



Town Council Agenda Report

Date: August 27, 2019 Item No. 5

To: Honorable Mayor and Town Council

Subject: SECOND READING OF ORDINANCE 513 OF THE TOWN OF APPLE VALLEY, CALIFORNIA, AMENDING TITLE 9 "DEVELOPMENT CODE" OF THE TOWN OF APPLE VALLEY MUNICIPAL CODE THAT WILL MODIFY VARIOUS RELATING TO THE FOLLOWING:

- A. Allow administrative review of all new development that is less than 100,000 square feet in size.
- B. Remove Use Permit requirements as it pertains to physical development and replace it with a Development Permit.
- C. Expand the lapse of time for a Variance to two (2) years and allow for extensions of time for Variance and Deviation Permits.
- D. Modify language to better clarify the extension of time process for Use, Development, Variance and Deviation Permits.
- E. Add language to the Development Code relating to the Development Advisory Board.
- F. Remove Chapter 9.66 "Entertainment Overlay" and associated references.
- G. Reduce the number of Findings required to approve a Use or Development Permit.

From: Douglas Robertson, Town Manager

Submitted by: Pam Cupp, Senior Planner
Planning Department

Budgeted Item: Yes No N/A

RECOMMENDED ACTION:

Adopt Ordinance No. 513

SUMMARY:

At its August 13, 2019 meeting, the Town Council reviewed and introduced Ordinance No. 513, which modifies various sections of the Development Code and is predominantly comprised of administrative and procedural changes. As a part of the requirements to adopt any new ordinance, Ordinance No. 513 has been scheduled for adoption at the August 27, 2019 Town Council Meeting.

Fiscal Impact:

Not Applicable

Attachments:

Ordinance No. 513

ORDINANCE NO. 513

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 9.17 AS IT RELATES TO ADMINISTRATIVE REVIEW OF PROJECTS LESS THAN 100,000 SQUARE FEET IN SIZE; MODIFYING CHAPTERS 9.17, 9.35, 9.37, 9.45 AND 9.47 AS IT RELATES TO REPLACING THE USE PERMIT PROCESS WITH A DEVELOPMENT PERMIT FOR PROJECTS INVOLVING PHYSICAL DEVELOPMENT ONLY; MODIFYING CHAPTERS 9.16, 9.17, 9.24 AND 9.25 AS IT RELATES TO LAPSE OF TIME FOR A VARIANCE AND THE EXTENSION OF TIME PROCESS FOR USE, DEVELOPMENT, VARIANCE AND DEVIATION PERMITS; MODIFYING CHAPTER 9.12 TO INTRODUCE LANGUAGE REGARDING THE DEVELOPMENT ADVISORY BOARD; REMOVAL OF OBSOLETE CHAPTER 9.66 “ENTERTAINMENT VILLAGE OVERLAY DISTRICT” AND ASSOCIATED REFERENCE WITHIN CHAPTER 9.05; AND MODIFYING CHAPTERS 9.16 AND 9.17 BY REDUCING THE FINDINGS REQUIRED FOR APPROVAL OF A USE OR DEVELOPMENT PERMIT.

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, On May 1, 2019, the Town Council and Planning Commission held a joint workshop to discuss the Development Code and procedures that should be modified to enhance the Town’s business friendly environment;

WHEREAS, On May 1, 2019, the Town Council directed staff to initiate Development Code Amendments consistent with the Town’s desire to enhance its business friendly environment;

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 the Development Code of the Town of Apple Valley Municipal Code by modifying Chapter 9.17 as it relates to administrative review of projects less than 100,000 square feet in size; modifying Chapters 9.17, 9.35, 9.37, 9.45 and 9.47 as it relates to replacing the Use Permit process with a Development Permit for projects involving physical development only; modifying Chapters 9.16, 9.17, 9.24 and 9.25 as it relates to lapse of time for a Variance and the extension of time process for Use, Development, Variance and Deviation permits; modifying Chapter 9.12 to introduce language regarding the Development Advisory Board; removal of obsolete Chapter 9.66 “Entertainment Village Overlay District” and associated reference within

Chapter 9.05; and modifying Chapters 9.16 and 9.17 by reducing the Findings required for approval of a Use or Development Permit.

WHEREAS, on June 19, 2019, the Planning Commission of the Town of Apple Valley conducted a duly noticed public hearing on Development Code Amendment No. 2019-005, receiving testimony from the public and adopting Planning Commission Resolution No. 2019-005 forwarding a recommendation to the Council; and

WHEREAS, Development Code Amendment No. 2019-005 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 August 2, 2019, Development Code Amendment No. 2019-005 was duly noticed in the Apple valley News, a newspaper of general circulation within the Town of Apple Valley; and

WHEREAS, On August 13, 2019, the Planning Commission of the Town of Apple Valley conducted a duly noticed and advertised public hearing on Development Code Amendment No. 2019-005, receiving testimony from the public and

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. 2019-005 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 Section 9.17.020 "Applicability" of Chapter 9.17 "Development Permit" as follows:

“A Development Permit allows for the architectural/aesthetic review of structures permitted by this Code for the various zoning districts. A Development Permit is not required if a Conditional Use Permit has been submitted and approved where the Commission has addressed the aesthetics and site design issues required under a Development Permit.

- A. A Development Permit approved by the Director shall be required for:
 - 1. All commercial, office and industrial development 100,000 square feet or below.
 - 2. Any addition, reconstruction or relocation totaling more than fifty (50) percent of the existing floor area, or 2,500 square feet, or exterior remodeling or construction altering the exterior appearance of a commercial, office or industrial building.”
- B. A Development Permit approved by the Planning Commission shall be required for:
 - 1. All residential tract development (except single-family residential homes built on individual lots or tracts conditioned for custom home development).
 - 2. All commercial, office and industrial development greater than 100,000 square feet.”

Section 4. Modify Paragraph 3 of Section 9.35.040 “Site Development Standards” of Chapter 9.35 “Commercial and Office Districts to read as follows:

“All commercial development, including new construction, exterior modifications and additions, are subject to the provisions within Development Code Chapter 9.17 “Development Permits”.”

Section 5. Modify Footnote 5 in Table 9.35.040-A “Site Development Standards” of Chapter 9.35 “Commercial and Office Districts” as follows:

“(5) Up to 100 feet with a Development Permit reviewed and approved by the Planning Commission.”

Section 6. Modify Subsection A “Conversions of Existing Residential Structures” within Section 9.35.130 “Residential Structure Conversion/Relocation” of Chapter 9.35 “Commercial and Office Districts” as follows:

“A. Conversions of Existing Residential Structures

- 1. Structures originally designed for residential occupancy (including hotels and motels), or as accessory structures or additions to residences, and located in a non-residential district, shall not be used for any commercial or office use unless the building and site are improved to meet all applicable code requirements for a

change in occupancy. This includes, but is not limited to, Building and Safety, Engineering, Fire District, Police, Water District and Planning Division requirements.

2. Conversions of residential structures to commercial or office use is subject to the approval of a Development Permit.
3. In approving a Development Permit the review authority shall impose conditions necessary to make the following findings:
 - a. The conversion will not adversely impact adjacent properties or the reasonable use thereof.
 - b. Adequate parking and circulation will be provided.
 - c. The architectural design and materials used will be compatible with the character of the neighborhood.
 - d. Public improvements that would normally be required for new construction will be provided.”

Section 7. Modify Subsection B “Intent” within Section 9.37.010 “Purpose and General Plan Consistency” of Chapter 9.37 “Commercial and Office District Design Standards” as follows:

“B. Intent. The overall intent of these standards is to provide a framework that defines the type of built environment desired by the Town that can be used by developers, Town staff, the Planning Commission and the Town Council to design and evaluate development proposals. These standards are also intended to be used as minimums to evaluate standards proposed as a part of future specific plans and Planned Commercial Developments. Final design review of all commercial developments, including new construction, exterior modifications and additions, are subject to the provisions of Development Code Chapter 9.17 “Development Permit”.”

Section 8. Remove Section 9.37.015 “Applicability” of Chapter 9.37 “Commercial and Office District Design Standards” in its entirety.

Section 9. Remove the following paragraph from Table 9.45.040-A “Site Development Standards” of Chapter 9.45 “Industrial Districts”.

~~Approval of a Conditional Use Permit shall be required for any new structure of 230,000 square feet or larger within any Commercial Zoning District or 750,000 square feet or larger within any Industrial Zoning District as provided in Chapter 9.16 “Conditional and Special Use Permits”. Said Conditional Use Permit requirement shall also apply to additions or alterations that result in an existing building being enlarged beyond the thresholds noted above.~~

Section 10. Modify Subsection C “Applicability” within Section 9.47.010 “Purpose and General Plan Consistency, Objectives and Applicability” of Chapter 9.47 “Industrial Design Standards” as follows:

“C. Applicability

The provisions of this Chapter shall apply to all new industrial development within the Town and any addition, remodeling, relocation or construction requiring a building permit within any industrial district.

The overall intent of these standards is to provide a framework that defines the type of built environment desired by the Town that can be used by developers, Town staff, the Planning Commission and the Town Council to design and evaluate development proposals. Final design review of all industrial development, including new construction, exterior modifications and additions, is subject to the provisions of Development Code Chapter 9.17 “Development Permit

Section 11. Remove Section 9.47.015 “Applicability” of Chapter 9.47 “Industrial Design Standards” in its entirety.

Section 12. Modify Section 9.16.100 “Lapse of Permits/Expiration” of Chapter 9.16 “Conditional and Special Use Permits as follows:

“A. A Use Permit shall lapse and become void three (3) years following the date on which the use permit was approved, unless:

1. A building permit is issued, and construction is commenced and diligently pursued;
or
2. A certificate of occupancy is issued;
3. If no certificate of occupancy is required, the site is occupied in accordance with the approved Conditional Use Permit; or
4. An extension of time has been granted pursuant to the provisions within this chapter;

B. A Use Permit shall expire if one of the following occurs:

1. The use, business, or service for which the Conditional Use Permit was issued terminates or ceases operation for a continuous period of time in excess of one (1) year; or
2. The operation is discontinued or ceased because of destruction or damage by acts of God or by malicious acts and repair of the damaged facility has not commenced within two (2) years following the date of the destructive act.”

Section 13. Modify Section 9.16.155 “Extension of Time” of Chapter 9.16 “Conditional and Special Use Permits as follows:

- “A. Upon written request received no later than sixty (60) days prior to the original expiration date, the Community Development Director may grant an automatic Extension of Time to an approved Conditional/Special Use Permit, as provided by this Section. The use permit shall be extended beyond the applicable expiration date two (2) years, as specified, for any Conditional Use Permit or Special Use Permit.
- B. The original decision authority may, upon an application being filed sixty (60) days prior to expiration and for good cause, grant a final time extension not to exceed an additional two (2) years. Applications shall be made on a form to be provided by the Planning Division. Upon granting of an extension, the Planning Division, Director, Commission or Council when appropriate, shall ensure that the previously approved project is consistent with all current Development Code provisions and that the findings for approval of a Development in compliance with Section 9.16.080, Required Findings, of this Chapter, can be made.”

Section 14. Modify Section 9.17.100 “Lapse of Permits/Expiration” of Chapter 9.17 “Development Permits as follows:

- “A. Expiration. A Development Permit approval shall expire two (2) years following the date the permit is issued unless it is otherwise conditioned or unless prior to the expiration of two (2) years:
 - 1. A building permit is issued and substantial construction occurs and is diligently pursued towards completion of the project which was the subject of the Development Permit application. In addition, if after construction is commenced, work is discontinued for a period of two (2) years, then the Development Permit shall become null and void;
 - 2. A certificate of occupancy is issued for the structure which was the subject of the Development Permit application; or
 - 3. An extension of time has been granted pursuant to the provisions within this Chapter.
- B. Phased Projects. Projects may be built in phases if so approved by the reviewing authority. If a project is built in preapproved phases, each subsequent phase shall have two (2) years from the previous phase's date of construction commencement to the next phase's date of construction commencement unless another phasing schedule is approved, or the Development Permit shall become null and void. Phasing schedules approved with the Development Permit shall be followed or the Permit shall become subject to revocation.”

Section 15. Modify Section 9.17.110 “Extension of Time” of Chapter 9.17 “Development Permits” as follows:

- "A. Upon written request received no later than sixty (60) days prior to the original expiration date, the Community Development Director may grant an automatic Extension of Time to an approved Development Permit. The Development Permit may be extended beyond the applicable expiration date by three (3) years.
- B. The original decision authority may, upon an application being filed sixty (60) days prior to expiration, and for good cause, grant a final time extension not to exceed an additional two (2) years. Applications shall be made on a form to be provided by the Planning Division. Upon granting of an extension, the Planning Division, Director, Commission or Council when appropriate, shall ensure that the previously approved project is consistent with all current Development Code provisions and that the findings for approval of a Development in compliance with Section 9.17.080, Required Findings, of this Chapter, can be made. The approving authority may impose additional conditions at this time."

Section 16. Modify Section 9.24.110 "Lapse of Variance" of Chapter 9.24 "Variances" as follows:

"Expiration. A Variance approval shall expire two (2) years following the date the permit is issued unless prior to the expiration of two (2) years:

- A. Any required building permit related to the Variance is issued and substantial construction is commenced and diligently pursued toward completion; or
- B. An extension of time has been granted pursuant to the provisions within this Chapter."

Section 17. Modify Section 9.24.120 "Time Extensions" of Chapter 9.24 "Variances" as follows:

- "A. Upon written request received no later than sixty (60) days prior to the original expiration date, the Community Development Director may grant an automatic Extension of Time to an approved Variance. The Variance may be extended beyond the applicable expiration date by three (3) years.
- B. The Planning Commission may, upon an application being filed sixty (60) days prior to expiration, and for good cause, grant a final time extension not to exceed an additional two (2) years. Applications shall be made on a form to be provided by the Planning Division. Upon granting of an extension, the Commission shall ensure that the Variance complies with all current Development Code provisions that apply. The Planning Commission may impose additional conditions at this time."

Section 18. Modify Section 9.25.070 "Lapse of Deviation Permit" of Chapter 9.25 "Deviation Permits as follows:

“A Deviation Permit shall lapse and shall become null and void three (3) years following the date on which the permit was approved unless any prior to the expiration of three (3) years:

- A. Any required building permit related to the permit is issued and substantial construction is commenced and diligently pursued toward completion; or
- B. An extension of time has been granted pursuant to the provisions within this Chapter.”

Section 19. Add Section 9.25.080 “Time Extensions” of Chapter 9.25 “Deviation Permits” as follows:

“9.25.080 Time Extensions

- A. Upon written request received no later than sixty (60) days prior to the original expiration date, the Community Development Director may grant an automatic Extension of Time to an approved Deviation Permit. The Deviation Permit may be extended beyond the applicable expiration date by two (2) years.
- B. The original review authority may, upon an application being filed sixty (60) days prior to expiration, and for good cause, grant a final time extension not to exceed an additional two (2) years. Applications shall be made on a form to be provided by the Planning Division. Upon granting of an extension, the Review authority shall ensure that the Deviation complies with all current Development Code provisions that apply. The approving authority may impose additional conditions at this time.”

Section 20. Modify Section 9.12.020 “Pre-Application Conference” of Chapter 9.12 “Permit Process and Approvals” as follows:

“A pre-application conference with the Planning Division is encouraged prior to formal submittal of a permit application. Upon preliminary review of the proposal, the Planning Division may recommend a conference with the Development Advisory Board. The Development Advisory Board is generally comprised of representatives from various Town Departments, the Apple Valley Fire Protection District, local water agencies and other agencies as deemed appropriate. It is strongly recommended that the conference take place prior to any substantial investment and submittal of entitlement application. “

Section 21. Remove Chapter 9.66 “Entertainment Village Overlay District” in its entirety.

Section 22. Modify Table 9.05.030-A “Zoning Districts” of Chapter 9.05 “Zoning” as follows:

District Title	Map Designation
Residential Districts	
Very Low Density Residential (1 du/5 or more gross acre)	R-VLD
Residential Agriculture (1 du/2.5 gross ac)	R-A
Low Density Residential (1 du/2.5 to 5 gross ac)	R-LD
Estate Residential (1 du/1 to 2.5 gross ac)	R-E
Estate Residential $\frac{3}{4}$ (1 du/0.75 net ac)	R-E $\frac{3}{4}$
Equestrian Residential (1 du/0.4 to 0.9 net ac)	R-EQ
Single Family Residential (1 du/0.4 to 0.9 net ac)	R-SF
Multi-Family Residential (2 to 20 du/net ac)	R-M
Mobile Home Park	MHP
Mixed Use	M-U
Planned Residential Development	PRD
Commercial/Office Districts	
Office Professional	O-P
General Commercial	C-G
Service Commercial	C-S
Regional Commercial	C-R
Mixed Use	M-U
Village Commercial	C-V
Industrial Districts	
Planned Industrial	I-P
Resource Extraction	I-RE
Other Districts	
Public Facilities	P-F
Open Space, Conservation	OS-C
Open Space, Recreation	OS-R
Specific Plan	SP
Overlay Districts	
Airport Overlay	A-1, A-2
Flood Hazard Area	FH

Seismic Hazard	SH
Ranchos Residential Overlay	RRO

Section 23. Modify Section 9.16.090 “Required Findings” of Chapter 9.16 “Conditional and Special Use Permits” as follows:

“A. Before approving a Special or Conditional Use Permit, the Director, Commission or Council when appropriate, shall find that the circumstances prescribed below do apply:

1. That the proposed location, size, design and operating characteristics of the proposed use is consistent with the General Plan, the purpose of this Code, the purpose of the zoning district in which the site is located, and the development policies and standards of the Town;
2. That the proposed location, size, design and operating characteristics of the proposed use and the conditions under which it would be operated or maintained will not be detrimental to the public health, safety or welfare, nor be materially injurious to properties or improvements in the vicinity, adjacent uses, residents, buildings, structures or natural resources.
3. That there are public facilities, services and utilities available at the appropriate levels or that these will be installed at the appropriate time to serve the project as they are needed;
4. That the generation of traffic will not adversely impact the capacity and physical character of surrounding streets and that the traffic improvements and/or mitigation measures are provided in a manner consistent with the Circulation Element of the General Plan;
5. That there will not be significant harmful effects upon environmental quality and natural resources;
6. That Use Permits requiring new construction also meet the Required Findings set forth with Chapter 9.17 “Development Permits”.

Section 24. Modify Section 9.17.080 “Required Findings” of Chapter 9.17 “Development Permits” as follows:

“A. Before approving a Development Permit, the Planning Division, Director, Commission or Council when appropriate, shall find that the circumstances prescribed below apply:

1. That the location, size, design, density and intensity of the proposed development is consistent with the General Plan, the purpose of this Code, the purpose of the

zoning district in which the site is located, and the development policies and standards of the Town;

2. That the location, size and design of the proposed structures and improvements are compatible with the site's natural landforms, surrounding sites, structures and streetscapes and does not unnecessarily block public views from other buildings or from public ways, or visually dominate its surroundings;
3. That the materials, textures and details of the proposed construction, to the extent feasible, are compatible with the adjacent and neighboring structures and that quality in architectural design is maintained in order to enhance the visual environment of the Town;
4. That the amount, location, and design of open space and landscaping conforms to the requirements of this Code, enhances the visual appeal and is compatible with the design and function of the structure(s), site and surrounding area;
5. That excessive and unsightly grading of hillsides does not occur, and the character of natural landforms such as knolls and the Mojave River and that existing vegetation and Joshua Trees are adequately protected and preserved where feasible as required by this Code;
6. That the proposed development's generation of traffic will not adversely impact the capacity and physical character of surrounding streets and that traffic improvements and or mitigation measures are provided in a manner consistent with the Circulation Element of the Town General Plan;
7. That there will be no negative impacts upon the environment from the proposed structure(s) that cannot be mitigated; and
8. That the proposed development, and the conditions under which it would be operated or maintained will not be detrimental to the public health, safety and welfare of the community or be materially injurious to properties or improvements in the vicinity nor be contrary to the adopted General Plan.”

Section 25. 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 26. Effective Date. This Ordinance shall become effective thirty (30) days after the date of its adoption.

Section 27. 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 27th day of August, 2019.

Honorable Larry Cusack, Mayor

ATTEST:

Ms. La Vonda M. Pearson, Town Clerk

Approved as to form:

Approved as to content:

Mr. Thomas Rice, Town Attorney

Mr. Douglas B. Robertson, Town Manager