(3), that this Development Code Amendment 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. The Town Council, therefore, directs that a Notice of Exemption be filed with the County Clerk of the County of San Bernardino in accordance with CEQA Guidelines.

SECTION 4. Consistency. The changes as proposed are consistent with the Goals and Policies of the Town of Apple Valley and the adopted General Plan.

MOVED, PASSED, AND ADOPTED at a regular meeting of the Planning Commission on the 3rd day of August, 2016, by the following vote:

Chairman Doug Qualls

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 3rd day of August, 2016 by the following vote, to-wit:

AYES:
NOES:
ABSENT:
ABSTAIN:

Ms. Yvonne Rivera ,
Planning Commission Secretary

ORDINANCE NO. _____

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF APPLE VALLEY, AMENDING THE APPLE VALLEY MUNICIPAL CODE TO ADD SECTION 9.36.230 PROHIBITING CANNABIS DISPENSARIES, CANNABIS MANUFACTURERS, AND THE CULTIVATION AND DELIVERY OF CANNABIS AND TO REMOVE REDUNDANCIES IN THE APPLE VALLEY MUNICIPAL CODE

WHEREAS, in 1996, the voters of the State of California approved Proposition 215 (codified as Health & Safety Code Section 11362.5 et seq. and entitled "The Compassionate Use Act of 1996"); and

WHEREAS, the intent of Proposition 215 was to enable seriously ill Californians to legally possess, use, and cultivate marijuana for medical use under state law; and

WHEREAS, in 2003, the California Legislature adopted SB 420, the Medical Marijuana Program ("MMP"), codified as Health and Safety Code Section 11362.7 et seq., which permits qualified patients and their primary caregivers to associate collectively or cooperatively to cultivate marijuana for medical purposes without being subject to criminal prosecution under the Penal Code; and

WHEREAS, neither the Compassionate Use Act ("CUA") nor the MMP require nor impose an affirmative duty or mandate upon local governments to allow, authorize, or sanction the establishment of facilities that cultivate or process medical marijuana within its jurisdiction; and

WHEREAS, in May 2013, the California Supreme Court issued its decision in *City of Riverside v. Inland Empire Patients Health and Wellness Center, Inc.* (2013) 56 Cal. 4th 729, holding that cities have the authority to regulate or ban outright medical marijuana land uses; and

WHEREAS, under the Federal Controlled Substances Act, codified in 21 U.S.C. Section 801 et seq., the use, possession, and cultivation of marijuana are unlawful and subject to federal prosecution without regard to a claimed medical need; and

WHEREAS, on October 9, 2015, Governor Jerry Brown signed the "Medical Marijuana Regulation and Safety Act" ("MMRSA") into law; and

WHEREAS, MMRSA became effective January 1, 2016 and contains provisions which allow for local governments to regulate licenses and certain activities thereunder, including allowing for a complete ban on dispensaries, cultivation, and delivery services; and

WHEREAS, several California cities have reported negative impacts of marijuana cultivation, processing, and distribution, including offensive odors, illegal sales, and distribution of marijuana, trespassing, theft, violent robberies and robbery attempts, fire hazards, and problems associated with mold, fungus, and pests; and

WHEREAS, marijuana plants, as they begin to flower and for a period of two months or more, produce a strong odor, which is detectable far beyond property boundaries if grown outdoors; and

WHEREAS, the strong smell of marijuana creates an attractive nuisance, alerting persons to the location of the valuable plants, creating a risk of burglary, robbery, or armed robbery; and

WHEREAS, the indoor cultivation of marijuana has potential adverse effects to the health and safety of the occupants; including structural damage to the building due to increased moisture and excessive mold growth which can occur and can pose a risk of fire and electrocution; additionally, the use of pesticides and fertilizers can lead to chemical contamination within the structure; and

WHEREAS, the Attorney General's August 2008 Guidelines for the Security and Non-Diversion of Marijuana Grown for Medical Use recognizes that the cultivation or other concentration of marijuana in any location or premises without adequate security increases the risk that nearby homes or businesses may be negatively impacted by nuisance activity such as loitering or crime; and

WHEREAS, based on the experiences of other cities, these negative effects on the public health, safety, and welfare are likely to occur, and continue to occur, in the Town due to the establishment and operation of marijuana cultivation, processing, and distribution uses; and

WHEREAS, on January 12, 2016, the Town Council adopted Urgency Ordinance No. 480 pursuant to Government Code Section 65858 establishing a forty-five (45) day moratorium on marijuana dispensaries, marijuana manufacturers, cultivation, and delivery of marijuana in the Town pending the completion of studies and the preparation of an update to the Apple Valley Municipal Code; and

WHEREAS, on February 23, 2016, the Town Council adopted an extension of Urgency Ordinance No. 480 pursuant to Government Code Section 65858 extending the moratorium by an additional ten(10) months and fifteen(15) days; and

WHEREAS, Town staff, the Police Department, and the Town Attorney's office have conducted research into the possible and likely impacts of further regulating or banning medical marijuana dispensaries, manufacturers, cultivation, and delivery in the Town in order to mitigate such impacts; and

WHEREAS, based on that study , the potential establishment of marijuana dispensaries, cultivation, marijuana manufacturers and delivery of marijuana uses in the Town without regulation poses a current and immediate threat to the public health, safety and welfare in the Town due to the negative land use and other impacts of such uses; and

WHEREAS, the issuance or approval of business licenses, subdivisions, use permits, variances, building permits, or any other applicable entitlement for marijuana dispensaries, cultivation, marijuana manufacturers and delivery of marijuana will result in the aforementioned threat to public health, safety, or welfare; and

WHEREAS, on June 28, 2016, the Secretary of State certified Proposition 64, the Control, Regulate, and Tax Adult Use of Marijuana Act ("AUMA"), for the November 8, 2016 ballot; and

WHEREAS, the AUMA would become law if a majority of the electorate votes "Yes" on the proposition; and

WHEREAS, the AUMA would regulate, among other items, the use of marijuana for personal and commercial purposes, including the recreational use of marijuana by adults over 21 years of age; and

WHEREAS, to regulate personal use of marijuana the AUMA would add Section 11362.1 to the Health and Safety Code, which makes it “lawful under state and local law” for persons 21 years of age or older to “possess, process, transport, purchase, obtain, or give away to persons 21 years of age or older without any compensation whatsoever” up to 28.5 grams of marijuana in the form of concentrated cannabis or not more than eight grams of marijuana in the form of concentrated cannabis contained in marijuana products; and

WHEREAS, the AUMA would make it lawful for those individuals to “possess, plant, cultivate, harvest, dry, or process not more than six living marijuana plants and possess the marijuana produced by the plants; and

WHEREAS, the AUMA would make it lawful for those individuals to smoke or ingest marijuana or marijuana products; and

WHEREAS, should the AUMA pass, many of its provisions would take effect on November 9, 2016; and

WHEREAS, to regulate commercial use of marijuana, the AUMA would add Division 10 (Marijuana) to the Business & Professions Code, which grants state agencies “the exclusive authority to create, issue, renew, discipline, suspend, or revoke” licenses for businesses including the transportation, storage, distribution, sale, cultivation, manufacturing, and testing of marijuana; and

WHEREAS, the AUMA provides that the above state agencies shall promulgate rules and regulations and shall begin issuing licenses under Division 10 by January 1, 2018; and

WHEREAS, the AUMA states that a local jurisdiction shall not prevent transportation of marijuana or marijuana products on public roads by a licensee transporting marijuana or marijuana products in compliance with Division 10; and

WHEREAS, the AUMA would authorize cities to “reasonably regulate” without completely prohibiting cultivation of marijuana inside a private residence or inside an “accessory structure to a private residence located upon the grounds of a private residence that is fully enclosed and secure”; and

WHEREAS, the AUMA would authorize cities to completely prohibit outdoor cultivation on the grounds of a private residence, up to and until a “determination by the California Attorney General that nonmedical use of marijuana is lawful in the State of California under federal law”; and

WHEREAS, the AUMA would authorize cities to completely prohibit the establishment or operation of any marijuana business licensed under Division 10 within its jurisdiction, including marijuana dispensaries, marijuana retailers, and marijuana delivery services; and

WHEREAS, absent appropriate local regulation authorized by the AUMA, state regulations will control; and

WHEREAS, the Town has taken into account the potential effects of AUMA in formulating regulations surrounding marijuana issues.

NOW, THEREFORE, THE TOWN COUNCIL OF THE TOWN OF APPLE VALLEY, CALIFORNIA, DOES ORDAIN AS FOLLOWS:

SECTION 1. Incorporation of Recitals. The Town Council hereby finds that all of the foregoing recitals and the staff report presented herewith are true and correct and are hereby incorporated and adopted as findings of the Town Council as if fully set forth herein.

SECTION 2. Apple Valley Municipal Code Amendment #1. Title 9 of the Apple Valley Municipal Code is hereby amended to add Section 9.36.230, to read in full as follows:

“9.36.230 - CANNABIS DISPENSARIES, CANNABIS MANUFACTURERS, AND THE CULTIVATION AND DELIVERY OF CANNABIS

A. Purpose.

The purpose of this Section is to regulate personal, medical, and commercial marijuana uses in the Town. Nothing in this Section shall preempt or make inapplicable any provision of state or federal law. No provisions of this Section shall hinder or supersede any other applicable State or Federal statute.

B. Definitions.

For purposes of this Section, the following definitions shall apply:

1. “Commercial marijuana activity” includes the cultivation, possession, manufacture, distribution, processing, storing, laboratory testing, labeling, transportation, distribution, delivery or sale of marijuana and marijuana products.
2. “Cultivation” means any activity involving the planting, growing, harvesting, drying, curing, grading, or trimming of marijuana.
3. “Delivery” means the commercial transfer of marijuana or marijuana products to a customer. "Delivery" also includes the use by a retailer of any technology platform owned and controlled by the retailer, or independently licensed under California law, that enables customers to arrange for or facilitate the commercial transfer by a licensed retailer of marijuana or marijuana products.
4. “Distribution” means the procurement, sale, and transport of marijuana and marijuana products between entities for commercial use purposes.
5. “Licensee” means the holder of any state issued license related to marijuana activities, including but not limited to licenses issued under Division 10 of the Business & Professions Code.
6. “Manufacture” means to compound, blend, extract, infuse, or otherwise make or prepare a marijuana product.
7. “Marijuana” means all parts of the plant *Cannabis sativa* L., whether growing or not; the seeds thereof; the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds or resin. It does not include:

(a) Industrial hemp, as defined in Section 11018.5 of the California Health & Safety Code; or

(b) The weight of any other ingredient combined with marijuana to prepare topical or oral administrations, food, drink, or other product.

8. "Marijuana accessories" means any equipment, products or materials of any kind which are used, intended for use, or designed for use in planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, smoking, vaporizing, or containing marijuana, or for ingesting, inhaling, or otherwise introducing marijuana or marijuana products into the human body.
9. "Marijuana products" means marijuana that has undergone a process whereby the plant material has been transformed into a concentrate, including, but not limited to, concentrated cannabis, or an edible or topical product containing marijuana or concentrated cannabis and other ingredients.
10. "Person" includes any individual, firm, co-partnership, joint venture, association, corporation, limited liability company, estate, trust, business trust, receiver, syndicate, or any other group or combination acting as a unit, and the plural as well as the singular.
11. "Private residence" means a house, an apartment unit, a mobile home, or other similar dwelling.
12. "Sale" includes any transaction whereby, for any consideration, title to marijuana is transferred from one person to another, and includes the delivery of marijuana or marijuana products pursuant to an order placed for the purchase of the same and soliciting or receiving an order for the same, but does not include the return of marijuana or marijuana products by a licensee to the licensee from whom such marijuana or marijuana product was purchased.
13. Any term defined in this Section also means the very term as defined in the California Business & Professions Code or the California Health & Safety Code, unless otherwise specified.

C. Personal Use.

1. For purposes of this subsection, personal recreational use, possession, purchase, transport, or dissemination of marijuana shall be considered unlawful in all areas of the Town to the extent it is unlawful under California law.
2. Outdoor Cultivation. A person may not plant, cultivate, harvest, dry, or process marijuana plants outdoors in any zoning district of the Town. No use permit, building permit, variance, or any other permit or entitlement, whether administrative or discretionary, shall be approved or issued for any such use or activity.
3. Indoor Cultivation.

(a) A person may not plant, cultivate, harvest, dry, or process marijuana plants inside a private residence, or inside an accessory structure to a private residence located upon the grounds of a private residence, or inside any other enclosed structure within any zoning district of the Town. No use permit, building permit, variance, or any other permit or entitlement, whether administrative or discretionary, shall be approved or issued for any such use or activity.

(b) To the extent a complete prohibition on indoor cultivation is not permitted under California law, a person may not plant, cultivate, harvest, dry, or process marijuana plants inside a private residence, or inside an accessory structure to a private residence located upon the grounds of a private residence, unless the person is issued an indoor cultivation permit by the Planning Division. A person may not plant, cultivate, harvest, dry, or process marijuana plants inside any enclosed structure within any zoning district of the Town which is not either a private residence or an accessory structure to a private residence located upon the grounds of a private residence.

(c) The Planning Division will issue application and processing guidelines for the indoor cultivation permit. No indoor cultivation permit shall be issued prior to the release of these guidelines, and no permit shall be granted which has not complied fully with the application and processing requirements.

D. Medical Use.

1. Cultivation of medical marijuana pursuant to Section 11362.77 of the California Health & Safety Code is subject to the cultivation requirements laid out in subsection (C) of this Section.
2. The establishment or operation of any medical marijuana collective, cooperative, dispensary, delivery service, operator, establishment, or provider shall be considered a prohibited use in all zoning districts of the Town. No use permit, variance, building permit, or any other entitlement or permit, whether administrative or discretionary, shall be approved or issued for the establishment of any collective, cooperative, dispensary, delivery service, operator, establishment, or provider in any zoning district, and no person shall otherwise establish such businesses or operations in any zoning district.

E. Commercial Use.

1. The establishment or operation of any business of commercial marijuana activity is prohibited. No use permit, variance, building permit, or any other entitlement or permit, whether administrative or discretionary, shall be approved or issued for the establishment or operation of any such business or operation. Such prohibited businesses or operations may include, but are not limited to:
 - (a) The transportation, delivery, storage, distribution, or sale of marijuana, marijuana products, or marijuana accessories;
 - (b) The cultivation of marijuana;
 - (c) The manufacturing or testing of marijuana, marijuana products, or marijuana accessories; or

(d) Any other business licensed by the state or other government entity under Division 10 of the California Business & Professions Code, as it may be amended from time to time.

F. Penalty for Violation.

No person, whether as principal, agent, employee or otherwise, shall violate, cause the violation of, or otherwise fail to comply with any of the requirements of this Section. Every act prohibited or declared unlawful, and every failure to perform an act made mandatory by this Section shall be a misdemeanor or an infraction, at the discretion of the Town Attorney or the District Attorney. In addition to the penalties provided in this Section, any condition caused or permitted to exist in violation of any of the provisions of this Section is declared a public nuisance and may be abated as provided in Article III of Chapter 1.01 of the Apple Valley Municipal Code and/or under any other applicable provision of state law.”

SECTION 3. Apple Valley Municipal Code Amendment #2. The title and subdivision (D) of Section 9.05.070(D) of the Apple Valley Municipal Code are hereby amended to read as follows:

“9.05.070 – SIMILAR USES

D. Unlawful Uses

Uses which are unlawful under Federal or State law shall not be treated as permitted uses, and shall not be determined to be similar uses under this Section.”

SECTION 4. Apple Valley Municipal Code Amendment #3. Chapter 9.08 of the Apple Valley Municipal Code is hereby amended to remove the definition of “Medical Marijuana Dispensary” to ensure consistency throughout the Apple Valley Municipal Code.

SECTION 5. CEQA. The Town Council finds that this Ordinance is not subject to the California Environmental Quality Act (“CEQA”) pursuant to CEQA Guidelines Sections 15060(c)(3) because this activity is not a project as defined by Section 15378 of the CEQA Guidelines, California Code of Regulations, Title 14, Chapter 3, 15060(c)(3) (the activities are not “projects” as defined in Section 15378) of the CEQA Guidelines, California Code of Regulations, Title 14, Chapter 3, because they have no potential for resulting in physical change to the environment, directly or indirectly and pursuant to CEQA Guidelines Section 15061(b)(3) of the CEQA Guidelines, California Code of Regulations, Title 14, Chapter 3, because it can be seen with certainty that it will not have a significant effect or physical change to the environment.

SECTION 6. Restatement of Existing Law. Neither the adoption of this Ordinance nor the repeal of any other ordinance of this Town shall in any manner affect the prosecution for violations of ordinances, which violations were committed prior to the effective date hereof, nor be construed as a waiver of any license or penalty or the penal provisions applicable to any violation thereof. The provisions of this Ordinance, insofar as they are substantially the same as ordinance provisions previously adopted by the Town relating to the same subject matter or relating to the enumeration of permitted uses under the Town’s zoning code, shall be construed as restatements and continuations and not as new enactments.

SECTION 7. Severability. If any section, subsection, subdivision, sentence, clause, phrase, or portion of this Ordinance for any reason is held to be invalid or unconstitutional by the decision of

any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Code. The Town Council hereby declares that it would have adopted this Ordinance, and each section, subsection, subdivision, sentence, clause, phrase, or portion thereof, irrespective of the fact that any one or more sections, subsections, subdivisions, sentences, clauses, phrases, or portions thereof be declared invalid or unconstitutional.

SECTION 8. Publication. The Town Clerk shall certify as to the adoption of these amendments and shall cause it to be published within fifteen (15) days of the adoption and shall post a certified copy of this Ordinance, including the vote for and against the same, in the Office of the Town Clerk, in accordance with California Government Code Section 36933.

PASSED, APPROVED and ADOPTED this ___ day of _____, 2016.

Barb Stanton
Mayor

ATTEST:

La Vonda M-Pearson
Town Clerk

APPROVED AS TO FORM:

Best Best & Krieger LLP
Town Attorney



Get a Slice of the Apple.

TOWN OF APPLE VALLEY PLANNING COMMISSION

Staff Report

AGENDA DATE:	August 3, 2016
APPLICANT:	Town of Apple Valley Engineering Department
PROPOSAL:	Action on Subdivision Map Act Violations For the Planning Commission to: <ol style="list-style-type: none">1. Provide an Opportunity for Property Owners to Present Evidence to the Planning Commission Per Government Code section 66499.36;2. As Appropriate, Provide Direction to Staff to Record Notices of Violation
LOCATION:	Multiple Locations as Identified in the Staff Report
ENVIRONMENTAL DETERMINATION:	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.
RESPONSIBLE STAFF PERSON:	Brad Miller, Town Engineer
RECOMMENDATION:	Provide an opportunity for any interested owners to present evidence regarding the Notice of Intention to Record Notice of Violations. Following presentation of evidence, provide direction to staff, as appropriate, to record Notices of Violation.

BACKGROUND

The Town of Apple Valley (“Town”) entered into multiple subdivision agreements with developers for subdivisions within the Town pursuant to the Subdivision Map Act, Government Code section 66410, *et seq.* (the “Map Act”). These agreements provided for a two-year period following recordation of the final tract map for completion of various improvements including, but not limited to, street improvements, landscaping, and monumentation. The agreements provided for extensions upon request. As part of entering into these agreements, developers submitted performance bonds as security for completion of the improvements under the agreements. As a result of the economic downturn, some of the subdivision projects have stalled, and the improvements were not completed within the specified timeframe. Certain developers did not request extensions under the subdivision agreements, even though they did not complete the improvements within the required timeframe. Any developers that did not complete the improvements as required, and that did not extend the term of their respective subdivision agreement, are in default under the Map Act and the Town considers these properties as illegally divided. Some of the properties are no longer owned by the same developer that entered into the original agreements.

One of the remedies the Map Act provides for real property that has been divided in violation of the Act is filing and recording a notice of violation against the offending property.

Pursuant to Government Code section 66499.36, whenever a local agency has knowledge that real property has been divided in violation of the Map Act or of local ordinances enacted pursuant to it, the local agency may mail by certified mail to the then-current owner of record of the property a notice of intention to record a notice of violation. The notice of intention must describe the real property in detail, name the owners thereof, and state that an opportunity will be given to the owner to present evidence (“Notice of Intention”). The Notice of Intention must specify a time, date, and place for a meeting at which the owner may present evidence to the legislative body supporting why the notice should not be recorded. The Notice of Intention must also contain a description of the violations and an explanation as to why the subject parcel is not lawful under subdivision (a) or (b) of Section 66412.6.

The purpose of filing a notice of violation against a property that is out of compliance is to place the property owner, as well as any potential purchasers or lenders, on notice of the incomplete improvements, and of the Map Act violations. The Town will not issue building permits or certificates of occupancy for these properties unless and until the violations are corrected.

Other than completion of the improvements, a violation may be corrected at this time if the property owner enters into a new subdivision agreement with the Town, and issues new bonds.

ANALYSIS

The Town Engineering Department identified the following properties as out of compliance with the Map Act for the general reasons described above:

<u>Tract/Parcel Map</u>	<u>Property Owner Name/Company ("Owner")</u>
15151	Grand Liquor Property LLC
15151	Halle Properties LLC
15151	Autozone Texas
14484-1	Gary Ledford
15386-1,2,3	Gary Ledford
15384-1,2	Gary Ledford
14514-1	Apple 96 2010 LLC
17453	Polvera Inc
17494	Maida, Maida Ira and Maida Munem Ira
18343	Av 2010 Central PS

NOTICING

The Town mailed Notices of Intention to the Owners identified above in accordance with Government Code section 66499.36. The Notices of Intention are attached to this Staff Report and set forth in detail the alleged violations on each of the identified properties. The Notices of Intention identified the date and time of the prior Planning Commission meeting as the date for the hearing described below. That meeting was cancelled, and the Town informed the Owners that the meeting to present evidence was continued to August 3, 2016.

RECOMMENDATION

Provide the Owner an opportunity to contest the notice of violation and to present evidence to the Planning Commission as to why the notice of violation should not be recorded. If, after the Owner has presented evidence, the Planning Commission determines that there has been no violation, the Town will mail a clearance letter to the Owner. If, after the Owner has presented evidence, the Planning Commission determines that the property has in fact been illegally divided, the Town will record the notice of violation for record with the County Recorder's Office for the County of San Bernardino.

If the Owner does not appear to present evidence and/or if the Planning Commission determines that a property has been illegally divided after considering evidence presented by the Owner, staff recommends that the Planning Commission provide direction and authorize recordation of notices of violation against the violating property(ies).

Prepared By:

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Town Engineer