



TOWN OF APPLE VALLEY

TOWN COUNCIL STAFF REPORT

To: Honorable Mayor and Town Council **Date:** September 27, 2016

From: Carol Miller, Principal Planner **Item No:** 3
Planning Department

Subject: ADOPT ORDINANCE NO. 488 – AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF APPLE VALLEY, CALIFORNIA, TO AMEND TITLE 9 DEVELOPMENT CODE REPEALING PROVISIONS REGULATING SEX OFFENDER RESIDENCY

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

RECOMMENDED ACTION:

Adopt Ordinance No. 488.

SUMMARY:

At its September 13, 2016 meeting, the Town Council reviewed and introduced Ordinance No. 488 which amends the Development Code repealing provisions regulating sex offender residency.

As a part of the requirements to adopt any new Ordinance, Ordinance No. 488 has been scheduled for adoption at the September 27, 2016 Town Council meeting.

FISCAL IMPACT:

Not Applicable

ATTACHMENTS:

Ordinance No. 488

ORDINANCE NO. 488

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.

APPROVED and ADOPTED by the Town Council and signed by the Mayor and attested to by the Town Clerk this 27th day of September, 2016.

Barb Stanton, Mayor

ATTEST:

La Vonda M-Pearson, Town Clerk

APPROVED AS TO FORM:

APPROVE AS TO CONTENT:

John Brown, Town Attorney

Frank Robinson, Town Manager