



Town Council Agenda Report

Date: May 28, 2019 Item No. 9

To: Honorable Mayor and Town Council

Subject: INTRODUCE ORDINANCE NO. 508 – AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF APPLE VALLEY, CALIFORNIA, AMENDING CHAPTER 6.30 OF THE APPLE VALLEY MUNICIPAL CODE AS IT RELATES TO THE ENFORCEMENT AND NOTICE PROCESSES

From: Douglas Robertson, Town Manager

Submitted by: Guy Eisenbrey, Code Enforcement Manager
Code Enforcement

Budgeted Item: Yes No N/A

RECOMMENDED ACTION

- A. **Find** that the proposed adoption of Ordinance No. 508 is not subject to and is exempt from CEQA based upon a finding that, under section 15061(b)(3) of the CEQA Guidelines, it can be seen with certainty that there is no possibility that the proposed amendment may have a significant effect on the environment.
- B. **Move** to waive the reading of Ordinance No. 508 in its entirety and read by title only.
- C. **Move** to introduce Ordinance No. 508 amending Chapter 6.30 as it relates to the enforcement and notice processes.
- D. **Direct** staff to file a Notice of Exemption.

SUMMARY

It is necessary to review the language of the Town's Municipal Code from time to time to ensure that it aligns with state law and best business practices, as determined by professional and expert staff and can be understood by the layman. This amendment serves to change the language of some Municipal Code sections for the following reasons: to allow Town Code Enforcement Officers to more effectively and efficiently enforce the Town's Municipal Code; to clarify the meaning and intent of certain sections

by changing syntax; to consolidate sections that reference giving notice and the processes for which notice can be provided; and to uphold the Town Council's intent. As a result of this review, the following changes are proposed to be made to the Municipal Code.

BACKGROUND

The Code Enforcement profession has changed significantly since the inception of the Town's Municipal Code and state law has equally changed to address and abate elements of blight and issues related to substandard housing that plague California's communities.

The amendments seek to make the Town's Municipal Code easier to understand to a layperson and clarify the intent of the Code. They also seek to clarify and consolidate references related to noticing. The current Code references notice and cost recovery in various locations, including Title 1, and in different ways leading to the possibility of confusing the reader and those that use it to enforce its provisions. The amendments in Chapter 6.30 address this and provide a ~~more clear~~ clearer expectation for the resident and enforcement officer alike.

None of these proposed changes to the Municipal Code add or delete any violations but serve to better position the Town to effectively enforce the provisions of the Code. Nor are the amendments intended to alter the Town Council's overarching intent of the Code itself.

{A ~~strike through~~ in the municipal code text shows proposed deletions and **bold with underlined** text shows proposed additions to the code sections}

ATTACHMENTS

Ordinance No. 508.

ORDINANCE NO. 508

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF APPLE VALLEY, CALIFORNIA, AMENDING CHAPTER 6.30 OF THE APPLE VALLEY MUNICIPAL CODE AS IT RELATES TO THE ENFORCEMENT NOTICE PROCESSES.

WHEREAS, the amendments are necessary to allow Town Code Enforcement Officers to more effectively and efficiently enforce the Town’s Municipal Code; and

WHEREAS, the amendments are meant to clarify and consolidate portions of the Town’s Municipal Code; and

WHEREAS, the amendments are also necessary to provide greater understanding to the layperson; and

WHEREAS, the amendments are necessary to uphold the Town Council’s intent of the Code;

WHEREAS, it is in the best interest of the Town to amend the provisions of Chapter 6.30 (entitled “Nuisances”) of Title 6 of the Apple Valley Municipal Code; and

WHEREAS, it is the objective of the Town of Apple Valley through code enforcement efforts to preserve and enhance properties located within the Town limits.

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

Section 1. Section 6.30.020 of Chapter 6.30 of Title 6 of the Town of Apple Valley Municipal Code is hereby amended to read in its entirety as follows:

“6.30.020 – Purpose.

Elements of blight, consisting of including, but not limited to, fire hazards, polluted air and water, abandoned vehicles and improperly maintained property, among others, ~~creates~~ create an unsightly appearance, ~~creates~~ create a hazard to the public health, safety and welfare, ~~interferes~~ interfere with the reasonable enjoyment of property by neighbors, can detrimentally affect property values in the surrounding neighborhood and community, and ~~is~~ are a public nuisance. It is hereby declared to be in the public interest to promote the public health, safety and welfare of the residents of the Town of Apple Valley by providing a procedure for the abatement of nuisances which shall be in addition to all other procedures allowed by this Code or any other manner provided by law.”

Section 2. Section 6.30.030 of Chapter 6.30 of Title 6 of the Town of Apple Valley Municipal Code is hereby amended to read in its entirety as follows:

“6.30.030 - Unlawful nuisances.

“Each and every one of the following conditions or acts is unlawful and hereby declared to be a public nuisance:

- A. Fire hazards. Dry or dead ~~shrub, dead tree,~~ **shrubs or trees**, combustible refuse and waste or any material growing upon a street, sidewalk or private property within the Town which constitutes a fire hazard to a building, improvement, crop or which, when dry, will in reasonable probability constitute a fire hazard.
- B. Hazardous obstructions. An **Any** obstacle, landscaping or object installed, planted or maintained within the sight triangle corner setback area reaching a height higher than 30 ~~in.~~ **inches** above the nearest street elevation. Hazardous obstructions do not mean existing or future permanent buildings, otherwise constructed or maintained in accordance with applicable building and zoning regulations, public utility poles, trees trimmed at the trunk at least six ~~ft.~~ **feet** above the level of the ground surface provided trees are spaced so that trunks do not obstruct the vision of motorists.
- C. Polluted water. A swimming pool, pond or other body of water which is abandoned, unattended, unfiltered, or not otherwise maintained, resulting in the water becoming polluted. Polluted water means water contained in a swimming pool, pond or other body of water, which includes but is not limited to bacterial growth, including algae, remains of deceased animals, reptiles, rubbish, refuse, debris, papers and any other foreign matter or material which because of its nature or location constitutes an unhealthy, unsafe or unsightly condition.
- D. Public burning. The intentional outdoor burning of any material, structure, matter or thing unless specifically authorized.
- E. Refuse and waste. Unused or discarded matter and material, including but not limited to the following: rubbish, refuse, debris, rubble, asphalt, concrete, plaster, tile, rocks, brick, soil, building materials, crates, cartons, containers, boxes, machinery or parts thereof, scrap metal and other pieces of ferrous or nonferrous metal, furniture, inoperative vehicles and parts, trimmings from plants and trees, cans, bottles and barrels.
 - ~~1. Animal waste. All animal waste must be cleaned up every 72 hours, excluding all large animal waste (i.e., horses, cattle, sheep) which will be required to be cleaned up once a week.~~
- F. Property Maintenance. ~~It is declared a public nuisance for any person owning, leasing, occupying or having charge of any premises in this Town to maintain or to allow to be maintained such property in such manner that any of the following conditions are found to exist thereon:~~
 1. ~~Buildings, which are abandoned, boarded up, partially destroyed, or~~ **Abandoned, boarded up, or partially destroyed structures or structures** left in a state of partial construction for a period of more than 30 days.
 - a. A building **structure** may be abandoned, boarded up, partially destroyed or left in a state of partial construction for a longer period if the person owning, leasing, occupying or having charge of the property has entered an agreement permitting the same with the Town. The Town may enter into such an agreement only where special circumstances are present, which shall be determined at the discretion of the Town Manager or ~~his or her~~ **their**

designee. Without limiting the foregoing, the planned demolition or rehabilitation of a structure may constitute special circumstances. Whether to enter such an agreement and the terms thereof shall be at the sole discretion of the Town Manager or ~~his or her~~ **their** designee.

2. Unpainted buildings or portions of buildings or structures causing dry rot, warping or termite infestation.
3. Broken, dilapidated, and/or unsecured windows, doorways, and/or gates.
4. [Reserved].
5. Vegetation that is overgrown, dead, decayed, dry, or hazardous.
6. Stored vehicles or trailers, campers, boats and other objects parked or stored in a manner which extends or otherwise encroaches over, under or upon the Town's right-of-way.
7. Any vehicle or trailer containing any advertising matter, words, symbols or pictures, parked whether on public or private property, for the primary purpose of advertising or directing attention to a business or vehicle for sale. Exception: This Chapter **Subsection** shall not apply to one vehicle, which is parked legally on the vehicle owner's occupied residential property or commercially zoned properties licensed for vehicle sales.
~~Any person in violation of this subsection may be issued a parking citation, and the fine for that infraction shall be \$50.00.~~
8. Operative vehicles parked or stored on the premises shall be limited to six vehicles per single family residential lot. The vehicles must be operative at all times and in compliance with Chapter 11.80 of the Town of Apple Valley Municipal Code. All vehicles located in the front yard area between the front of the home and the public right-of-way must be parked on a driveway or on a concrete, asphalt or gravel parking surface. The following shall be exceptions to this provision and will not be included in the maximum vehicles permitted as described in this Section:
 - a. Vehicles completely screened from public view by a wooden fence, concrete block wall, brick wall, or chain link fence with approved screening materials, in accordance with Section ~~6.30.030(F)15.e.~~ **6.30.030(F)(15)(e)** of the Town of Apple Valley Municipal Code or solid landscaping that completely screens the vehicle from view, provided the vehicles are located behind the structure.
 - b. Vehicles provided to the resident that are owned by the resident's employer and used by the resident for business. This exemption shall not apply to vehicles related to a home occupation permit.
 - c. Operable motorcycles and mopeds.
 - d. Vehicles owned by visitors to the property that will be parked for less than 24 hours.
 - e. Vehicles located in an enclosed garage ~~are not included in the maximum number of vehicles.~~
9. Attractive nuisances dangerous to children, **including, but not limited to:**
 - a. Abandoned and/or broken equipment.
 - b. Unfenced, unsecured, or otherwise accessible pools, ponds and excavations.

- c. Neglected machinery, broken or discarded furniture and household equipment, stoves, refrigerators, freezers, cans, packing boxes and similar debris.
 - d. Any attractive nuisance which is potentially detrimental to children whether in a building, on the premises of a building or upon an unoccupied lot or parcel. This includes, but is not limited to, any abandoned wells, shafts, basements or excavations; abandoned refrigerators and motor vehicles; any structurally unsound fences or structures; or any lumber, trash, fences, debris or vegetation which may prove a hazard for inquisitive minors.
10. Broken or discarded furniture and household equipment in visible yard areas.
 11. ~~Clothesline~~ **Clotheslines** or clothes hanging in front yard areas.
 12. Packing boxes and other debris stored in yards and visible from public streets.
 13. Toxic materials, hazardous waste or chemicals that are improperly or unlawfully stored, which includes the disposal of sewage, human excrement or other liquid waste in any place or manner.
 14. Maintenance of premises in such condition as to be detrimental to the public health, safety or general welfare or in such a manner as to constitute a public nuisance as defined by Civil Code § 3480.
 15. Property with buildings or exteriors maintained in such condition as to become defective, unsightly, or in a state of disrepair. This includes, but is not limited to, the keeping or disposing of or the scattering over the property or premises of any of the following:
 - a. Lumber, junk, trash or debris,
 - b. Abandoned, discarded or unused objects of equipment such as automobiles, furniture, stoves, refrigerators, freezers, cans or containers,
 - c. Stagnant water or excavations,
 - d. Any device, decoration, design, fence or structure which is unsightly by reason of its condition or its inappropriate location,
 - e. Fences shall be maintained using approved fencing material. Approved screening material to shield, conceal or hide shall consist of solid block, stucco, wood slat fencing and chain link fencing with plastic, wood or metal inserts. Materials including, but not limited to, plywood, particleboard, garage doors, plastic tarps or canvas are prohibited screening materials. All fences shall be in compliance with **the Town of Apple Valley Development Code** Section 9.08.1300 **9.28.120 et seq.** ~~Walls and Fences of the Town of Apple Valley Development Code.~~
 - f. Permitting or allowing any graffiti to remain on any building, wall, fence or structure.
 16. Any building, driveway or structure which has any of the following conditions or defects:
 - a. Whenever any door, aisle, passageway, stairway or other means of exit is not of sufficient width or size, or is not so arranged as to provide safe and adequate means of exit, in case of fire or panic, for all persons housed or assembled therein who would be required to, or might use such door, aisle, passageway, stairway or other means of exit,

- b. Whenever any portion thereof has been damaged by earthquake, wind, flood, or by any other cause, in such a manner that the structural strength or stability thereof is appreciably less than the minimum requirements of this Code for a new building or similar structure, purpose or location,
- c. Whenever any portion or member or appurtenance thereof is likely to fall or to become detached or dislodged or to collapse and thereby injure persons or damage property,
- d. Whenever any building, portion of a building, or any member, appurtenance or ornamentation on the exterior thereof is not of sufficient strength or stability or is not so anchored, attached or fastened in place so as to be capable of resisting wind pressure, earthquake forces, live-load or dead-load as specified in the ~~Uniform~~ **California** Building Code without exceeding the stresses permitted in the ~~Uniform~~ **California** Building Code,
- e. Whenever any portion thereof has settled to such an extent that walls or other structural portions have materially less resistance to winds or earthquake than is required in new construction,
- f. Whenever the building or structure, or any portion thereof, because of dilapidation, deterioration, decay, faulty construction or because of the removal or movement of some portion of the ground necessary for the purpose of supporting such building or portion thereof, or some other cause is likely to completely collapse or some portion of the foundation or underpinning is likely to fall or give way,
- g. Whenever, for any reason whatsoever, the building or structure, or any portion thereof is unsafe for the purpose for which it is used,
- h. Whenever the building or structure has become dilapidated, damaged, or dangerous, resulting from decay, damage, faulty construction or arrangement, fire, wind, earthquake or flood, old age, or neglect,
- i. Whenever any building or structure which has been constructed or which now exists or is maintained in violation of any specific requirement or prohibition applicable to such building or structure, of the building regulations of this Town as set forth in the ~~Uniform~~ **California** Building Code, or ~~Uniform Housing Code~~ or of any law or ordinance of this State or Town relating to the condition, location or structure of buildings,
- j. Whenever a building or structure, used or intended to be used for dwelling purposes, because of dilapidation, decay, damage or faulty construction or arrangement, or otherwise is unsanitary or unfit for human habitation or is in a condition that is likely to cause sickness or disease when so determined by the health officer, or is likely to work injury to the health, safety or general welfare of those living within,
- k. Whenever any building or structured used, or intended to be used, for dwelling purposes has light, air and sanitation facilities inadequate to protect the health, safety or general welfare of persons living within,
- l. Whenever any building or structure, by reason of obsolescence, dilapidated condition, deterioration, damage, electric wiring, gas connections, heating apparatus, or other cause, is in such condition as to be a fire hazard and is so situated as to endanger life or other buildings or property in the vicinity

- or provide a ready fuel supply to augment the spread and intensity of fire arising from any cause,
- m. Any building which meets the definitions of a sub-standard building in Health and Safety Code § 17920.3,
- n. Any building that does not have the exterior fire resistive requirements of the ~~Uniform~~ **California** Building Code,
- o. Buildings or structures maintained in violation of Section 203(a) of the ~~Uniform~~ **California** Building Code ~~of the Town~~,
- p. Any curb, gutter, sidewalk or driveway which is debilitated, broken, damaged or raised one-half in. or more above the surrounding grade.”

Section 3. Section 6.30.050 of Chapter 6.30 of Title 6 of the Town of Apple Valley Municipal Code is hereby amended to read in its entirety as follows:

“6.30.050 - Notification of nuisance.

- A. Whenever the Town Manager, or a designee thereof, determines that all or any part of any real property within the Town is being maintained contrary to one or more of the provisions of ~~Section 6.30.030~~ **this Chapter**, he or she shall give written notice (~~notice to abate~~) to the owner(s) of said property of the violation(s) or public nuisance conditions (hereafter collectively the "nuisance") **shall conform to the provisions set forth in Section 1.01.300 of this code.** A **The** notice to ~~abate~~ shall contain the following information:
 1. The names and addresses, according to County Assessor Records, of each owner. When applicable pursuant to Section 6.30.050(D), the notice shall recite similar information for interested persons.
 2. The street address and assessor parcel number for the real property on which the nuisance exists.
 3. A description of each condition or violation constituting a nuisance on the real property. Applicable Sections of the Town Municipal Code shall be included. Omission of any such Section shall not invalidate the notice.
 4. A description of the corrective method(s) proposed or required for abatement or termination of the nuisance. If Town approvals, licenses, or permits are required, they shall be identified in the notice. Omission of any such approval, license, or permit shall not invalidate the notice.
 5. The deadline or deadlines for completion of the corrective method(s) and to pass all required Town inspections of the real property.
 6. A recital that it is unlawful to cause, permit or allow a nuisance to exist and that the owner may incur substantial sanctions and other consequences if the nuisance is not promptly and fully corrected or otherwise abated.
- B. The notice **shall contain a statement regarding the Town's right to collect cost recovery in accordance with Section 1.01.260 of this** code ~~may be served upon the owner(s) in person, by first class mail, or by certified mail to their last known address according to County Assessor Records. Service shall be deemed complete at the time notice is personally served or deposited with the U.S. Postal~~

~~Service. Failure of any person to receive the notice to abate shall not affect the validity of any proceedings hereunder.~~

- C. The notice to ~~abate~~ may contain the Town's election to establish the right to abate a nuisance with Town or contract forces. In this event, the notice shall also contain the following recital:

"The Town has elected to establish the right to abate a nuisance with Town or contract forces. If you object to the determination of a nuisance, or to the proposed method(s) of its abatement, in this notice, you may tender a request for a hearing on a Town approved form to the Town Clerk's Office at Town Hall within ten calendar days of the date of service of the notice to abate. There is no fee for filing this request. Failure of the Town Clerk to receive a request for hearing from an owner of the subject real property in a timely manner shall constitute a waiver of the right to a hearing. In this event, the determination of a nuisance and the method(s) of its abatement in this notice shall be final and the Town may cause abatement thereof. If a nuisance is abated by Town or contract forces, all personal property and any demolition debris involved in the abatement action at the subject real property may be removed therefrom and discarded or destroyed without regard to its salvage or other value. Recovery of the Town's abatement costs for the nuisance shall be sought pursuant to Section 6.30.180 and other Sections of Chapter 6.30 of the Town Code."

- D. If abatement of a nuisance includes the possible demolition of a permitted building or other structure by Town or contract forces, the notice to abate shall also be served upon lienholders and other interested persons with recorded instruments that are on file with the San Bernardino County Recorder's Office as of the date of the notice to abate.
- E. Establishment of the Town's right to abate a nuisance with Town or contract forces shall not obligate the Town to do so.
- F. Owners or other interested persons shall not be entitled to a hearing pursuant to Chapter 6.30 if the Town elects instead to exercise its criminal or civil and injunctive remedies to cause the abatement of a nuisance, whereupon owners or interested persons are entitled to receive a hearing and other due process rights in court. Nothing contained in this Subsection shall prevent the Town, in its sole discretion, from nevertheless voluntarily undertaking the administrative hearings set forth in this Chapter concerning any nuisance."

Section 4. Section 6.30.140 of Chapter 6.30 of Title 6 of the Town of Apple Valley Municipal Code is hereby amended to read in its entirety as follows:

"6.30.140 - Abatement by Town.

- A. If such nuisance is not abated as ordered within said abatement period, the Town Manager or their designee shall cause the same to be abated by Town employees or private contract. The Town Manager or representative is expressly authorized to enter upon said property for such purposes. The cost, including incidental expenses, of abating the nuisance shall be billed to the owner and shall

become due and payable 30 days thereafter. The term "incidental expenses" shall include, but not be limited to, personnel costs incurred in documenting the nuisance; the actual expenses and costs of the Town in the preparation of notices, specifications and contracts, and in inspecting the work; and the costs of printing and mailing required hereunder.

- B. A person shall not obstruct, impede or interfere with the Town Manager, or his or her **their** representative, or with any person who owns, or holds any interest or estate in, any property in the performance of any necessary act, preliminary to or incidental to, carrying out an abatement order issued pursuant to Sections 6.30.080 and 6.30.110.
- C. ~~In the event the Town incurs attorney fees in any action or proceeding to abate a nuisance under Title 6 or under any other ordinance or title of the Town of Apple Valley Municipal Code, pursuant to Government Code § 38773.5, attorney fees are recoverable by the prevailing party, in those actions or proceedings in which the Town elects at the initiation of the action or proceeding, to seek recovery of its own attorney fees."~~

Section 5. Except as expressly amended hereby, all other provisions of Title 6 of the Town of Apple Valley Municipal Code shall remain in effect.

Section 6. Invalidation. The amendment by this Ordinance of Chapter 6.30 of the Town of Apple Valley Municipal Code as previously in effect shall not be construed to invalidate any entitlement exercised or proceeding taken pursuant to either of said Chapters while the same was in effect.

Section 7. 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.

Section 8. Effective Date. This Ordinance shall become effective thirty days from and after its adoption.

Section 9. 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 28th day of May, 2019.

Larry Cusack, Mayor

ATTEST:

La Vonda M-Pearson, Town Clerk

APPROVED AS TO FORM:

APPROVED AS TO CONTENT:

Thomas Rice, Town Attorney

Douglas B. Robertson, Town Manager