

**TOWN OF
APPLE VALLEY, CALIFORNIA**

AGENDA MATTER

Subject Item:

INTRODUCE ORDINANCE NO. 384 – AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF APPLE VALLEY AMENDING CHAPTER 11.68 USE OF PARK AND RECREATION FACILITIES; AND REPEALING SECTION 11.70 REGULATIONS FOR USE OF SKATE PARKS OF THE APPLE VALLEY MUNICIPAL CODE

SUMMARY STATEMENT

With the recent addition of Civic Center Park and the amphitheater, the Code Enforcement Division is facing a new challenge regarding enforcement of park facilities. Bicycle riders and skateboarders have found the amphitheater a great place to ride, jump and grind their bikes and skateboards. This activity has the potential for the riders to injure themselves or others and also can cause damage to concrete, the rails, turf, plants and to the irrigation system. This activity is not limited to Civic Center Park; it is a challenge in all parks.

Staff has reviewed the Municipal Code sections regarding Use of Parks and Recreation Facilities chapter 11.68 and the Skate Park regulations chapter 11.70 and is recommending some changes to these Municipal Code sections for the purpose of uniformity of procedures and uniformity of fines within the Town's park regulations and the skate park regulations. Presently there is a discrepancy in fine amounts between the skate park and the rest of the parks. Further some clean-up language was done to various sections that also included a change to the no smoking section.

Recommended Action:

1. Move to waive the reading of Ordinance No. 384 in its entirety and read by title only.
2. Move to Introduce Ordinance No. 384 amending Chapter 11.68 Use of Park and Recreation Facilities and Repealing Section 11.70 Regulations for use of Skate Parks of the Apple Valley Municipal Code.

Proposed by: Municipal Services Department **Item Number** _____

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

Background

The Code Enforcement Division has been diligent in their attempts to keep riders out of the no riding areas. Recently a juvenile was issued an administrative citation for riding in and around the amphitheater stage area. Presently the penalty for violating section 11.68 of the Municipal Code is a misdemeanor punishable by up to six months in jail and or \$1000.00 fine. As an alternative the punishment may be an administrative citation with the penalty being \$100.00 fine for the first offense, \$250.00 for the second citation and \$500.00 for the third and subsequent violations within a twelve month time period.

Currently the punishment for violating section 11.70 Use of Skate Park is a \$25.00 fine for the first violation, \$50.00 for the second violation and \$100.00 for the third and subsequent violations and the offender's right to use the skate park facility shall be suspended for a period of not less than six consecutive months.

Proposed changes

The proposed amendment will make violations of park and recreation facilities regulations either a misdemeanor or an infraction. The person issuing the citation will have the discretion to issue a misdemeanor citation to court or an administrative citation in the amount of \$100.00 for the first offense, \$250.00 for the second offense and \$500.00 for the third and subsequent offense in accordance with §1.01.200 of the Municipal Code.

As an alternative the issuing person may issue an administrative citation in the amount of \$25.00 for the first violation, \$50.00 for the second violation and \$100.00 for the third and subsequent violations within a twelve month period. After an administrative citation is issued the subject has the opportunity to request an administrative hearing. The Hearing Officer has the authority to uphold the citation, dismiss the citation or to uphold the citation and reduce the fine if deemed appropriate.

Giving the discretion to the issuing person should allow for more appropriate fines for violations depending on the severity of the violation. For instance a person riding a bike on wet turf may cause minor damage to the turf and should be fined \$25.00 or given a verbal or written warning. A person riding their bike on the amphitheater and grinding their pegs on the edge of the cement causing actual property damage may be issued an administrative citation for \$100.00 if deemed appropriate. Nothing in this chapter would preclude the Town from civilly pursuing a person who causes damage to Town property.

Other notable changes

1. Under 11.68.040 specific acts prohibited subsection (b) was changed from the riding or operating a bike, skateboard etc. in a park being a violation

and modified to make it a violation of the code to do such in a manner to cause or potentially cause damage. Riding a bike or skateboard in a safe manner on paved paths etc. would not be a violation.

2. 11.68.040 (q) No Smoking section was expanded from no smoking inside facilities only, to smoking not being allowed in any park or facility except in designated areas.
3. The seizure of evidence section 11.68.110 was modified to reflect the seized item would be returned after the fine is paid or if an administrative hearing is requested after the administrative hearing and fines are paid. Also the section will reference the disposition of unclaimed property section 11.90. The seizure of evidence would be mandatory for all areas of the park not limited to the skate park. Code Enforcement will store and handle the disposition of the property.
4. The Skate Park facility Use Regulations section 11.68.060 was changed to come into conformance with California State law which under section 115800 of the Health and Safety Code requires the use of helmets, elbow pads and knee pads at all times while in a skate park. The current Town code requires the use of helmets but recommends the use of elbow pads, knee pads and wrist guards. Town code may not be less restrictive than State law.

ORDINANCE NO. 384

**AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF APPLE VALLEY
AMENDING CHAPTER 11.68 USE OF PARK AND RECREATION FACILITIES;
AND REPEALING SECTION 11.70 REGULATIONS FOR USE OF SKATE PARKS
OF THE APPLE VALLEY MUNICIPAL CODE**

WHEREAS, in order to ensure uniformity in the enforcement of regulations regarding use of park and recreation facilities;

WHEREAS, the Town Council has a desire for all park and recreational facilities to be used in a manner that is safe and enjoyable;

WHEREAS, there is a desire to allow recreational bike use in parks that does not create a hazard to pedestrians or damage to park property;

WHEREAS, State law requires that certain provisions be adopted regarding the use of skates in parks;

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

Section 1. Chapter 11.68 of Title 11 of the Town of Apple Valley Municipal Code is hereby amended by modifying as follows:

Chapter 11.68

USE OF PARK AND RECREATION FACILITIES

Sections:

11.68.010	Declaration of Policy
11.68.020	Definitions
11.68.030	Compliance
11.68.040	Specific Acts Prohibited
11.68.050	Designation of Park hours
11.68.060	Skate Park Regulations
11.68.070	Posting of Skate Park Regulations
11.68.080	Confining or Prohibiting Activities
11.68.090	Permits
11.68.100	Enforcement
11.68.110	Seizure of Evidence
11.68.120	Penalties
11.68.130	Administrative Citations

11.68.010 Declaration of Policy

Town parks and recreational facilities are established for the use and enjoyment of all persons in the pursuit of recreation, whether active or passive. It is the Town's responsibility to promote the health, peace, safety, welfare and convenience of all persons in regards to their use and enjoyment of any Town park. The Council finds that to give practical effect to this policy and to insure that all persons may enjoy such parks and facilities, it is necessary to regulate the use of Town parks and facilities.

11.68.020 Definitions

In this Chapter, the following definitions shall apply:

- a. "Park" means a park, playground, recreation center, tennis courts, swimming facilities, sports field, ballfield and/or open space or other area, structure or facility, owned or used by the Town.
- b. "Facility" means an indoor building, owned or used by the Town.
- c. "Town Manager" means the Town Manager of the Town of Apple Valley or the person authorized by said Town Manager to act in his or her stead in respect to the provisions of this Chapter.
- d. "Neighborhood Parks" are intended for daytime use, and have no regularly scheduled nighttime activities nor lighted facilities intended for nighttime public use.
- e. "Community Parks" are intended for daytime use and have outdoor, permanent lighted facilities intended for public use during certain nighttime events.
- f. "Skate board": A skate board is a board-like object which has two axles attached to the bottom of the board-like object with one or two wheels attached to each axle and the user rides or stands upon the board-like object and may include a handlebar.
- g. "In-line skates": In-line skates, also known as roller blades, are footwear containing four or more axles mounted in a straight line extending generally from or behind the heel of the footwear to or in front of the toe of the footwear with a single wheel attached to each axle.
- h. "Roller Skates": Roller skates are any footwear or device which may be attached to the foot or footwear to which wheels are attached and such wheels may be used by the wearer in moving.
- i. "Amplified Sound": Amplified sound means music, sound wave, vibration or speech projected or transmitted by electronic equipment.
- j. "Daytime Use". Shall mean from dawn to dusk unless otherwise posted.

- k. "Vehicle". Is a device by which any persons or property may be propelled, moved, or drawn upon a highway, including motorcycles.
- l. "Scheduled nighttime events" Activities formally recognized and approved by the Town Recreation Department.

11.68.030 Compliance

No person shall enter, be or remain in any Town park unless such person complies with all the regulations and conditions set forth in this Chapter. The prohibitions of this Chapter, however, shall not apply to emergency police, fire or public utility services.

11.68.040 Specific Acts Prohibited

Every person who willfully within any park commits any of the acts set out in this section or violates any other prohibition in this Chapter is guilty of a violation of this Chapter. The prohibited acts include the following:

- (a) To hitch, fasten, lead, drive or let loose any animal or fowl of any kind, except in areas which may be designated by the Town Manager, provided that this shall not apply to dogs and cats when led by a leash and under full control by its owner or custodian.
- (b) To ride or operate bicycles, skateboards, inline skates, roller skates, or similar such devices in any manner that can cause damage to persons or property. This includes but is not limited to riding, jumping, or grinding from any stage, stairs, rails, tables, benches, curbing, walls, trees, amphitheater, any building or structure, grass or other area where the operation of the device can cause damage to property.
Exceptions:
 - 1. Skateboards, inline skates and roller skates operating in conformance with posted regulations in the skate park.
 - 2. Bicycles, skateboards, inline skates, roller skates or similar type devices while riding or operating in a safe manner on paved walking areas or designated paths. Except when specifically prohibited.
- (c) To light or maintain any fire or to cook, any meal other than at a stove, barbecue, fire circle or other place provided for that purpose.
- (d) To possess, carry or discharge any firearms, firecrackers, rockets, explosives or any other fireworks, air gun, bow and arrow, slingshot or any similar device or weapon; nor shall any person carry into or use any other object within a park with the intent of disturbing the peace of any person by means of noise or otherwise. This prohibition shall not apply to the engaging in or traveling to target practice conducted in accordance with appropriate standards of safety at an archery, skeet or target range authorized and provided by the Town for such purpose, nor shall this prohibition apply to law enforcement personnel acting within the scope of their official duties.

- (e) To drive, hit or putt any golf ball or to use any golf club in any park or upon any pathway or trail, except in such areas as may be designated by the Town Manager for that purpose.
- (f) To cut, break, injure, deface or destroy any tree, shrub, plant, rock, building, cage, pen, monument, sidewalk or paved area, fence, bench or other structure, apparatus or property, or pull up, cut, take or remove any shrub, bush, plant or flower, or mark or write upon, paint or deface in any manner any building, monument, bench, sidewalk, paved area or other structure. This prohibition shall not apply to any employee or contractor while performing official duties of the Town.
- (g) To cut or remove any wood, turf, grass, soil, rock, gravel, sand or fertilizer from a park or from any place within a park.
- (h) To camp or lodge therein except by permission in writing by the Town Manager.
- (i) To throw, discard, place or dispose of any garbage or refuse in any place other than in a garbage can or other receptacle maintained for that purpose.
- (j) To operate or park any vehicle upon any turf or landscaped area, or on any park service road or pathway, except at places designed and designated for parking by the Town.
- (k) To play or bet at or against any game which is played, conducted, dealt or carried on with cards, dice or other devices for money, chips, shells, credit or other representative of value, or maintain or exhibit any gambling table or other instrument of gambling or gaming. This prohibition shall not apply to simulated gambling games or to bingo games when conducted by a nonprofit organization during fund raising events pursuant to a permit or reservation issued by the Town Manager pursuant to this Code and in compliance with all other applicable law.
- (l) To hold any meeting, service, concert, event or exhibition without first obtaining written permission from the Town Manager.
- (m) To engage in any commercial activity including but not limited to the selling, offering for sale, advertising for sale, or solicitation for future delivery or performance of any goods, wares, merchandise or services, except pursuant to a specific concession or contract granted by the Town or a permit therefore.
- (n) To interfere with the use of any scheduled group or activity that has received a permit from the Town for use of said park.
- (o) To throw, project or propel or drive upon a lawn or across any park, public walkway or driveway within a park any missile, model airplane, model car, go-carts or other self propelled devices and vehicles not covered under

the California Vehicle Code, capable of causing personal injury or damage to personal property; except at such places designated therefore by the Town Manager.

- (p) No person, company, society, organization, gathering or group of more than twenty-five persons shall hold or conduct any picnic, celebration, parade, event, gathering, assembly or meeting in any park within the Town without first obtaining a written permit to do so by the Town Manager, and no person shall attend, take part in or be a participant in any such picnic, celebration, parade, exercise, gathering, assembly or meeting in a park unless the permission has first been obtained.
- (q) No person, company or organization shall be permitted to smoke in any park or recreation facility except in areas designated for such use.
- (r) Amplified Sound: The intent of this section is to reasonably regulate the use of parks within the Town in such a manner that various groups may enjoy such parks without unduly interfering with or creating conflicts with other groups, and to insure that if public address systems, amplified instruments or percussion instruments are used within the parks, that they shall be used in such place and manner that they will not unduly interfere with or be an annoyance to other groups or individual people who may be using the parks at the same time or to the surrounding neighborhood.
- (s) Public address systems, acoustical instruments, and/or electrically amplified instruments are prohibited unless the Town Manager finds the amplification meets the criteria stated in section (r) above, and the amplification use is approved in writing by and in the sole discretion of the Town Manager.
- (t) The possession (open and closed containers), consumption, sale, transportation or disbursement of alcoholic beverages is prohibited in Town parks and facilities unless a permit is obtained and approved in writing by the Town Manager, and in that event only in compliance with the conditions and restrictions of that permit.

11.68.050 Designation of park hours.

Unless otherwise approved in writing by the Town Manager:

- (a) Parks may be used during the hours from dawn to dusk. Any person who enters, remains, stays or loiters in any Park between the hours of dusk to dawn is guilty of a violation of this Chapter.
 - 1. Exception: Parks, which have outdoor lighted facilities, intended for public use during certain nighttime hours may be used during the hours from dawn to 11:00 p.m. provided a scheduled nighttime event is being conducted.
- (b) Park hours subject to change as determined by the Town Manager

11.68.060 Skate Park Facility Use Regulations

- (a) All users of the skate park facility are required to wear helmets, elbow pads and knee pads at all times while inside the fenced skate park as required by state law Health and Safety Code section 115800 as here and after amended.
- (b) The skate park facility is for use by persons using skateboards, roller skates, and in-line skates only. All other uses are prohibited.
- (c) No smoking, alcohol, or drug use allowed in or around the skate park facility.
- (d) No food or drink allowed in or on the skating facility.
- (e) No graffiti or tagging of the facility. (AVMC 11.82)
- (f) The use of profanity is prohibited.
- (g) The use of amplified music is prohibited.
- (h) Due to safety concerns, spectators who are not skating may not enter the fenced skate park. Spectators must remain outside the fence.
- (i) No animals are allowed inside the fenced area of the facility, whether on a leash or not.
- (j) Skateboarding, roller skating and in-line skating are hazardous activities. All persons using the skate park facility shall do so at their own risk.

11.68.070 Posting of Skate Park Facility Regulations

The Director of Public Services shall ensure that the skate park facility is posted with signs affording reasonable notice of the following:

- (a) Park hours of operation shall be posted as approved by the Town Manager.
- (b) Skateboarding, roller skates and in-line skating are hazardous activities. Skate at your own risk.
- (c) Skateboards, roller skates and in-line skates only.
- (d) Bicycles or motorized vehicles are prohibited.
- (e) Failure to wear helmets, elbow pad and knee pads will subject persons to citation.

- (f) No graffiti or tagging. (AVMC 11.82)
- (g) No glass bottles.
- (h) No food or drink allowed on the skating surface.
- (i) No smoking, alcohol or drug use allowed in the skate park or immediate area.
- (j) No spectators permitted inside the fenced skate area.
- (k) No unauthorized pieces of equipment, obstacles or apparatus may be brought into the skate area.

11.68.080 Confining or Prohibiting Activities

The Town Manager may prohibit or confine to posted areas within a park or facility any activities to the extent necessary so that it will not be detrimental to the health, safety and welfare of the general public or damaging to the property of the Town.

11.68.090 Permits

All permits are subject to such kinds and coverage of liability insurance and security requirements, and alcoholic beverage control license (if applicable) and such other conditions and requirements imposed for the permitted event as found necessary by the Town Manager to protect the public health, safety and welfare, and in accordance with such rules and regulations as may be adopted to implement the provisions of this Chapter.

11.68.100 Enforcement

The Town Manager shall have the primary responsibility for the enforcement of this Chapter. Each police and law enforcement officer of the Town is given permission to enter the public and restricted parts of all parks and facilities to maintain public order or to prevent, remedy or take other appropriate action in respect to violations of the provisions of this Chapter or of other applicable laws or regulations.

11.68.110 Seizure of Evidence

Any device used in the violation of any provision of this Chapter shall be seized by the enforcing officers, removed and stored. Property shall be returned when all fines are paid or upon completion of an administrative hearing if one is requested and when all fines are paid. Unclaimed property will be disposed of in accordance with section 11.90 of the Municipal Code.

11.68.120 Penalties

Every person who willfully within any park commits any of the acts set out in this section or violates any other prohibition in this Chapter is guilty of a violation of this Chapter, punishable in accordance with sections 1.01.200 through 1.01.230 of the Town of Apple Valley Municipal Code.

Alternatively a violation of any part of this chapter may be issued an administrative citation as an infraction and the fine for such violation shall be as follows:

1. For a first offense, the fine shall be \$25.00
2. For a second offense, the fine shall be \$50.00
3. For a third or subsequent offense within any 12-month period, the fine shall be \$100, and the offender's right to use the park facilities shall be suspended for a period of not less than 6 consecutive months.
4. The parent or legal guardian having control or custody of an unemancipated minor whose conduct violates this Chapter shall be jointly and severally liable with the minor for any fines imposed pursuant to this Chapter.

11.68.130 Administrative Citations

Any violation of any of the provisions of this chapter may be, but is not required to be prosecuted as an administrative citation procedure pursuant to this section.

- a. Any enforcement official may issue an administrative citation to any responsible party whom the enforcement official determines has violated any section of this chapter.
- b. The enforcement official shall attempt to obtain on the administrative citation the signature of the responsible party. If a responsible party of person served refuses or fails to sign the administrative citation, the failure or refusal to sign shall not affect the validity of the citation or of subsequent proceedings.
- c. The administrative citation shall contain at a minimum the following:
 1. The date and location of the violation and the approximate time the violation occurred.
 2. The code section violated and a description of how the section was violated.
 3. The amount of the fine imposed for the violation and the time within which and the place at which the fine shall be paid.
 4. A description of the administrative citation review process, including the time within which to contest the administrative citation and the place from which to obtain a request for hearing form to contest the administrative citation.

5. The name of the citing enforcement official.
- d. Administrative Fine. The administrative fine in the amount set forth in Section 11.68.120, or such other amount as may be set from time to time by resolution of the Town Council, shall be paid to the Town of Apple Valley within twenty-one (21) days from the date of service of the administrative citation.
- e. Any responsible party to whom an administrative citation is issued may contest the citation no later than twenty-one (21) days from the date of service of the administrative citation by:
 1. Completing a request for hearing form, which may be obtained from the Town Clerk, and returning it to the Town; and
 2. Either depositing the administrative fine with the Town or providing notice that a request for an advance deposit hardship waiver has been filed.
- f. The person requesting the hearing shall be notified in person at the time of the request or by certified mail, return receipt requested, of the time and place of the hearing at least ten (10) days before the date of the hearing. The Town shall set the date and time for the administrative hearing not less than fifteen (15) days nor more than thirty (30) days after the request for hearing form is filed and the administrative fine is deposited with the Town. The Town shall send notice of the date, time and place of the hearing to the person requesting the hearing by U. S. Mail at least ten (10) days before the date of the hearing. The administrative hearing will be conducted by the Town Manager or his/her designee. If the responsible party fails to attend the scheduled hearing, the hearing will proceed without the responsible party, and he or she will be deemed to have waived his or her right to an administrative hearing.
- g. Within ten (10) days after the date on which the administrative hearing concludes, the administrative hearing officer shall issue a written decision to uphold or cancel the administrative citation. The administrative hearing officer shall set forth the reasons for the decision. The decision shall be served upon the responsible party. If the administrative hearing officer upholds the administrative citation, the Town shall retain the fine deposited by the responsible party. If the administrative hearing officer cancels the administrative citation, the fine deposited with the Town shall be promptly refunded. The administrative hearing officer shall have the discretion to uphold the citation and to lower the fine amount. The administrative hearing officer's written decision is final and he/she shall notify the responsible party of his or her right to appeal as provided herein.

- h. As an alternative to a monetary fine the hearing officer may authorize community service. The hearing officer shall make the determination for the appropriate amount of community service hours to be completed. Community service will generally be conducted with the Town's Park Department.
- i. The Town may collect any past due administrative fine by use of any available legal means.
- j. Appeal of Decision of Administrative Hearing Officer. Within twenty (20) days after service of the decision of the administrative hearing officer upon the responsible party, he or she may seek review of the decision by filing a notice of appeal with the Superior court. The responsible party shall serve upon the Town Clerk either in person or by first class mail a copy of the notice of appeal. If the responsible party fails to timely file a notice of appeal, the administrative hearing officer's decision shall be deemed confirmed.
- k. Penalties. Failure to pay an administrative fine is a violation of this code. Filing a criminal action does not preclude the Town from using any other legal remedy available to gain compliance with the administrative order.

Section 2. Repeal Chapter 11.70 of Title 11 of the Town of Apple Valley
Municipal Code:

Chapter 11.70

REGULATIONS FOR USE OF SKATE PARK

Sections:

- ~~11.70.010~~ ~~Definitions.~~
- ~~11.70.020~~ ~~Skate Park Facility Use Regulations.~~
- ~~11.70.030~~ ~~Posting of Skate Park Facility Regulations.~~
- ~~11.70.040~~ ~~Penalties.~~
- ~~11.70.050~~ ~~Seizure of Evidence~~
- ~~11.70.060~~ ~~Administrative Citations~~

Section 3. All other provisions of Chapter 11 shall remain in effect.

Section 4. Effective Date. This ordinance shall become effective thirty days from and after its adoption.

Section 5. Notice of Adoption. The Town Clerk of the Town of Apple Valley shall certify to the adoption of this ordinance and cause publication to occur in a newspaper of general circulation and published and circulated in the Town in a manner permitted under Section 36933 of the Government Code.

APPROVED and ADOPTED by the Town Council and signed by the Mayor and attested by the Town Clerk this day of June, 2008.

Timothy J. Jasper, Mayor

Attest:

La Vonda Pearson, Town Clerk

Approved as to form:

Approved as to content:

Neal Singer, Town Attorney

Jim Cox, Interim Town Manager