



## Town Council Agenda Report

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Date: June 11, 2019 Item No. 6

To: Honorable Mayor and Town Council

Subject: SECOND READING OF ORDINANCE 507 OF THE TOWN COUNCIL OF THE TOWN OF APPLE VALLEY, CALIFORNIA, AMENDING CHAPTER 1.01 OF THE APPLE VALLEY MUNICIPAL CODE AS IT RELATES TO THE ENFORCEMENT, NOTICE, AND APPEAL PROCESSES

From: Douglas Robertson, Town Manager

Submitted by: Guy Eisenbrey, Code Enforcement Manager  
Code Enforcement Department

Budgeted Item:  Yes  No  N/A

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### RECOMMENDED ACTION

Adopt Ordinance No. 507

### BACKGROUND

At its May 28, 2019 meeting, the Town Council reviewed and introduced Ordinance No. 507 which amends Chapter 1.01 of the Apple Valley municipal code as it relates to the enforcement, notice, and appeal processes. As a part of the requirements to adopt any new ordinance, Ordinance No. 507 has been scheduled for adoption at the June 11, 2019 Town Council Meeting.

### FISCAL IMPACT

Not Applicable.

### ATTACHMENTS

Ordinance No. 507.

**ORDINANCE NO. 507**

**AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF APPLE VALLEY, CALIFORNIA, AMENDING CHAPTER 1.01 OF THE APPLE VALLEY MUNICIPAL CODE AS IT RELATES TO THE ENFORCEMENT, NOTICE, AND APPEAL 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 align the Town's Municipal Code with current state law; and

**WHEREAS**, the amendments are also necessary to provide indigent residents with a means of appeal without prepayment of the administrative fine utilizing a hardship waiver process; and

**WHEREAS**, the amendments are necessary to better define the Town Manager's or their designee's discretionary powers in administrative decisions that had previously been limited to the Town Attorney;

**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 1.01 (entitled "Code Adopted") of Title 1 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 1.01.200 of Chapter 1.01 of Title 1 of the Town of Apple Valley Municipal Code is hereby amended to read in its entirety as follows:

**"1.01.200 – Violations.**

- (a) No person shall violate any of the provisions or fail to comply with any of the requirements of this Code. Any person violating any of the provisions or failing to comply with any of the requirements of this Code, unless otherwise specified in particular Titles, Chapters, or Sections of this Code, shall be guilty of a misdemeanor, except as authorized in Subsection (b), and upon conviction thereof, the penalty shall be a fine of not more than \$1,000.00, or imprisonment in

the County jail for a period of not more than six months or by both fine and imprisonment. Each such offense shall be a separate offense for each and every day during any portion of which any violation of any provision of this Code, or any provision of any code adopted by reference by this Code, or of any other Town ordinance, is committed, continued, or permitted by such person, and may be punished accordingly.

- (b) Notwithstanding the provisions of Subsection (a), either the Town Attorney, his or her designee, or any officer issuing a citation hereunder, may issue the citation as an infraction. Further, in the discretion of the Town Attorney, his or her designee, or any officer, any complaint or citation issued as a misdemeanor may be reduced to an infraction.
- (c) In addition to the penalties described in Subsections (a) and (b) of this Section, any person found guilty of a violation of a Title, Chapter or Section of this Code shall be ordered to comply with the requirements of such Title, Chapter or Section of this Code.
- (d) In addition to the penalties provided in Subsections (a) and (b) of this Section, any condition caused or permitted to exist in violation of any of the provisions of this Code shall be deemed a public nuisance and may be, by this Town, summarily abated as such.
- (e) Any person violating any of the provisions or failing to comply with any of the requirements of this Code, unless otherwise specified in particular Titles, Chapters, or Sections of this Code, including parking violations, may be issued an administrative citation by any employee authorized to issue such citations under Section 1.08.050 of this Code. The fines schedule for such administrative citation shall be as follows:
  - (1) A fine not exceeding \$100.00 ~~plus costs~~ for a first violation;
  - (2) A fine not exceeding ~~\$250.00~~ **\$200.00** ~~plus costs~~ for a second violation of the same Code section within one year of the date of the first ~~offense~~ **citation**; and
  - (3) A fine not exceeding \$500.00 for each additional violation of the same Code section within one year of the date of the **previous citation**.
- (f) Each administrative citation shall contain the following information:
  - (1) Name of the responsible person for the violation of this Code.
  - (2) Date on which an inspection established the Code violation.
  - (3) The Code section(s) violated.
  - (4) Address where the Code violation occurred.
  - (5) Amount of the fine for the violation and procedure to pay the fine and avoid a late payment penalty.
  - (6) Description of the procedure for requesting an administrative hearing to contest a citation.
  - (7) A notice that the Code violation is a nuisance and that collection of ~~unpaid fines~~ **enforcement** and/or nuisance abatement costs can be enforced as an assessment of lien against the property where a property related Code violation occurs and that unpaid assessments can result in the property being sold after three years by the County Assessor.

- (8) An order prohibiting the continuation or repeated occurrence of the Code violation or public nuisance described in the administrative citation.
- (9) Name of the Enforcement Officer issuing the citation.
- (10) ~~Each administrative citation shall be accompanied by an itemized statement and invoice of the enforcement costs incurred to the date of the citation.~~
- (g) Service of the citation **shall conform to the provisions set forth in Section 1.01.300 of this code.**
  - (1) ~~An Enforcement Officer may personally serve the citation on the responsible person. The responsible person is required to sign a copy of the citation showing his or her receipt of the citation. If the responsible person served refuses or fails to sign the administrative citation, the failure or refusal to sign shall not affect the validity of the administrative citation or of the subsequent proceedings.~~
  - (2) ~~An Enforcement Officer may mail the citation by certified mail. The citation shall be mailed certified mail return receipt requested to the responsible person's address shown on the County's last equalized property tax assessment rolls for a property related violation, or to any address known for the cite for all other violations. Simultaneously, the citation shall be sent by first class mail. If the citation is sent by certified mail and returned unsigned, then service shall be deemed effective pursuant to first class mail, provided the citation sent by first class mail is not returned.~~
- (h) Satisfaction of the administrative citation. Upon receipt of a citation, the responsible person must do the following:
  - (1) Pay the fine to the Town within ~~45~~ **30** days from the date of the citation. All fines assessed shall be payable to the Town of Apple Valley Finance Department. Payment of a fine shall not excuse or discharge a failure to correct continuing violations nor shall it bar further enforcement action by the Town.
  - (2) **The failure of any person to pay a fine assessed by administrative citation within the time specified on the citation shall result in the assessment of an additional late fee. The amount of the late fee shall be fifty percent of the total amount of the administrative fine owed.**
- ~~(i) Reduction of administrative citation fine amounts: The Town Manager or designee may reduce the administrative citation fine amount at his/her discretion provided the minimum fine imposed is no less than \$1,000.00 unless the total fine due is less than \$1,000.00 in which case the fine shall not be reduced.~~
- ~~(j) (i) Any vehicle violating the California Vehicle Code § 22507.8, Disabled Parking, may be issued an administrative citation by any employee authorized to issue such citations under Section 1.08.050 of this Municipal Code. The fine for such violation is set by the California Vehicle Code or affirmed by resolution of the Town Council as the same may be amended from time to time. ”~~

**Section 2.** Section 1.01.205 of Chapter 1.01 of Title 1 of the Town of Apple Valley Municipal Code is hereby amended to read in its entirety as follows:

**"1.01.205 - Appeal of the administrative citation.**

~~(1)~~ **(a)** Time frame to file an appeal. Any recipient of an administrative citation may contest that there was a violation of the Apple Valley Municipal Code or that he or she is the responsible person by ~~completing~~ **submitting a written** "request for hearing" ~~form~~ and returning it to the Town **or its contractor** within 15 days from the date the administrative citation is served or deemed to have been served, together with an advanced deposit of the fine. Such "request for hearing" forms shall be made available at no charge by the Town Clerk. A failure to file a timely "request for hearing" **or failure to appear at the scheduled hearing** shall be deemed a waiver of the right to appeal the citation and to seek judicial review.

~~(a)~~ **(1) Advance deposit hardship waiver.**

- i. **Any person who intends to request a hearing to appeal the results of the initial review and who is financially unable to make the advance deposit of the fine as required in this Section may file a request for an advance deposit hardship waiver.**
- ii. **The request shall be filed with the Code Enforcement Division on an advance deposit hardship waiver application form, available from the Code Enforcement Division, within seven (7) days of the date of the request for a hearing.**
- iii. **The requirement for depositing the full amount of the fine as described in this Section shall be sustained unless or until the Town Manager or their designee makes a determination to grant the waiver.**
- iv. **The Town Manager or their designee may waive the requirement of an advance deposit set forth in this Section and grant the waiver only if the cited party submits to the Code Enforcement Department a sworn affidavit, together with any supporting documents or materials, demonstrating to the satisfaction of the Town Manager or their designee the person's actual financial inability to deposit with the Town the full amount of the fine in advance of the hearing.**
- v. **If the Town Manager or their designee determines not to grant the waiver, the person shall remit the deposit to the Town within ten (10) days of that decision in advance of the appeal hearing or pay the fine within thirty (30) days from the date of citation issuance to avoid assessment of late penalties.**
- vi. **The Town Manager or their designee shall issue a written determination listing the reasons for his determination to grant or not grant the waiver. The written determination of the Town Manager or their designee shall be final.**
- vii. **The written determination shall be served upon the appellant in person or by first class mail.**

~~(2)~~ **(b)** Return of deposit. Any administrative citation fine which has been deposited shall be refunded if it is determined, after a hearing, the person charged in the

administrative citation was not responsible for the violation or that there was no violation as charged in the administrative citation.

~~(3)~~ **(c)** Hearing Officer. The Town Manager shall designate the Hearing Officer for the administrative citation hearing.

~~(4)~~ **(d)** Hearing procedure.

~~(a)~~ **(1)** No hearing to contest an administrative citation before a Hearing Officer shall be held unless and until a timely "request for hearing" form has been completed and submitted and, the fine has been deposited in advance.

~~(b)~~ **(2)** After receipt of the "request for hearing" and fine deposit, a hearing before the Hearing Officer shall be set for a date that is not less than 15 and not more than 60 days from the date that the "request for hearing" is filed in accordance with the provisions of this Section. The person requesting the hearing shall be notified of the time and place set for the hearing at least seven days prior to the date of the hearing. The failure of any recipient of an administrative citation to appear at the hearing shall constitute a forfeiture of the fine and be a bar to judicial review of the Hearing Officer decision based upon a failure to exhaust administrative remedies.

~~(c)~~ **(3)** The Hearing Officer shall only consider evidence that is relevant to whether the violation occurred and whether the responsible person has caused or maintained the violation of the Municipal Code on the date(s) specified in the administrative citation.

~~(d)~~ **(4)** The responsible person contesting the administrative citation shall be given the opportunity to testify and present witnesses and evidence concerning the administrative citation.

~~(e)~~ **(5)** The administrative citation and any additional document submitted by the issuing officer/employee shall constitute prima facie evidence of the respective facts contained in those documents. Formal rules of evidence shall not apply.

~~(f)~~ **(6)** Upon request, the recipient of an administrative citation shall be provided with copies of the citations, reports and other documents submitted or relied upon by the issuing officer/employee when issuing the citation. In addition, if the issuing officer/employee submits any additional written reports concerning the administrative citation to the Hearing Officer for consideration at the hearing, then a copy of said documentation also shall be served by mail on the person requesting the hearing.

~~(g)~~ **(7)** The Hearing Officer may continue the hearing and request additional information from the issuing officer/employee or the recipient of the administrative citation prior to issuing a written decision.

~~(5)~~ **(e)** Hearing Officer's decision. After considering all of the testimony and evidence submitted at the hearing, the Hearing Officer may immediately issue a verbal decision or may issue a written decision within ten days of the hearing. The decision shall include the reasons for the decision and such decision shall be final. If the Hearing Officer determines that the administrative citation should be upheld,

then the fine amount on deposit with the Town shall be retained by the Town. **In the event a hardship waiver was granted, the Hearing Officer may set a date upon which payment of the fine shall be due, but no later than 30 days from the date the written notice of hearing officer's decision is received.** If the Hearing Officer determines that the administrative citation should be cancelled and the fine was deposited with the Town, then the Town shall promptly refund the amount of the deposited fine.

- (6) **(f)** Collection of unpaid fines. Failure to pay the assessed administrative fine within ~~15~~ **30** days ~~or such other time limit set forth in the administrative citation, and/or~~ **that which** has not been successfully challenged by a timely appeal ~~this obligation shall constitute a special assessment and/or lien against the real property on which the violation occurred. The special assessment and/or lien shall be imposed. Alternatively, may result in~~ the matter may be **being** referred for collection, which **may** ~~includes~~ **include**, but is not limited to, the filing of a ~~small claims~~ court action.
- (7) **(g)** Right to judicial review. Any person who is aggrieved by the decision of the Hearing Officer may obtain judicial review of such decision by filing an appeal to be heard in the Superior Court of California, County of San Bernardino, within 20 days of the decision or service thereof. Such appeal shall be filed in the San Bernardino County Superior Court, 14455 Civic Drive, Victorville, California and shall be completed pursuant to California Government Code § 53069.4. The appeal filed with the court must also contain a proof of service showing a copy of the appeal was served upon "Town of Apple Valley." "

**Section 3.** Section 1.01.230 of Chapter 1.01 of Title 1 of the Town of Apple Valley Municipal Code is hereby amended to read in its entirety as follows:

**"1.01.230 Punishments.**

- (a) Any person convicted of a misdemeanor under the provisions of this Code shall be punishable by a fine of not more than \$1,000.00, plus court costs, or by imprisonment in the County jail for a period not exceeding six months, or by both such fine and imprisonment.
- (b) Any person convicted of an infraction under the provisions of this Code shall be punishable for a first conviction by a fine of not more than \$100.00 plus court costs, for a second conviction within a period of one year by a fine of not more than ~~\$250.00~~ **\$200.00** plus court costs, and for a third or any subsequent conviction within a period of one year by a fine of not more than \$500.00 plus court costs.
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**Section 4.** Section 1.01.260 of Chapter 1.01 of Title 1 of the Town of Apple Valley Municipal Code is hereby amended to read in its entirety as follows:

**"1.01.260 - Nuisances: Recovery of abatement expenses.**

- (a) Whenever any person creating, causing, committing, or maintaining a public nuisance, as referred to in Section 1.01.250 of this Chapter, or other public

nuisance, as defined under State law or other ordinance or regulation, has been given notice, by or on behalf of the Town Attorney or by any other Town officer, employee or policing agent authorized to give such notice, to abate such nuisance, or cease and desist from continuing such nuisance or violation of law, and such person who was given notice fails, refuses, or neglects to comply with the notice within the time specified therein, or if such a time is not specified, then within a time reasonably sufficient to enable such compliance, such noncomplying person shall be liable to the Town for any and all costs and expenses to the Town involved in thereafter abating the nuisance and in obtaining compliance with or enforcing the law as referred to or encompassed in the said notice.

- (b) Costs and expenses, as referred to in Subsection (a) of this Section may include, but are not limited to, any and all direct costs and expenses related to such things as personnel salaries and benefits, ~~operational overhead~~, rent, interest, fees for experts or consultants, legal costs or expenses, including attorney's fees, claims against the Town arising as a consequence of the nuisance or violation, and procedures associated with collecting moneys due hereunder.
- (c) The provisions of Subsection (a) of this Section shall also apply to any person who received a notice, as specified therein, and thereafter the nuisance or violation was abated, but such person subsequently allowed or was responsible for a recurrence of the nuisance or violation.
- (d) The liability of any person for the payment of the costs and expenses, ~~not to exceed \$100.00~~, provided for in Subsection (a) of this Section may be waived in whole or in part by the Town ~~Attorney~~ **Manager or their designee** in any case wherein he or she determines, in his or her sole discretion, that the failure or refusal of such person to comply with the notice therein involved was based upon a good faith and bona fide issue of law or fact specially involved in the circumstances of the case. Any determination or decision of the Town ~~Attorney~~ **Manager or their designee** in this regard shall be final and conclusive.
- (e) Moneys due to the Town pursuant to this Section may be recovered in an appropriate civil action. Alternatively, such liability may be enforced by special assessment proceedings against the parcel of land upon which the nuisance existed, which proceedings may be conducted in a manner substantively similar to proceedings described in Government Code § 39574 et seq. relating to weed abatement assessments-, **provided that the property owner is first issued an invoice that is appealable by the property owner in accordance with section 2.04.100 of this Code.**
- (f) **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.** Section 1.01.300 of Chapter 1.01 of Title 1 of the Town of Apple Valley Municipal Code is hereby amended to read in its entirety as follows:

**“1.01.300 - Service of Notices and Citations.**

Whenever a notice is required to be given, or may be given, under any provision of this Code or any provision of any code adopted by reference by this Code or any provision of any ordinance or resolution of the Town not included within this Code, such notice may be given as herein provided **by an employee authorized to issue such notice or citation under Section 1.08.050 of this code.** Unless different or special provisions are otherwise specifically made in this Code or in some other applicable enactment, any such notice may be given ~~either by personal delivery thereof to the person to be notified, or by deposit in the United States mail in a sealed envelope, postage prepaid, addressed to such person to be notified, at that person's last known business address as the same appears in the public records or other records pertaining to the matters to which such notice is directed. Service by mail shall be deemed to have been completed at the time of deposit in the post office or in the official receptacle thereof~~ **and accomplished as follows:-**

- (a) **Personal Service. The authorized employee may obtain the signature of the responsible party to establish personal service of the notice or administrative citation. If the responsible party refuses or otherwise fails to sign the notice or administrative citation, the lack of signature shall in no way affect the validity of the notice or citation or the proceedings;**
- (b) **The authorized employee may post the citation by affixing the citation to a surface in a conspicuous place on the property. Conspicuous posting of the citation is not required when personal service is accomplished or when conspicuous posting poses a hardship or is excessively expensive. Failure of a posted notice or administrative citation to remain in place after posting shall in no way affect the validity of the notice or citation or the proceedings; and**
- (c) **In lieu of or in addition to either Subsection (a) or (b), the authorized employee may serve the notice or administrative citation by first class mail as follows:**
  - (1) **The notice or administrative citation shall be mailed to the responsible party or property owner(s) by first class mail, postage prepaid, with a declaration of service under penalty of perjury. This method of service must be made by a person who is over the age of eighteen and not a party to the action.**
  - (2) **A declaration of service shall be made by the person mailing the notice or administrative citation showing the date and manner of service by mail and reciting the name and address of the citation addressee.**
  - (3) **The failure of any responsible party to receive a properly addressed notice or administrative citation shall not affect the validity of said notice or citation.**

**(4) Service of the notice or administrative citation in the manner described above shall be effective on the date of mailing.** ”

**Section 6.** Except as expressly amended hereby, all other provisions of Title 1 of the Town of Apple Valley Municipal Code shall remain in full force and effect.

**Section 7.** Invalidation. The amendment by this Ordinance of Chapter 1.01 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 8.** 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 9.** Effective Date. This Ordinance shall become effective thirty days from and after its adoption.

**Section 10.** 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 11<sup>th</sup> day of June, 2019.

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Larry Cusack, Mayor

**ATTEST:**

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La Vonda M-Pearson, Town Clerk

**APPROVED AS TO FORM:**

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Thomas Rice, Town Attorney

**APPROVED AS TO CONTENT:**

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Douglas B. Robertson, Town Manager