



TOWN OF APPLE VALLEY

TOWN COUNCIL STAFF REPORT

To: Honorable Mayor and Town Council **Date:** April 24, 2018
From: Pam Cupp, Associate Planner **Item No:** 9
Community Development Department
Subject: A REQUEST TO CONSIDER AN AMENDMENT TO TITLE 9 "DEVELOPMENT CODE" OF THE TOWN OF APPLE VALLEY MUNICIPAL CODE BY MODIFYING CHAPTER 9.08 "DEFINITIONS", CHAPTER 9.28 "RESIDENTIAL DISTRICTS" AND CHAPTER 9.29 "SPECIFIC USE REGULATIONS FOR RESIDENTIAL DISTRICTS" AS IT PERTAINS TO ACCESSORY DWELLING UNITS AND OTHER RESIDENTIAL HABITABLE ACCESSORY STRUCTURES

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

RECOMMENDED ACTION:

Move to open the public hearing and take testimony. Close the public hearing.
Then:

- A. **Determine** that, pursuant to Section 15061(b)(3) of the State Guidelines to Implement the California Environmental Quality Act (CEQA), the project is exempt from environmental review because the activity is covered by the general rule that CEQA applies only to projects that have the potential for causing a significant effect on the environment. Where it can be seen with certainty that there is no possibility that the activity in question, the proposed Code Amendment, may have a significant effect on the environment, the activity is not subject to CEQA.
- B. **Find** the facts presented within the staff report, including the attached Planning Commission staff report for March 21, 2018, support the required Findings for approval of the proposed Development Code Amendment and adopt the Findings.
- C. **Move** to waive the reading of Ordinance No. 502 in its entirety and read by title only.
- D. **Introduce** Ordinance No. 502 approving Development Code Amendment No. 2017-002.
- E. **Direct** staff to file a Notice of Exemption with the San Bernardino County Clerk of the Board.

SUMMARY:

On October 8, 2017 Governor Brown signed into law two (2) pieces of legislation, SB 229 and AB 494, both of which relate to regulations governing accessory dwelling units, formally referred to as second dwelling units. The intent of the State regulations is to address barriers, streamline approval and expand potential capacity for accessory dwelling units. Accessory dwelling units can provide housing for family members, students, the elderly, in-home health care providers, the disabled and others at below market prices within existing neighborhoods. The purpose of Development Code Amendment No. 2017-002, is to bring the Town into compliance with State Law.

On March 21, 2018, the Planning Commission adopted Planning Commission Resolution No. 2018-003 recommending an amendment to the Development Code to replace the existing second dwelling unit provisions with standards applicable to all accessory dwelling units consistent with Government Code Section 65852.2. Guest quarters, pool houses and similar accessory structures are often proposed for construction containing elements that could support occupation as an independent living unit. Therefore, it is recommended that development standards addressing these types of structures be added to the Code. Also included within the resolution are modifications to certain definitions to accurately reflect current terminology.

ANALYSIS:

Government Code Section 65852.2 allows local governments to apply development standards and may designate where accessory dwelling units are permitted based upon criteria such as water and sewer services and the impact of accessory dwelling units on traffic flow and public safety. Accessory dwelling units located within existing structure must be allowed in all single family residential zones. For accessory dwelling units consisting of new additions or construction of a detached accessory structure, development standards can be established with certain limitations. However, standards and allowable areas must not be applied in a manner that burdens the development of accessory dwelling units and should maximize the potential for accessory unit development.

The Town's current Code limits second dwelling units to lots of one (1) acre or more in size, which is consistent with Measure "N", two (2) dwelling units per acre. The State has determined that accessory dwelling units are to be considered an accessory use only and should not be counted for the purposes of calculating allowable density under the General Plan and Zoning. While accessory dwelling units are not counted in allowable density, the Town can include accessory dwelling units in its affordable housing numbers. The State allows local governments to include provisions relating to sewer availability, reasonable size limits and architectural compatibility. The Town may also require restrictive covenants, such as owner occupancy and prohibiting the accessory dwelling unit from being sold or conveyed separately from the primary dwelling unit.

The Development Code is not in compliance with State statute regarding accessory dwelling units. Therefore, on March 21, 2018 staff presented to the Planning Commission for its consideration, Development Code Amendment No. 2017-002. This amendment replaces the Town's Second Dwelling Unit standards in its entirety with standards specific

to accessory dwelling units that are in compliance with Government Code Section 65852.2. Following the presentation of the staff report, and subsequent Commission discussion, the Commission approved Planning Commission Resolution No. 2018-003, recommending to the Town Council that it adopt an Ordinance amending the Development Code. A complete, strike-thru/underline of the proposal can be reviewed within the attached Planning Commission report from its March 21, 2018 meeting.

The following is a summary of the proposed modifications:

- Standards related to Guest Quarters and detached habitable structures intended for recreational purposes have been added.
- Accessory Dwelling Units replaces Second Dwelling Units subject to the following modifications:
 - Must be reviewed ministerially.
 - Minimum lot size requirements have been removed.
 - The lot must be zoned for residential uses on which there is already built, or currently under construction, a single-family detached dwelling.
 - Sewer connection is required for lots under one (1) acre in size, unless modifying existing bedrooms within the primary dwelling to an accessory dwelling unit.
 - A Covenant must be recorded that states:
 - a. The use of the accessory dwelling unit as an independent living space may continue only if one dwelling on the lot is occupied by the property owner.
 - b. The accessory dwelling unit may not be sold or otherwise conveyed separate from the primary residence.
 - c. The property may only contain one (1) rented unit.
 - The maximum size for an attached unit is thirty (30) percent of the habitable floor area of the primary dwelling, not to exceed 1,200 square feet.
 - The maximum size for a detached unit is fifty (50) percent of the habitable floor area of the primary dwelling, not to exceed 1,200 square feet.

NOTICING:

Development Code Amendment No. 2017-002 was advertised as a Town Council public hearing in the Apple Valley News newspaper on April 13, 2018.

ENVIRONMENTAL REVIEW:

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.

REQUIRED FINDINGS:

Prior to the approval of any Amendment to the Development Code, the Council, based upon the advice of the Planning Commission, must make specific "Findings" as listed within the Code. Code Section 9.06.060 "Required Findings" of Chapter 9.06 Amendments to Zoning Provisions" specifies that two (2) Findings must be made in a positive manner to approve an Amendment. These Findings, along with a comment to address each, are presented below.

- A. The proposed amendment is consistent with the General Plan; and

Comment: The General Plan is the blueprint for the community's future growth. Specific Goals and Objectives are provided within each of the adopted General Plan's State-mandated Elements. The Housing Element encourages housing for special needs households, including the elderly, single parent households, large households, the disabled and the homeless. Additionally, the Housing Element encourages the development of second units. Development Code Amendment No. 2017-002 will provide standards for accessory dwelling units that will encourage additional development while providing quality site planning and design that enhances the aesthetics and economy of the Town.

- B. The proposed amendment will not be detrimental to the public health, safety or welfare of the Town or its residents.

Comment: Amending the Code as proposed under Development Code Amendment No. 2017-002 will provide a simplified permitting process, which should encourage property owners to come forward and obtain the necessary permits required. Additionally, the permit process will ensure there are adequate services available to the accessory dwelling unit so the accessory use will not be detrimental to the public health, safety or welfare of the community.

FISCAL IMPACT:

Not Applicable.

ATTACHMENTS:

- 1 Town Council Ordinance No. 502
- 2 Planning Commission Resolution No. 2018-003
- 3 Planning Commission Staff Report – March 21, 2018

ORDINANCE NO. 502

AN ORDINANCE OF THE TOWN OF APPLE VALLEY, CALIFORNIA, AMENDING TITLE 9 “DEVELOPMENT CODE” OF THE TOWN OF APPLE VALLEY MUNICIPAL CODE, BY MODIFYING CHAPTER 9.08 “DEFINITIONS”, CHAPTER 9.28 “RESIDENTIAL DISTRICTS” AND CHAPTER 9.29 “SPECIFIC USE REGULATIONS” AS IT PERTAINS TO ACCESSORY DWELLING UNITS AND OTHER RESIDENTIAL HABITABLE ACCESSORY STRUCTURES

WHEREAS, Title 9 “Development Code” of the Municipal Code of the Town of Apple Valley was adopted by the Town Council on April 27, 2010; and

WHEREAS, Title 9 (Development Code) of the Municipal Code of the Town of Apple Valley has been previously modified by the Town Council on the recommendation of the Planning Commission; and

WHEREAS, specific changes are proposed to Title 9 “Development Code” of the Town of Apple Valley Municipal Code by modifying Chapter 9.08 “Definitions”, Chapter 9.28 “Residential Districts” and Chapter 9.29 “ Specific Use Regulations” as it pertains to accessory dwelling units and other residential habitable accessory structures ; and

WHEREAS, on March 21, 2018, the Planning Commission of the Town of Apple Valley conducted a duly noticed public hearing on Development Code Amendment No. 2017-002, receiving testimony from the public and adopting Planning Commission Resolution No. 2018-003 forwarding a recommendation to the Council; and

WHEREAS, Development Code Amendment No. 2017-002 is consistent with the Town's General Plan and Title 9 "Development Code" of the Municipal Code of the Town of Apple Valley and shall promote the health, safety, and general welfare of the citizens of the Town of Apple Valley; and

WHEREAS, the project is not subject to the California Environmental Quality Act (CEQA) pursuant to Section 15061(b)(3) of the State Guidelines to Implement CEQA, which states that the activity is covered by the general rule that CEQA applies only to projects that have the potential for causing a significant effect on the environment. Where it can be seen with certainty that there is no possibility that the activity in question, the proposed Code Amendment, may have a significant effect on the environment, the activity is not subject to CEQA; and

WHEREAS, on April 24, 2018, the Town Council of the Town of Apple Valley conducted a duly noticed and advertised public hearings on Development Code Amendment No. 2017-002, receiving testimony from the public.

NOW, THEREFORE, the Town Council of the Town of Apple Valley, State of California, does ordain as follows:

Section 1. Find that the changes proposed by Development Code Amendment No. 2017-002 are consistent with the Goals and Policies of the Town of Apple Valley adopted General Plan.

Section 2. Pursuant to Section 15061(b)(3) of the State Guidelines to Implement the California Environmental Quality Act (CEQA), it can be determined that the Code amendment 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, as with the proposed Code Amendment, that there is no possibility that the proposal approved under Development Code Amendment No. 2016-004 will have a significant effect on the environment and, therefore, the Amendment is EXEMPT from further environmental review.

Section 3. Amend Chapter 9.08 “Definitions” as follows:

“Accessory Dwelling Unit

An attached or detached residential dwelling unit which provides complete independent living facilities for one or more persons. It shall include permanent provisions for living, sleeping, eating, cooking, and sanitation on the same parcel as the single-family dwelling is situated. An efficiency unit, as defined in Section 17958.1 of the California Health and Safety Code shall also constitute an accessory dwelling unit.

Guest Quarters

Any structure, whether attached to or detached from the main residence on a residential lot, or a lot used for residential purposes, containing living quarters for the use by temporary guests of the residents of the main residential structure on the same premises.

Habitable Floor Area

Interior residential space used for living purposes that contains heat, plumbing, and electricity. It includes foyers, hallways, bedrooms, kitchen, restrooms, closets, storage, and other common areas within a building. Habitable Floor Area does not include patio, porch, garage, carport or other accessory structures.”

Habitable Structure

A building which includes space for living, sleeping, eating or cooking. This can include bathrooms, toilet compartments, closets, halls, storage or utility space, and similar areas.”

Section 4. Amend Table 9.28.030-A “Permitted Uses” of Chapter 9.28 “Residential Districts” as follows:

Table 9.28.030-A Permitted Uses

TYPE OF USE	R-VLD	R-A	R-LD	R-E	R-E ¾	R-EQ	R-SF	R-M	MHP	M-U	PRD²
G. Accessory Uses and Structures											
1. Non-Commercial antennas and satellite dishes.	P	P	P	P	P	P	P	P	P	P	P
Commercial antennas and satellite dishes	-	-	-	-	-	-	-	-	-	CUP	-
2. Habitable/Nonhabitable accessory structures	P	P	P	P	P	P	P	P	P	P	P
3. Off campus dormitory	CUP	CUP	CUP	CUP	CUP	CUP	CUP	CUP	CUP	-	CUP
4. Private recreational courts with exterior lighting and/or recreational fencing over six (6) feet in height	CUP	CUP	CUP	CUP	CUP	CUP	CUP	CUP	CUP	CUP	CUP
5. Private swimming pools and accessory equipment	P	P	P	P	P	P	P	P	P	P	P
6. Accessory Dwelling Units	P	P	P	P	P	P	P	P	P	P	P
7. Water Storage tanks less than 5,000 gallon	P	P	P	P	P	P	P	-	-	-	P
more than 5,000 gallons	CUP	CUP	CUP	CUP	CUP	CUP	CUP	-	-	-	CUP
8. Liquid, petroleum or Gas (LPG) Tanks not exceeding 200 gallons	P	P	P	P	P	P	P	P	P	P	P

Section 5. Amend Section 9.29.020 “Accessory Uses and Structures” of Chapter 9.29 “Specific Use Regulations for Residential Districts” to add the following subsections:

“G. Guest Quarters are permitted and subject to the following:

1. May be attached to or detached from the main residential structure.
2. The maximum floor area is 400 square feet.
3. There shall be no kitchen or cooking facilities.
4. Independent access to the guest quarters shall not be located on the same elevation as the access to the primary dwelling.
5. Guest quarters are for the exclusive use of the residents of the primary dwelling unit and may not be rented or otherwise used as a dwelling unit.

H. Detached habitable structures consisting of pool houses, art or music studios, or other structures intended for recreational purposes are permitted subject to the following:

1. Habitable accessory structures shall be architecturally compatible with the design of the main dwelling and shall incorporate the same architectural features, colors and materials of the primary unit.
2. There shall be no indoor kitchen or bedrooms, except as identified within this section.
3. One (1) detached habitable structure is permitted per lot.
4. An accessory dwelling unit or guest quarters may occupy a portion of the habitable structure; however, access shall not be permitted from the interior.
5. Unless permitted as an accessory dwelling unit, detached habitable structures shall not be rented or otherwise used as a dwelling unit.”

Section 6. Replace Section 9.29.120 “Second Dwelling Units” in its entirety with the following:

“9.29.120 Accessory Dwelling Units

A. Purpose. The purpose of this Section is to expand the variety of housing opportunities in the Town by implementing State Government Code (65852.2) as it pertains to accessory dwelling units. Implementation of these regulations will insure that accessory dwelling units are located in areas where services are adequate to support them and that accessory dwelling units are designed and maintained as a compatible and integral part of the Town's residential zoning districts.

B. Applicability. In compliance with the provisions of Government Code 65852.2, the provisions of this Chapter shall apply to all lots that are occupied with a single-family dwelling unit and zoned residential.

C. General Standards

1. Applications for accessory dwelling units shall be approved or disapproved ministerially pursuant to the requirements of this Section within 120 days of a determination that the application is complete, as required by Gov. Code, § 65852.2(b).
2. The parcel upon which the accessory dwelling unit is to be built shall comply with all development standards for the district in which it is located.
3. An accessory dwelling unit may only be permitted on a lot zoned for residential uses on which there is already built, or currently under construction, a single-family detached dwelling (primary dwelling).
4. No more than one (1) accessory dwelling unit shall be permitted on any parcel or lot.
5. The accessory dwelling unit shall have adequate water supply pursuant to specifications of the Uniform Plumbing Code.
6. Parcels on which an accessory dwelling unit is to be located must be connected to sewer, unless otherwise specified herein.
7. The primary dwelling, accessory dwelling unit, or both must be occupied by the property owner
8. The accessory dwelling unit may be rented separate from the primary residence but may not be sold or otherwise conveyed separate from the primary residence.
9. The rental term for an accessory dwelling unit shall not be less than thirty (30) days.
10. The accessory dwelling unit may be either attached or detached from the primary dwelling.
11. Fire sprinklers shall only be required if required for the primary residential structure.
12. At no time may the primary dwelling unit be converted to the extent that it becomes substandard in size as a single-family residence. Except that a 150 square foot maximum, efficiency unit with a partial kitchen or bathroom as authorized by California Health & Safety Code Section 17958.1, shall be permitted upon any lot containing a single-family residence and shall be considered an accessory dwelling unit.
13. *Restrictive Covenant.* Prior to the issuance of a building permit for an accessory dwelling unit, a restrictive covenant against the land, which is binding on the property owner and their successors in interest, shall be recorded with the office of the San Bernardino County Recorder, which specifies that the following:
 - a. The use of the accessory dwelling unit as an independent living space

may continue only if one dwelling on the lot is occupied by the property owner.

- b. The accessory dwelling unit may not be sold or otherwise conveyed separate from the primary residence.
- c. The property may only contain one (1) rented unit.

D. Attached Accessory Dwelling Unit Development Standard

Along with the general standards prescribed by subsection D, the following development standards apply to detached accessory dwelling units:

1. The maximum size for an attached accessory dwelling unit is thirty (30) percent of the habitable floor area of the primary dwelling, not to exceed 1,200 square feet.
2. Independent access to the accessory dwelling unit shall not be located on the same elevation as the access to the primary dwelling.
3. If existing bedrooms are converted to an accessory dwelling unit, availability of sewer may not be required, subject to the review and approval of the Building Official.

E. Detached Accessory Dwelling Units

Along with the general standards prescribed by subsection C, the following development standards apply to detached accessory dwelling units:

1. Detached accessory dwelling units are subject to all provision within Section 9.29.020 "Accessory Uses and Structures".
2. The maximum floor area of an accessory dwelling unit is fifty (50) percent of the existing habitable floor area of the primary dwelling, not to exceed 1,200 square feet.
3. An accessory dwelling unit may occupy all, or a portion, of an existing detached accessory structure meeting the architectural guidelines set forth in this chapter.
4. Sewer connection is required unless the lot is one (1)-acre or more in size and located outside of any sewer service area
5. The driveway serving the primary dwelling shall be used to serve the accessory dwelling unit whenever feasible.
6. The accessory dwelling unit may be metered separately from the main dwelling for gas, electricity and water/sewer services.
7. The accessory dwelling unit shall be architecturally compatible with the design of the main dwelling and shall match with the same colors and materials of the primary unit."
8. No setback shall be required for an existing garage that is converted to an accessory dwelling unit or to a portion of an accessory dwelling unit, and a setback of no more than five feet from the side and rear lot lines shall be required for an accessory dwelling unit that is constructed above

a garage.

G. Interior Accessory Dwelling Units Standards

Internal accessory dwelling units that meet all of the following requirements are subject only to the general standards prescribed by subsection C:

1. The accessory dwelling unit is contained within the existing space of the primary dwelling or accessory structure, including, but not limited to, a studio, pool house, or other similar structure.
2. The accessory dwelling has independent exterior access from the primary dwelling,
3. The accessory dwelling unit has side and rear setbacks are sufficient for fire safety.”

Section 7. Notice of Adoption. The Town Clerk of the Town of Apple Valley shall certify to the adoption of this ordinance and cause publication to occur in a newspaper of general circulation and published and circulated in the Town in a manner permitted under Section 36933 of the Government Code of the State of California.

Section 8. Effective Date. This Ordinance shall become effective thirty (30) days after the date of its adoption.

Section 9. Severability. If any provision of this Ordinance, or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications and, to this end, the provisions of this Ordinance are declared to be severable.

APPROVED and **ADOPTED** by the Town Council and signed by the Mayor and attested to by the Town Clerk this 8th day of May, 2018.

Art Bishop, Mayor

ATTEST:

La Vonda M-Pearson, Town Clerk

APPROVED AS TO FORM:

APPROVED AS TO CONTENT:

John Brown, Town Attorney

Douglas B. Robertson, Town Manager

PLANNING COMMISSION RESOLUTION NO. 2018-003

A RESOLUTION OF THE PLANNING COMMISSION OF THE TOWN OF APPLE VALLEY, CALIFORNIA, RECOMMENDING THAT THE TOWN COUNCIL ADOPT DEVELOPMENT CODE AMENDMENT NO. 2017-002 AMENDING TITLE 9 “DEVELOPMENT CODE” OF THE TOWN OF APPLE VALLEY MUNICIPAL CODE, BY MODIFYING CHAPTER 9.08 “DEFINITIONS”, CHAPTER 9.28 “RESIDENTIAL DISTRICTS” AND CHAPTER 9.29 “ SPECIFIC USE REGULATIONS” AS IT PERTAINS TO HABITABLE ACCESSORY STRUCTURES AND ACCESSORY DWELLING UNITS.

WHEREAS, Title 9 “Development Code” of the Municipal Code of the Town of Apple Valley was adopted by the Town Council on April 27, 2010; and

WHEREAS, Title 9 (Development Code) of the Municipal Code of the Town of Apple Valley has been previously modified by the Town Council on the recommendation of the Planning Commission; and

WHEREAS, specific changes are proposed to Title 9 “Development Code” of the Town of Apple Valley Municipal Code by amending Chapter 9.08 "Definitions", Chapter 9.28 “Residential Districts” and Chapter 9.29 “Specific Use Regulations” as it pertains to habitable accessory structures and accessory dwelling units; and,

WHEREAS, on March 9, 2018, Development Code Amendment No. 2017-002 was duly noticed in the Apple Valley News, a newspaper of general circulation within the Town of Apple Valley; and

WHEREAS, Staff has determined that the project is not subject to the California Environmental Quality Act (CEQA) pursuant to Section 15061(b)(3) of the State Guidelines to Implement CEQA, which states that the activity is covered by the general rule that CEQA applies only to projects that have the potential for causing a significant effect on the environment. Where it can be seen with certainty that there is no possibility that the activity in question, the proposed Code Amendment, may have a significant effect on the environment, the activity is not subject to CEQA; and

WHEREAS, on March 21, 2018 the Planning Commission of the Town of Apple Valley conducted a duly noticed and advertised the public hearing on Development Code Amendment No. 2017-002, receiving testimony from the public; and

WHEREAS, Development Code Amendment No. 2017-002 is consistent with Title 9 “Development Code” of the Municipal Code of the Town of Apple Valley and shall promote the health, safety and general welfare of the citizens of the Town of Apple Valley.

NOW, THEREFORE, BE IT RESOLVED that in consideration of the evidence presented at the public hearing, and for the reasons discussed by the Commissioners at said hearing, the Planning Commission of the Town of Apple Valley, California, does hereby resolve, order and determine as follows and recommends that the Town Council

make the following findings and take the following actions:

Section 1. Find that the changes proposed by Development Code Amendment No. 2017-002 are consistent with the Goals and Policies of the Town of Apple Valley adopted General Plan.

Section 2. The project is not subject to the California Environmental Quality Act (CEQA) pursuant to Section 15061(b)(3) of the State Guidelines to Implement CEQA, which states that the activity is covered by the general rule that CEQA applies only to projects that have the potential for causing a significant effect on the environment. Where it can be seen with certainty that there is no possibility that the activity in question, the proposed Code Amendment, may have a significant effect on the environment, the activity is not subject to CEQA.

Section 3. Amend Chapter 9.08 “Definitions” as follows:

“Accessory Dwelling Unit

An attached or detached residential dwelling unit which provides complete independent living facilities for one or more persons. It shall include permanent provisions for living, sleeping, eating, cooking, and sanitation on the same parcel as the single-family dwelling is situated. An efficiency unit, as defined in Section 17958.1 of the California Health and Safety Code shall also constitute an accessory dwelling unit.

Guest Quarters

Any structure, whether attached to or detached from the main residence on a residential lot, or a lot used for residential purposes, containing living quarters for the use by temporary guests of the residents of the main residential structure on the same premises.

Habitable Floor Area

Interior residential space used for living purposes that contains heat, plumbing, and electricity. It includes foyers, hallways, bedrooms, kitchen, restrooms, closets, storage, and other common areas within a building. Habitable Floor Area does not include patio, porch, garage, carport or other accessory structures.”

Habitable Structure

A building which includes space for living, sleeping, eating or cooking. This can include bathrooms, toilet compartments, closets, halls, storage or utility space, and similar areas.”

Section 4. Amend Table 9.28.030-A “Permitted Uses” of Chapter 9.28 “Residential Districts” as follows:

Table 9.28.030-A Permitted Uses

TYPE OF USE	R-VLD	R-A	R-LD	R-E	R-E ¾	R-EQ	R-SF	R-M	MHP	M-U	PRD²
G. Accessory Uses and Structures											
1. Non-Commercial antennas and satellite dishes.	P	P	P	P	P	P	P	P	P	P	P
Commercial antennas and satellite dishes	-	-	-	-	-	-	-	-	-	CUP	-
2. Habitable/Nonhabitable accessory structures	P	P	P	P	P	P	P	P	P	P	P
3. Off campus dormitory	CUP	CUP	CUP	CUP	CUP	CUP	CUP	CUP	-	CUP	CUP
4. Private recreational courts with exterior lighting and/or recreational fencing over six (6) feet in height	CUP	CUP	CUP	CUP	CUP	CUP	CUP	CUP	CUP	CUP	CUP
5. Private swimming pools and accessory equipment	P	P	P	P	P	P	P	P	P	P	P
6. Accessory Dwelling Units	P	P	P	P	P	P	P	P	P	P	P
7. Water Storage tanks less than 5,000 gallon	P	P	P	P	P	P	P	-	-	-	P
more than 5,000 gallons	CUP	CUP	CUP	CUP	CUP	CUP	CUP	-	-	-	CUP
8. Liquid, petroleum or Gas (LPG) Tanks not exceeding 200 gallons	P	P	P	P	P	P	P	P	P	P	P

Section 5. Amend Section 9.29.020 “Accessory Uses and Structures” of Chapter 9.29 “Specific Use Regulations for Residential Districts” to add the following subsections:

“G. Guest Quarters are permitted and subject to the following:

1. May be attached to or detached from the main residential structure.
2. The maximum floor area is 400 square feet.
3. There shall be no kitchen or cooking facilities.
4. Independent access to the guest quarters shall not be located on the same elevation as the access to the primary dwelling.
5. Guest quarters are for the exclusive use of the residents of the primary dwelling unit and may not be rented or otherwise used as a dwelling unit.

H. Detached habitable structures consisting of pool houses, art or music studios, or other structures intended for recreational purposes are permitted subject to the following:

1. Habitable accessory structures shall be architecturally compatible with the design of the main dwelling and shall incorporate the same architectural features, colors and materials of the primary unit.
2. There shall be no indoor kitchen or bedrooms, except as identified within this section.
3. One (1) detached habitable structure is permitted per lot.
4. An accessory dwelling unit or guest quarters may occupy a portion of the habitable structure; however, access shall not be permitted from the interior.
5. Unless permitted as an accessory dwelling unit, detached habitable structures shall not be rented or otherwise used as a dwelling unit.”

Section 6. Replace Section 9.29.120 “Second Dwelling Units” in its entirety with the following:

“9.29.120 Accessory Dwelling Units

A. Purpose. The purpose of this Section is to expand the variety of housing opportunities in the Town by implementing State Government Code (65852.2) as it pertains to accessory dwelling units. Implementation of these regulations will insure that accessory dwelling units are located in areas where services are adequate to support them and that accessory dwelling units are designed and maintained as a compatible and integral part of the Town's residential zoning districts.

B. Applicability. In compliance with the provisions of Government Code 65852.2, the provisions of this Chapter shall apply to all lots that are occupied with a single-family dwelling unit and zoned residential.

C. General Standards

14. Applications for accessory dwelling units shall be approved or disapproved ministerially pursuant to the requirements of this Section within 120 days of a determination that the application is complete, as required by Gov. Code, § 65852.2(b).
15. The parcel upon which the accessory dwelling unit is to be built shall comply with all development standards for the district in which it is located.
16. An accessory dwelling unit may only be permitted on a lot zoned for residential uses on which there is already built, or currently under construction, a single-family detached dwelling (primary dwelling).
17. No more than one (1) accessory dwelling unit shall be permitted on any parcel or lot.
18. The accessory dwelling unit shall have adequate water supply pursuant to specifications of the Uniform Plumbing Code.
19. Parcels on which an accessory dwelling unit is to be located must be connected to sewer, unless otherwise specified herein.
20. The primary dwelling, accessory dwelling unit, or both must be occupied by the property owner
21. The accessory dwelling unit may be rented separate from the primary residence but may not be sold or otherwise conveyed separate from the primary residence.
22. The rental term for an accessory dwelling unit shall not be less than thirty (30) days.
23. The accessory dwelling unit may be either attached or detached from the primary dwelling.
24. Fire sprinklers shall only be required if required for the primary residential structure.
25. At no time may the primary dwelling unit be converted to the extent that it becomes substandard in size as a single-family residence. Except that a 150 square foot maximum, efficiency unit with a partial kitchen or bathroom as authorized by California Health & Safety Code Section 17958.1, shall be permitted upon any lot containing a single-family residence and shall be considered an accessory dwelling unit.
26. *Restrictive Covenant.* Prior to the issuance of a building permit for an accessory dwelling unit, a restrictive covenant against the land, which is binding on the property owner and their successors in interest, shall be recorded with the office of the San Bernardino County Recorder, which specifies that the following:
 - a. The use of the accessory dwelling unit as an independent living space

may continue only if one dwelling on the lot is occupied by the property owner.

- b. The accessory dwelling unit may not be sold or otherwise conveyed separate from the primary residence.
- c. The property may only contain one (1) rented unit.

D. Attached Accessory Dwelling Unit Development Standard

Along with the general standards prescribed by subsection D, the following development standards apply to detached accessory dwelling units:

4. The maximum size for an attached accessory dwelling unit is thirty (30) percent of the habitable floor area of the primary dwelling, not to exceed 1,200 square feet.
5. Independent access to the accessory dwelling unit shall not be located on the same elevation as the access to the primary dwelling.
6. If existing bedrooms are converted to an accessory dwelling unit, availability of sewer may not be required, subject to the review and approval of the Building Official.

E. Detached Accessory Dwelling Units

Along with the general standards prescribed by subsection C, the following development standards apply to detached accessory dwelling units:

1. Detached accessory dwelling units are subject to all provision within Section 9.29.020 "Accessory Uses and Structures".
2. The maximum floor area of an accessory dwelling unit is fifty (50) percent of the existing habitable floor area of the primary dwelling, not to exceed 1,200 square feet.
3. An accessory dwelling unit may occupy all, or a portion, of an existing detached accessory structure meeting the architectural guidelines set forth in this chapter.
4. Sewer connection is required unless the lot is one (1)-acre or more in size and located outside of any sewer service area
5. The driveway serving the primary dwelling shall be used to serve the accessory dwelling unit whenever feasible.
6. The accessory dwelling unit may be metered separately from the main dwelling for gas, electricity and water/sewer services.
7. The accessory dwelling unit shall be architecturally compatible with the design of the main dwelling and shall match with the same colors and materials of the primary unit."
8. No setback shall be required for an existing garage that is converted to an accessory dwelling unit or to a portion of an accessory dwelling unit, and a setback of no more than five feet from the side and rear lot lines shall be required for an accessory dwelling unit that is constructed above

a garage.

G. Interior Accessory Dwelling Units Standards

Internal accessory dwelling units that meet all of the following requirements are subject only to the general standards prescribed by subsection C:

1. The accessory dwelling unit is contained within the existing space of the primary dwelling or accessory structure, including, but not limited to, a studio, pool house, or other similar structure.
2. The accessory dwelling has independent exterior access from the primary dwelling,
3. The accessory dwelling unit has side and rear setbacks are sufficient for fire safety.

Approved and Adopted by the Planning Commission of the Town of Apple Valley this 21st day of March, 2018.

Chairman B.R. "Bob" Tinsley

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 21st day of March, 2018, by the following vote, to-wit:

AYES:

NOES:

ABSENT:

ABSTAIN:

Ms. Yvonne Rivera, Planning Commission Secretary



TOWN OF APPLE VALLEY PLANNING COMMISSION

Get a Slice of the Apple.

Staff Report

- AGENDA DATE:** March 21, 2018
- CASE NUMBER:** Development Code Amendment No. 2017-002
- APPLICANT:** Town of Apple Valley
- PROPOSAL:** An amendment to Title 9 "Development Code" of the Town of Apple Valley Municipal Code by modifying provisions relating to second dwelling units and accessory dwelling units, as required by California Government Code Section 65852.2 and California Health & Safety Code Section 17958.1. This amendment will also provide standards related to guest quarters and residential accessory structures used for recreational purposes.
- 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.
- PROJECT PLANNER:** Ms. Pam Cupp, Associate Planner
- RECOMMENDATION:** Adopt Planning Commission Resolution No. 2018-003.

BACKGROUND

On October 8, 2017 Governor Brown signed into law two (2) pieces of legislation, SB 229 and AB 494, both of which relate to regulations governing accessory dwelling units, formally referred to as second dwelling units. The purpose of Development Code Amendment No. 2017-002, is

to bring the Town in compliance with State Law. The intent of the State regulations is to address barriers, streamline approval and expand potential capacity for accessory dwelling units. Accessory dwelling units can provide housing for family members, students, the elderly, in-home health care providers, the disabled and others at below market prices within existing neighborhoods.

ANALYSIS

Government Code Section 65852.2 allows local governments to apply development standards and may designate where accessory dwelling units are permitted. Accessory dwelling units located within existing structure must be allowed in all single family residential zones. For accessory dwelling units consisting of new additions or construction of a detached accessory structure, development standards can be established with certain limitations. However, standards and allowable areas must not be designed or applied in a manner that burdens the development of accessory dwelling units and should maximize the potential for accessory unit development.

The Town's current Code limits second dwelling units to lots of one (1) acre or more in size, which is consistent with Measure "N", two (2) dwelling units per acre. The State has determined that accessory dwelling units are to be considered an accessory use only and should not be counted for the purposes of calculating allowable density under the General Plan and Zoning. While accessory dwelling units are not counted in allowable density, the Town can include accessory dwelling units in its affordable housing numbers. The State allows local governments to include provisions relating to sewer availability, reasonable size limits and architectural compatibility. The Town may also require restrictive covenants, such as owner occupancy and prohibiting the accessory dwelling unit from being sold or conveyed separately from the primary dwelling unit.

Based upon the new regulations, and for ease of implementation, it is necessary to update the Town's definitions and development standards relating to habitable accessory structures. Development Code Amendment No. 2017-002 will remove the existing language within Development Code Section 9.29.120, "Second Dwelling Units", and replace it with development standards as required within California Government Code Section 65852.2.

If an ordinance effecting these modifications is ultimately approved by the Town Council, the Town is required by California Government Code Section 65852.2(h) to submit a copy of the ordinance to the California Department of Housing and Community Development (HCD) within sixty (60) days of the adoption. HCD may review and comment on the ordinance but is not authorized to certify or invalidate the ordinance.

Staff is offering for the Commission's consideration the following modifications as identified by strike-through text for deletions and underlined text for additions. Because Section 9.29.120 is being replaced in its entirety, the new language will include bold/italicized comments identifying substantive changes to the development standards.

Chapter 9.08 Definitions

Second Accessory Dwelling Unit

~~A self-contained living unit, either attached to or detached from, and in addition to, the primary residential unit of a single lot, and which includes permanent provisions for living, sleeping, eating, cooking and sanitation on the same parcel as the single family dwelling is situated, and also as referenced in California Government Code, Section 65852.2.~~

An attached or detached residential dwelling unit which provides complete independent living facilities for one or more persons. It shall include permanent provisions for living, sleeping, eating, cooking, and sanitation on the same parcel as the single-family dwelling is situated. An efficiency unit, as defined in Section 17958.1 of the California Health and Safety Code shall also constitute an accessory dwelling unit.

Guest Quarters

Any structure, whether attached to or detached from the main residence on a residential lot, or a lot used for residential purposes, containing living quarters for the use by temporary guests of the residents of the main residential structure on the same premises. ~~No such guest quarters shall consist of more than four hundred (400) square feet, contain more than two (2) rooms and one bathroom and there shall be no kitchen or cooking facilities, nor shall such quarters be rented or otherwise used as a dwelling unit.~~ ***This portion moved to 9.29.020(G)***

Habitable Floor Area

Interior residential space used for living purposes that contains heat, plumbing, and electricity. It includes foyers, hallways, bedrooms, kitchen, restrooms, closets, storage, and other common areas within a building. Habitable Floor Area does not include patio, porch, garage, carport or other accessory structures.

Habitable Structure

~~A structure building which includes habitable space for living, sleeping, eating or cooking. This can include bathrooms, toilet compartments, closets, halls, storage or utility space, and similar areas are not considered habitable space.~~

Table 9.28.030-A Permitted Uses

TYPE OF USE	R-VLD	R-A	R-LD	R-E	R-E ¾	R-EQ	R-SF	R-M	MHP	M-U	PRD²
G. Accessory Uses and Structures											
1. Non-Commercial antennas and satellite dishes.	P	P	P	P	P	P	P	P	P	P	P
Commercial antennas and satellite dishes	-	-	-	-	-	-	-	-	-	CUP	-
2. Habitable/Nonhabitable accessory structures	P	P	P	P	P	P	P	P	P	P	P
3. Off campus dormitory	CUP	CUP	CUP	CUP	CUP	CUP	CUP	CUP	-	CUP	CUP
4. Private recreational courts with exterior lighting and/or recreational fencing over six (6) feet in height	CUP	CUP	CUP	CUP	CUP	CUP	CUP	CUP	CUP	CUP	CUP
5. Private swimming pools and accessory equipment	P	P	P	P	P	P	P	P	P	P	P
<u>Accessory Second Dwelling Units</u>	SUP	SUP	SUP	SUP	SUP	SUP	SUP	SUP	SUP	SUP	SUP
7. Water Storage tanks less than 5,000 gallon	P	P	P	P	P	P	P	-	-	-	P
more than 5,000 gallons	CUP	CUP	CUP	CUP	CUP	CUP	CUP	-	-	-	CUP
8. Liquid, petroleum or Gas (LPG) Tanks not exceeding 200 gallons	P	P	P	P	P	P	P	P	P	P	P

9.29.020 Accessory Uses and Structures

G. Guest Quarters are permitted and subject to the following:

1. May be attached to or detached from the main residential structure.
2. The maximum floor area is 400 square feet.
3. There shall be no kitchen or cooking facilities.
4. Independent access to the guest quarters shall not be located on the same elevation as the access to the primary dwelling.
5. Guest quarters are for the exclusive use of the residents of the primary dwelling unit and may not be rented or otherwise used as a dwelling unit.

H. Detached habitable structures consisting of pool houses, art or music studios, or other structures intended for recreational purposes are permitted subject to the following: **The Code does not address habitable accessory structures. Often times, plans for a "pool house" contain all the components of a single-family home.**

1. Habitable accessory structures shall be architecturally compatible with the design of the main dwelling and shall incorporate the same architectural features, colors and materials of the primary unit.
2. There shall be no indoor kitchen or bedrooms, except as identified within this section.
3. One (1) detached habitable structure is permitted per lot.
4. An accessory dwelling unit or guest quarters may occupy a portion of the habitable structure; however, access shall not be permitted from the interior.
5. Unless permitted as an accessory dwelling unit, detached habitable structures shall not be rented or otherwise used as a dwelling unit.

9.29.120 Accessory Dwelling Units

A. Purpose The purpose of this Section is to expand the variety of housing opportunities in the Town by implementing State Government Code (65852.2) as it pertains to accessory dwelling units. Implementation of these regulations will insure that accessory dwelling units are located in areas where services are adequate to support them and that accessory dwelling units are designed and maintained as a compatible and integral part of the Town's residential zoning districts.

B. Applicability. In compliance with the provisions of Government Code 65852.2, the provisions of this Chapter shall apply to all lots that are occupied with a single-family dwelling unit and zoned residential. **Current code restricts construction to one (1)-acre minimum lot size.**

C. General Standards

- 27. Applications for accessory dwelling units shall be approved or disapproved ministerially pursuant to the requirements of this Section within 120 days of a determination that the application is complete, as required by Gov. Code, § 65852.2(b).
- 28. The parcel upon which the accessory dwelling unit is to be built shall comply with all development standards for the district in which it is located.
- 29. An accessory dwelling unit may only be permitted on a lot zoned for residential uses on which there is already built, or currently under construction, a single-family detached dwelling (primary dwelling).
- 30. No more than one (1) accessory dwelling unit shall be permitted on any parcel or lot.
- 31. The accessory dwelling unit shall have adequate water supply pursuant to specifications of the Uniform Plumbing Code.
- 32. Parcels on which an accessory dwelling unit is to be located must be connected to sewer, unless otherwise specified herein.
- 33. The primary dwelling, accessory dwelling unit, or both must be occupied by the property ***This is new and will require recordation of a restrictive covenant.***
- 34. The ADU may be rented separate from the primary residence but may not be sold or otherwise conveyed separate from the primary residence. ***This is new and will require recordation of a restrictive covenant.***
- 35. The rental term for an accessory dwelling unit shall not be less than thirty (30) days. ***Current Code does not address rentals.***
- 36. The accessory dwelling unit may be either attached or detached from the primary dwelling.
- 37. Fire sprinklers shall only be required if required for the primary residential structure. ***State mandate.***
- 38. At no time may the primary dwelling unit be converted to the extent that it becomes substandard in size as a single-family residence. Except that a 150 square foot maximum, efficiency unit with a partial kitchen or bathroom as authorized by California Health & Safety Code Section 17958.1, shall be permitted upon any lot containing a single-family residence and shall be considered an accessory dwelling unit. ***The State requires all single family residences be permitted an efficiency unit regardless the size of the primary dwelling.***
- 39. ***Restrictive Covenant.*** Prior to the issuance of a building permit for an accessory dwelling unit, a restrictive covenant against the land, which is binding on the property owner and their successors in interest, shall be recorded with the office of the San Bernardino County Recorder, which specifies that the following:
 - a. The use of the accessory dwelling unit as an independent living space may continue only if one dwelling on the lot is occupied by the property owner.

- b. The accessory dwelling unit may not be sold or otherwise conveyed separate from the primary residence.
- c. The property may only contain one (1) rented unit. **Current Code has no requirement for owner occupancy.**

D. Attached Accessory Dwelling Unit Development Standard

Along with the general standards prescribed by subsection D, the following development standards apply to detached accessory dwelling units:

7. The maximum size for an attached accessory dwelling unit is thirty (30) percent of the habitable floor area of the primary dwelling, not to exceed 1,200 square feet.
8. Independent access to the accessory dwelling unit shall not be located on the same elevation as the access to the primary dwelling. **This is to avoid the appearance of a duplex.**
9. If existing bedrooms are converted to an accessory dwelling unit, availability of sewer may not be required, subject to the review and approval of the Building Official.

E. Detached Accessory Dwelling Units

Along with the general standards prescribed by subsection D, the following development standards apply to detached accessory dwelling units:

1. Detached accessory dwelling units are subject to all provision within Section 9.29.020 "Accessory Uses and Structures".
2. The maximum floor area of an accessory dwelling unit is fifty (50) percent of the existing habitable floor area of the primary dwelling, not to exceed 1,200 square feet. **The current Code does not reference the living area of the primary dwelling, only that it cannot exceed seventy-five (75) percent of the footprint.**
3. An accessory dwelling unit may occupy all, or a portion of, an existing detached accessory structure meeting the architectural guidelines set forth in this chapter. **State mandate, except for the architectural requirements, which the Town is allowed to apply.**
4. Sewer connection is required unless the lot is one (1)-acre or more in size and located outside of any sewer service area. **The Sewer Master Plan and the LAMP require a minimum lot size of one acre for septic.**
5. The driveway serving the primary dwelling shall be used to serve the accessory dwelling unit whenever feasible.
6. The accessory dwelling unit may be metered separately from the main dwelling for gas, electricity and water/sewer services.
7. The accessory dwelling unit shall be architecturally compatible with the design of the main dwelling and shall match with the same colors and materials of the primary unit.

FINDINGS

An amendment to the Development Code requires that the Planning Commission address two (2) required "Findings", as listed within Development Code Section 9.06.060. For Commission consideration, the required Findings are listed below, along with a comment addressing each. If the Commission concurs with these comments, they may be adopted and forwarded to the Council for its consideration of the Development Code Amendment. If the Commission wishes modifications to the offered comments, after considering input and public testimony at the public hearing, modifications to the Findings and Code Amendment recommendations can be included into the information forwarded to the Council for consideration.

- A. The proposed amendment is consistent with the General Plan; and

Comment: The General Plan is the blueprint for the community's future growth. Specific Goals and Objectives are provided within each of the adopted General Plan's State-mandated Elements. The Housing Element encourages housing for special needs households, including the elderly, single parent households, large households, the disabled and the homeless. Additionally, the Housing Element encourages the development of second units. Development Code Amendment No. 2017-002 will provide standards for accessory dwelling units that will encourage additional development while providing quality site planning and design that enhances the aesthetics and economy of the Town.

- B. The proposed amendment will not be detrimental to the public health, safety or welfare of the Town or its residents.

Comment: Amending the Code as proposed under Development Code Amendment No. 2017-002 will provide a simplified permitting process, which should encourage property owners to come forward and obtain the necessary permits required. Additionally, the permit process will ensure there are adequate services available to the accessory dwelling unit so the accessory use will not be detrimental to the public health, safety or welfare of the community

NOTICING

Development Code Amendment No. 2017-002 was advertised as a public hearing in the Apple Valley News newspaper on March 9, 2018.

ENVIRONMENTAL REVIEW

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.

RECOMMENDATION

Following receipt of public input and discussion by the Commission, it is recommended that the Commission move to approve Planning Commission Resolution No. 2018-003 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.

Prepared By:

Reviewed By:

Pam Cupp
Associate Planner

Carol Miller
Assistant Director of Community Development

Attachment:

Draft Planning Commission Resolution No. 2018-003