Get a Slice of the Apple.

TOWN OF APPLE VALLEY
PLANNING COMMISSION AGENDA

WEDNESDAY, DECEMBER 18, 2019

Regular Meeting 6:00 p.m.

Town Council Chambers
14955 Dale Evans Parkway
****

PLANNING COMMISSION MEMBERS

Bruce Kallen, Vice-Chairman
B.R. “Bob” Tinsley, Commissioner
Joel Harrison, Commissioner
Mike Arias Jr., Commissioner
Tom Lanyon, Commissioner

PLANNING DIVISION OFFICE: (760) 240-7000 Ext. 7200
www.AVPlanning.org

Monday - Thursday 7:30 a.m. to 5:30 p.m.
Alternating Fridays 7:30 a.m. to 4:30 p.m.

Get a Slice of the Apple.

TOWN OF APPLE VALLEY
PLANNING COMMISSION AGENDA
REGULAR MEETING
WEDNESDAY DECEMBER 18, 2019 – 6:00 P.M.

PUBLIC PARTICIPATION IS INVITED. Planning Commission meetings are held in the Town Council Chambers located at 14955 Dale Evans Parkway, Apple Valley, California. If you wish to be heard on any item on the agenda during the Commission's consideration of that item, or earlier if determined by the Commission, please so indicate by filling out a "REQUEST TO SPEAK" form at the Commission meeting. Place the request in the Speaker Request Box on the table near the Secretary, or hand it to the Secretary at the Commission meeting. (G.C. 54954.3 {a}).

Materials related to an item on this agenda, submitted to the Commission after distribution of the agenda packet, are available for public inspection in the Town Clerk's Office at 14955 Dale Evans Parkway, Apple Valley, CA during normal business hours. Such documents are also available on the Town of Apple Valley website at www.applevalley.org subject to staff's ability to post the documents before the meeting.

The Town of Apple Valley recognizes its obligation to provide equal access to those individuals with disabilities. Please contact the Town Clerk's Office, at (760) 240-7000, two working days prior to the scheduled meeting for any requests for reasonable accommodations.

REGULAR MEETING

The Regular meeting is open to the public and will begin at 6:00 p.m.

CALL TO ORDER

ROLL CALL

Commissioners: Tinsley_____; Arias _____; Harrison_____
Vice-Chairman Kallen _____

INSTALLATION OF NEWLY APPOINTED COMMISSIONER

Yvonne Rivera, Deputy Town Clerk, will administer the Oath of Office to the newly appointed Planning Commissioners.

ROLL CALL

Commissioners: Tinsley_____; Arias _____; Harrison_____
Lanyon_____.
Vice-Chairman Kallen _____

PUBLIC COMMENTS

Anyone wishing to address an item not on the agenda, or an item that is not scheduled for a public hearing at this meeting, may do so at this time. California State Law does not allow the Commission to act on items not on the agenda, except in very limited circumstances. Your concerns may be referred to staff or placed on a future agenda.

APPROVAL OF MINUTES

None

PUBLIC HEARING ITEMS

1. **Conditional Use Permit No. 2019-003 and Deviation No. 2019-002.** A request to approve a Conditional Use Permit to install a seventy (70)ft tall wireless telecommunications tower designed as a monocross. The tower will be situated within the southern portion of the church site and will inclde a 484 square-foot enclosure that accomodates the tower and equipment. The deviation is a request for a reduced separation distance from residential zoned property located to the west, east and south.

   APPLICANT: Synergy representing T-Mobile West LLC

   LOCATION: 21811 Ottawa Road (First Assembly of God) APN 3087-361-05

   ENVIRONMENTAL DETERMINATION: The project is characterized as the new construction of a small structure with a minor alteration to the land. Therefore, pursuant to the State Guidelines to Implement the California Environmental Quality Act (CEQA) Section 15303 and 15304, the proposal is exempt from further environmental review.

   CASE PLANNER: Carol Miller, Assistant Director of Community Development

   RECOMMENDATION: Denial

2. **Development Code Amendment No. 2019-017.** *(Continued from December 4, 2019)* An amendment to Title 9 "Development Code" of the Town of Apple Valley Municipal Code by modifying provisions relating to accessory dwelling units as required for compliance with recently approved State Legislation.

   APPLICANT: Town of Apple Valley

   LOCATION: Residential Zoning Districts Town-wide

ENVIRONMENTAL DETERMINATION: Pursuant to Section 21080.17 of the State Guidelines to Implement the California Environmental Quality Act (CEQA), this proposal is exempt because CEQA does not apply to the adoption of an ordinance by a city or county to implement the provisions of Section 65852.1 or Section 65852.2 of the Government Code.

CASE PLANNER: Pam Cupp, Senior Planner

RECOMMENDATION: Adopt Planning Commission Resolution No. 2019-020.

3. **Development Code Amendment No. 2019-016.** An amendment to Title 9 "Development Code" of the Town of Apple Valley Municipal Code amending Section 9.36.230 and adding Section 9.29.210 as it relates to cannabis cultivation for personal recreational purposes and penalties for cannabis cultivation violations.

APPLICANT: Town of Apple Valley

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.

CASE PLANNER: Carol Miller, Assistant Director of Community Development

RECOMMENDATION: Adopt Planning Commission Resolution No. 2019-019

OTHER BUSINESS

PLANNING COMMISSION COMMENTS

STAFF COMMENTS

ADJOURNMENT

The Planning Commission will adjourn to the regular Planning Commission Meeting on January 15, 2020

Planning Commission Agenda Report

Date: December 18, 2019 Item No. 1

To: Planning Commission

Case Number: Conditional Use Permit No. 2019-003 and Deviation No. 2019-002

Applicant: Synergy representing T-Mobile West LLC

Proposal: A request to approve a Conditional Use Permit to install a seventy (70)-foot tall wireless telecommunications tower designed as a monocross. The tower will be situated within the southern portion of the church site and will include a 484 square-foot enclosure that accommodates the tower and equipment. The deviation is a request for a reduced separation distance from residential zoned property located to the west, east and south.

Location: 21811 Ottawa Road (First Assembly of God) APN 3087-361-05

Environmental Determination: The project is characterized as the new construction of a small structure with a minor alteration to the land. Therefore, pursuant to the State Guidelines to Implement the California Environmental Quality Act (CEQA) Section 15303 and 15304, the proposal is exempt from further environmental review.

Prepared By: Carol Miller, Assistant Director of Community Development

Recommendation: Denial

PROJECT SITE AND DESCRIPTION

A. Project Size:
The project site is 4.25 acres in size.

B. General Plan Designations:

Project Site -	Medium Density Residential (R-M)
North -	Service Commercial (C-S)
South -	Medium Density Residential (R-M)
East -	Medium Density Residential (R-M)
West -	Medium Density Residential (R-M)

C. Surrounding Zoning and Land Use:

Project Site-	Multi-family Residential (R-M), Existing Church
North -	Service Commercial (C-S), Single family residence; outdoor storage and repair facility.
South -	Multi-family Residential, Vacant
East -	Multi-family Residential, Vacant
West -	Multi-family Residential, Multi-family housing and vacant

D. Height:

Permitted Maximum:	75 ft. (Preferred Location)
Proposed Maximum:	70 ft.

E. Parking Analysis:

Total Parking Required:	1 Space
Parking Provided:	0 Space

F. Setback Analysis:

Tower to Property Line:	**Required**	**Proposed**
From West	26 ft.	32.33 ft.
From East	26 ft.	238 ft.
From South	26 ft.	62.33 ft.
From North	26 ft.	546 ft.

G. Separation Analysis:

Tower to SFR:	**Required**	**Proposed**
From West	500 ft.	**62.33 ft
From East	500 ft.	**238 ft.
From South	500 ft.	**62.33 ft
From North	500 ft.	546 ft
Tower to Existing Tower	750 ft.	Approx. 1,400 ft.

** highlights the deviations being requested

ANALYSIS

A. General:

Pursuant to the Development Code, a Conditional Use Permit is required for all new telecommunication towers to afford the Commission the opportunity to review the architecture and aesthetics of any proposed structure. The Code allows telecommunications facilities within church property, as an accessory use, with approval of a Conditional Use Permit. The Development Code Section 9.77.180 “Preferred Locations” identifies any church as the sole occupant of a site at least three (3) acres in size as a preferred location. The Wireless Telecommunication ordinance also encourages telecommunication facilities to be stealth in design, sited in the least visually obtrusive manner, either screened or disguised, mounted on a

facade and located on the same property as, or adjacent to, structures with tall features or trees similar in height.

B. Site Analysis:

The applicant is requesting Planning Commission review and approval of a Conditional Use Permit to construct a seventy (70)-foot high unmanned, wireless antenna ("Antenna") designed as a mono-cross within a 484 square foot lease area. To secure the related equipment area, a seven (7)-foot-high block wall enclosure is proposed. The tower straddles the equipment enclosure.

The project site currently contains a church campus consisting of a two-story sanctuary building, a single-story fellowship hall and two portable classrooms with related parking. The rear portion of the lot was previously graded and, therefore, void of much native vegetation. It is within this vacant area of the lot that the applicant proposes to install the wireless telecommunication facility. The nearest on-site structure is the church sanctuary building approximately 305 feet away.

A Preferred Location, the Code does give allowances for up to a fifty (50%) reduction in separation and setback requirements. If an antenna is located within a completely concealed structure, the separation requirements do not apply. However, based on the mono-cross design, the tower is not considered completely concealed as it presents no relationship to the primary use (structures) to due to distance apart, therefore; the standards apply at a fifty (50%) reduction.

The Code requires that the tower be setback a distance equal to at least seventy-five percent (75%) of the height of the tower from any adjoining lot line. This calculates to a fifty-two and a half (52.5)-foot (75% of 70 feet = 52.5 feet) setback from the adjoining property line. The permitted fifty (50%) reduction for Preferred Location, reduces the setback to twenty-six (26) feet.

The area where the wireless communication facility is located is within the rear vacant portion of the property and adjacent to other vacant lands. There are no structures or trees similar in height to further minimize the appearance of the structure or structure height, which is evident in the photo simulations provided by the applicant. As a result of these site characteristics, the proposed facility will be highly visible and emphasizes the appearance of the tower. This is contrary to the Wireless Communication Ordinance that establishes "Prohibited Locations" for the placement of telecommunications facilities.

The site plan indicates no paved access to the facility beyond the existing paved parking lot where the Code requires paved access. A three (3)-foot, two (2) inch landscape planter is proposed around the enclosure where the Code requires a minimum four (4) feet.

C. Architecture Analysis:

The Code states “Proposed locations for telecommunications facilities, structures or devices, and all associated supporting equipment, structures and devices, which, by the nature of its design, size, configuration, appearance, color or character, would, by the visibility of the site, exaggerate or emphasize the appearance of the telecommunication facility, making it unique to the area, obviously noticeable, out of character with the surrounding setting (including buildings, landforms, landscaping or native vegetation) are expressly prohibited. “

The seventy (70)-foot high, mono-cross is a four (4) column tower with four (4) sided screening panels with illuminated cross beginning at a height of fifty-two (52) feet. Screening panels are also located at the twenty-five (25) foot elevation. As designed, and the 305-foot distance from any physical features or architectural elements, the tower will appear out of character for the area which is predominately vacant land resulting in impacts to the aesthetics in and around the project. The tower is too far removed from the church buildings and no mature trees nearby to be considered consistent with the intent of the Development Code for preferred stealth/camouflage design elements.

Projects which have been approved by the Planning Commission in the past for other church campuses have been a fifty-seven (57)-foot tall steeple adjacent to the church building and a sixty-three (63)-foot tall faux bell tower adjacent to the church. In both instances, the towers were designed to match the church and in proximity to the church. This proposal does not meet either criteria.

D. Deviation Permit:

With the submittal of a Deviation Permit application, the Planning Commission may increase or modify standards relating to antenna height, setback, separation distance, security fencing or landscape screening if the goals of the Development Code would be better served by granting the requested deviation. Development Code Section 9.77.200 states that the applicant must provide supporting documentation of the identified need that cannot be met in any other manner. There must also be unique circumstances associated with the proposed location necessitating the requested deviation. The applicant should also demonstrate that there are no reasonable alternative sites available to provide the services offered to grant the waiver. The applicant has provided written justification for the deviations, which is attached for Commission consideration. Staff does not consider the written justifications as demonstrating a need that cannot be met in any other manner. The justifications are based on coverage only. They do not demonstrate how relocating the tower adjacent to the building with a design that compliments the sanctuary building and reduction in height are not feasible. Locating the tower adjacent to the sanctuary building would provide a greater separation from residential properties, blend in with the church campus, and a height that is more suited to the existing buildings.

Relocating the tower near the two-story sanctuary may not eliminate the separation requirement to residential but certainly would provide greater separation than the

distance proposed. Staff believes some deviation may be justified provided an acceptable design that minimizes the appearance of the antenna from the surrounding area can be achieved. Also, depending on the design and concealment, the separation and setbacks are eliminated. As proposed staff can find no justification to warrant the deviation in this highly visible location.

E. Summary:

Based upon review of the information presented, the circumstances of the site and the operation of the facility, the project is considered inconsistent with the provisions of the Telecommunication Ordinance which states the facilities shall be sited in the least visually obtrusive manner, either screened or disguised, mounted on a facade and located on the same property as, or adjacent to, structures with tall features or trees similar in height. The information provided does not appear to support the required Findings for granting the Conditional Use Permit and Deviation Permit. If the Commission can make the Findings in a positive manner, the Findings must be stated for the record. The project would need to be continued for staff to prepare the Findings and provide Conditions of Approval for Planning Commission consideration.

F. Environmental Assessment:

The project is characterized as the new construction of a small structure with a minor alteration to the land. Therefore, pursuant to the State Guidelines to Implement the California Environmental Quality Act (CEQA) Section 15303 and 15304, the proposal is exempt from further environmental review.

G. Noticing:

This item was advertised as a public hearing in the Apple Valley News newspaper on December 6, 2019

H. Conditional Use Permit Findings:

As required under Section 9.16.090 of the Development Code, prior to approval of a Conditional Use Permit, the Planning Commission must make the following Findings:

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;

   Comment: The proposed construction of the mono-cross designed telecommunications antenna is not considered in compliance with the Telecommunications Ordinance of the Development Code. The proposed tower will be located within an area that lacks physical features both onsite and adjacent lands. Given the towers height and design, the tower will impact the aesthetics in and around the project, because the tower is not located adjacent to any physical features or architectural elements. The tower is too far removed from the church

buildings and no mature trees nearby. Therefore, the design is found to be contrary to the intent of the Development Code for preferred stealth/camouflage design elements.

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.

   Comment: The seventy (70)-foot high, mono-cross design, telecommunications antenna will impact aesthetics in and around the project, as it is not consistent in design with surrounding architectural or natural elements. The physical design and construction will result in a facility that is clearly distinguished from the general character of the area due to its location away from the church campus and that the area and its surroundings are generally vacant.

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;

   Comment: There are existing improvements to serve the proposed site.

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;

   Comment: Traffic generated from the unmanned wireless telecommunication facility will not adversely impact the surrounding area. However, the proposed facility is not located within a developed portion of the site and none are proposed to be extended to provide adequate internal circulation and parking which can accommodate minimal traffic generated from the use proposed at this project site.

5. That there will not be significant harmful effects upon environmental quality and natural resources;

   Comment: Under the State guidelines to implement the California Environmental Quality Act (CEQA), the project is not anticipated to have any direct or indirect impact upon the environment.

6. That Use Permits requiring new construction also meet the Required Findings set forth with Chapter 9.17 “Development Permits”.

Comment: N/A

I. Findings for Deviation:

As required under Section 9.77.200 of the Development Code, the Planning Commission may increase or modify any standard relating to antenna height, setback, separation distance, security fencing or landscape screening established within Section 9.77, "Wireless Telecommunications Towers and Antennas". Prior to approval of a Deviation Permit the Planning Commission must make specific Findings. Below are the Findings with a comment to address each.

1. That the applicant has provided supporting documentation of the identified need that cannot be met in any other manner.

   Comment: Documentation has been provided by the applicant indicating the necessity for wireless coverage in the proposed vicinity; however, the documents do not demonstrate that this need can only be met by placing a mono-cross tower at this location. They do not demonstrate how relocating the tower adjacent to the building with a design that compliments the sanctuary building and reduction in height are not feasible. Locating the tower adjacent to the sanctuary building would provide a greater separation from residential properties, blend in with the church campus, and a height that is more suited to the existing buildings.

2. That there are unique circumstances associated with the proposed location necessitating the requested Deviations.

   Comment: The general vicinity is mainly zoned Multi-family residential making it difficult for a tower to conform to the required 500 or 1,000-foot separation distance requirement. However, utilizing a preferred stealth design as discussed in the staff report, the applicant would eliminate the need for a Deviation Permit.

3. That there are no reasonable alternative sites available to provide the services offered.

   Comment: There are very few available co-locations within close vicinity that would make it possible for a tower to conform to the required 500-foot separation distance from residential uses or zones. However, a tower that is incorporated within the church sanctuary or hall would provide the greatest separation possible or utilizing a preferred stealth design as discussed in the staff report, the applicant would eliminate the need for a Deviation Permit.

.

4. That the submitted information and testimony from the applicant, staff and public illustrates a reasonable probability that allowance of the Deviation will have minimal or no adverse impacts to the site, surrounding area or the community in general.

   Comment: The 70-foot high, mono-cross design telecommunications tower will impact aesthetics in and around the project due to the area lacking physical features for preferred stealth/camouflage design elements. The physical design and construction will result in a facility which is clearly distinguished from the general character of the area.

5. That the Commission finds that the proposed deviation will not be materially detrimental to the public health, safety or general welfare, or injurious to the property or improvements in the vicinity and land use district in which the property is located.

   Comments: The location, size, design and operating characteristics of the proposed facility, is not consistent with the development policies and standards of the Town. A minimum separation distance of 500 feet is required between towers and residential uses or districts. The proposed separation distance of twenty-six (26) feet does not comply with established development policies and would be detrimental to future residential development.

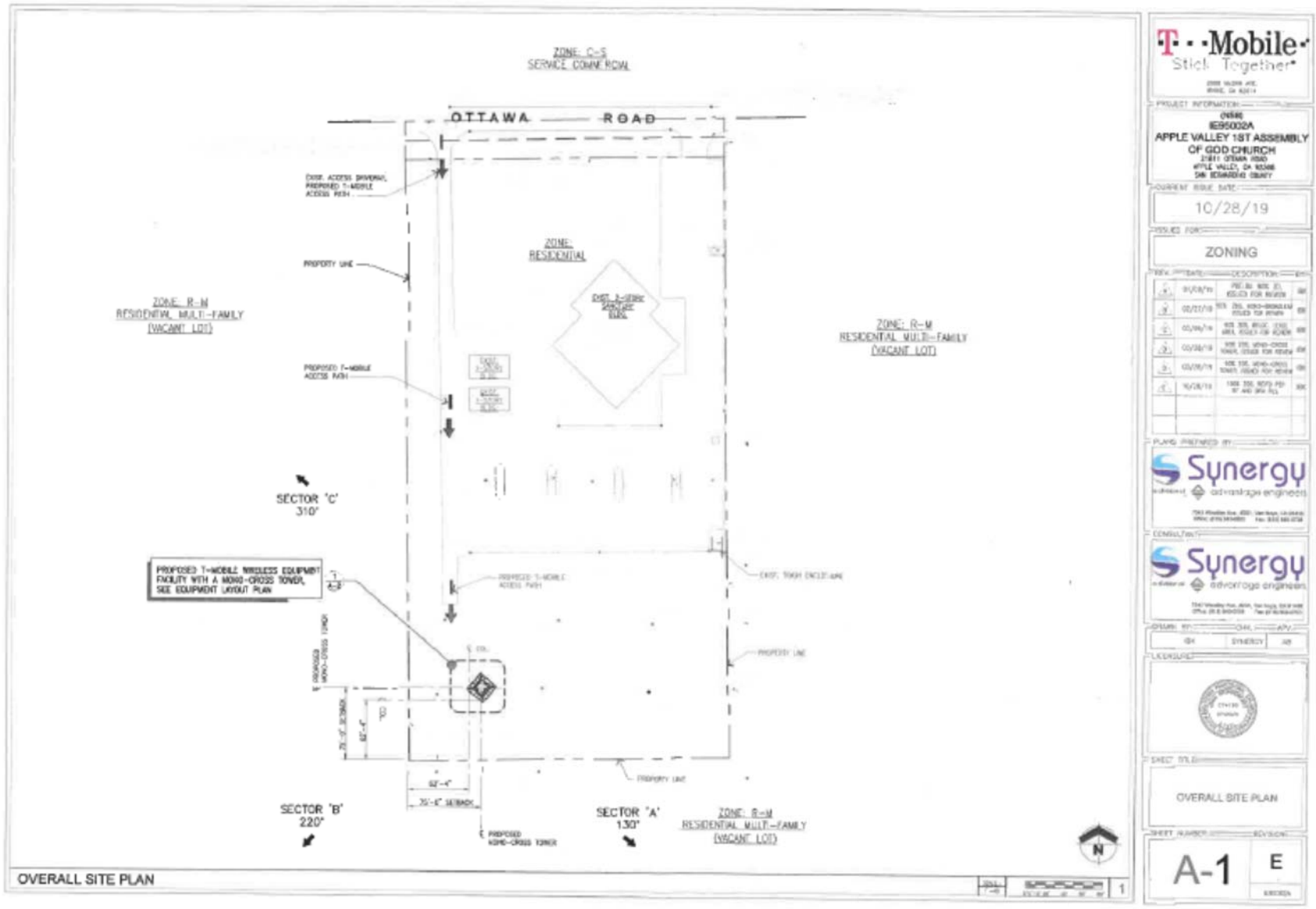
RECOMMENDED ACTION

Based upon the information contained within this report, and any input received from the public at the hearing, it is recommended that the Planning Commission move to:

1. Find the facts presented in the staff report do not support the required Findings for approval and deny Conditional Use Permit No. 2019-003 and Deviation No. 2019-002.

2. Adopt the negative comments as provided in the staff report findings to deny Conditional Use Permit No. 2019-003 and Deviation No. 2019-002 and deny the Conditional Use Permit and Deviation.

ATTACHMENTS:
1. Site Plan
2. Elevation
3. Applicant's Deviation Findings
4. Zoning Map



T··Mobile·
Stick Together

PROJECT INFORMATION:
(956)
E95002A
APPLE VALLEY 1ST ASSEMBLY OF GOD CHURCH
21811 OTTAWA ROAD
APPLE VALLEY, CA 92308
SAN BERNARDINO COUNTY

CURRENT ISSUE DATE:
10/28/19

ISSUED FOR:
ZONING

REV.	DATE	DESCRIPTION	BY
A	9/18/19	PRE-RF SITE ISSUED FOR REVIEW	SM
B	09/27/19	90% ZONING REVIEW ISSUED FOR REVIEW	KW
C	10/08/19	90% ZONING REVIEW ISSUED FOR REVIEW	KW
D	10/28/19	90% ZONING REVIEW ISSUED FOR REVIEW	KW
E	10/28/19	90% ZONING REVIEW ISSUED FOR REVIEW	KW
F	10/28/19	100% ZONING REVIEW RF ADDITIONS	KW

PLANS PREPARED BY:
Synergy
advantage engineers

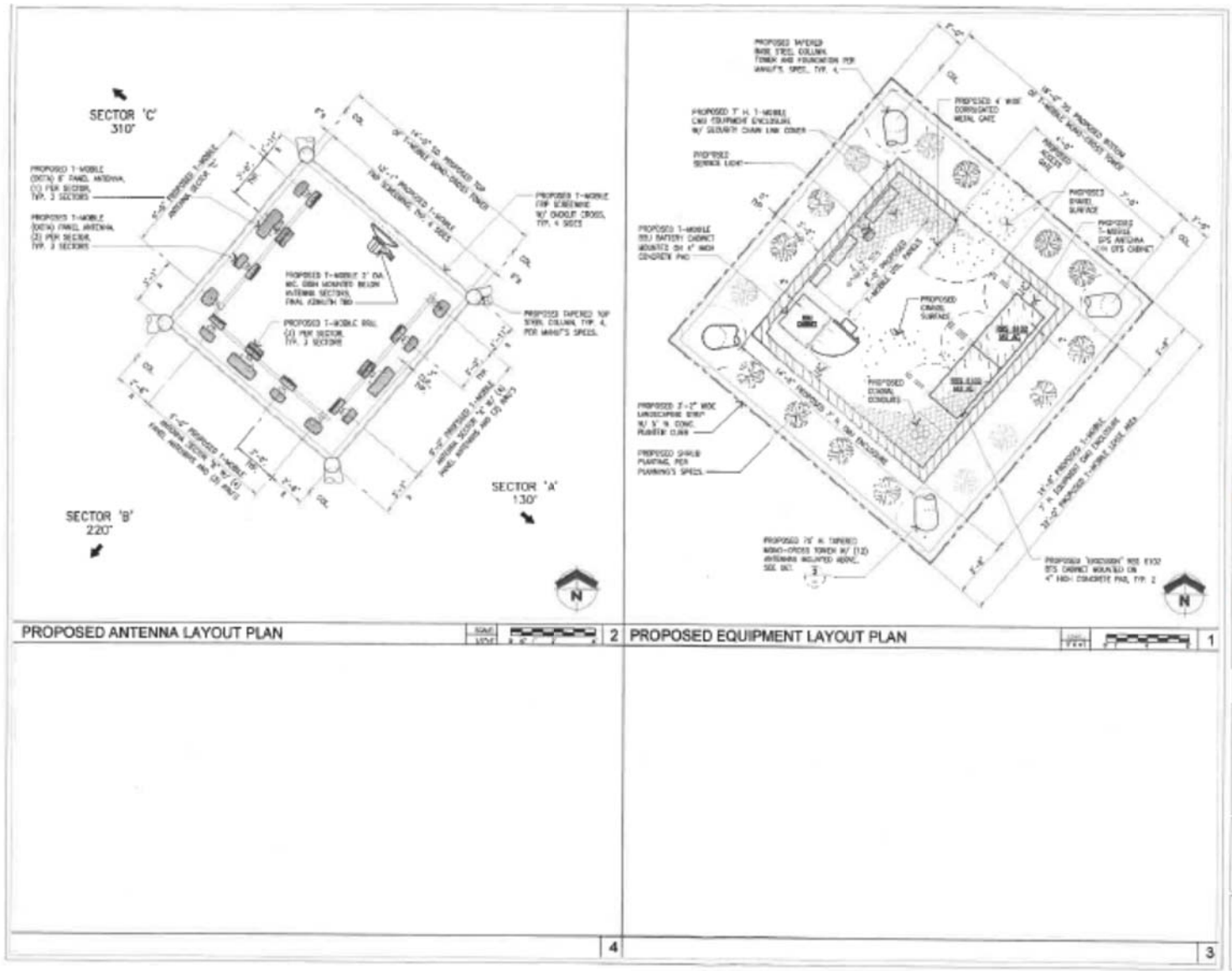
CONSULTANT:
Synergy
advantage engineers

DRAWN BY: KH | CHK: SYNERGY | APP: AB

LICENSURE:

SHEET TITLE:
OVERALL SITE PLAN

SHEET NUMBER: A-1 | REVISION: E



T··Mobile·
Stick Together

PROJECT INFORMATION:
(NSB)
LB05002A
APPLE VALLEY 1ST ASSEMBLY OF GOD CHURCH
21801 STARK ROAD
APPLE VALLEY, CA 92308
SAN BERNARDINO COUNTY

CURRENT ISSUE DATE:
10/28/19

ISSUED FOR:
ZONING

REV	DATE	DESCRIPTION	BY
A	01/08/19	FINAL SITE ZD ISSUED FOR REVIEW	EK
B	02/27/19	PER LOC. COMM. ENHANCEMENT ISSUED FOR REVIEW	SM
C	03/08/19	PER ZDS, REVISE LEASE AREA, ISSUED FOR REVIEW	EK
D	03/28/19	PER ZDS, MONO-CROSS DESIGN, ISSUED FOR REVIEW	EK
E	05/29/19	PER ZDS, REVISE PER SD AND ZBA RES.	EK

PLANS PREPARED BY:
Synergy
a division of advantage engineers

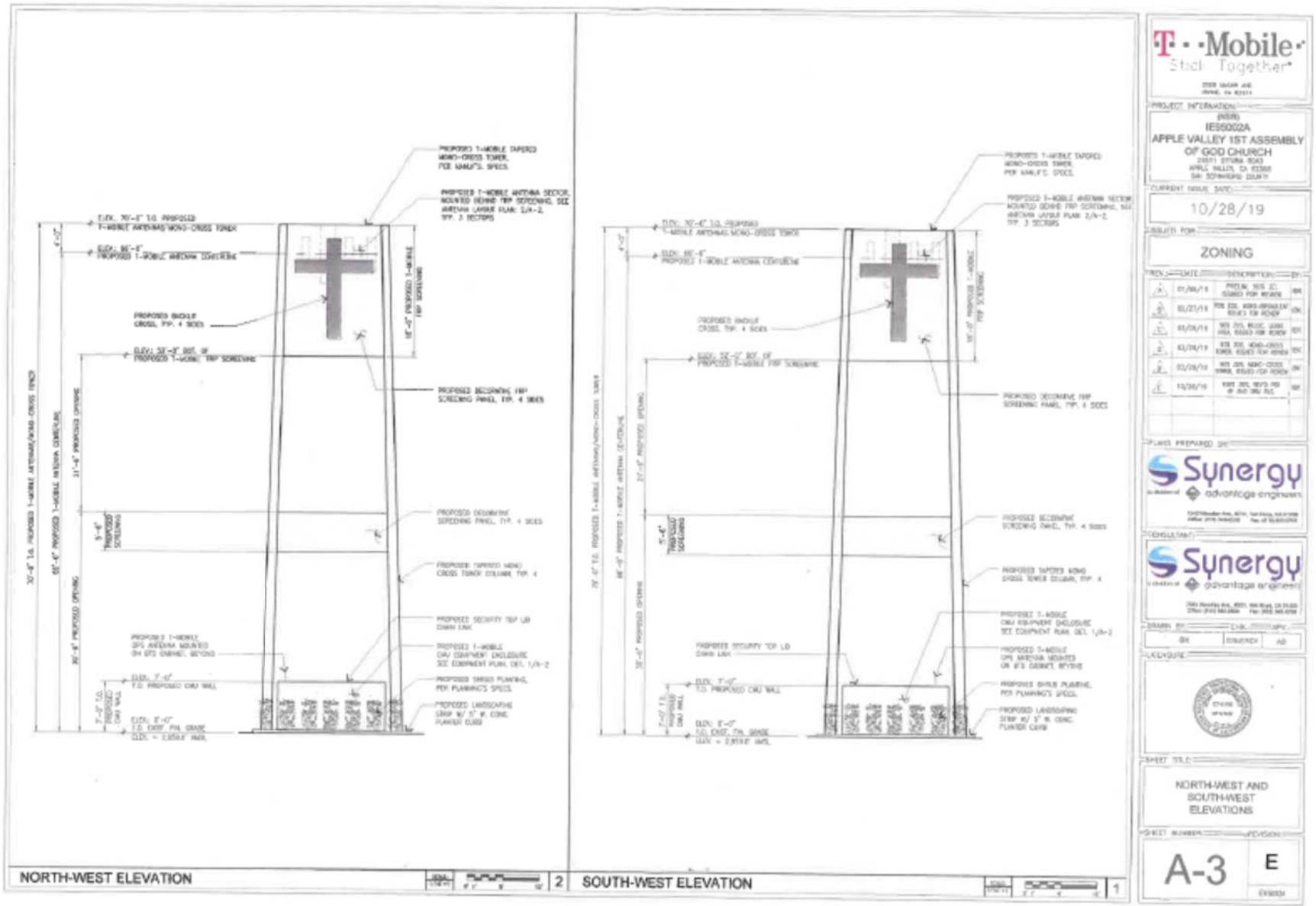
CONSULTANT:
Synergy
a division of advantage engineers

DRAWN BY: SJK | CHK. BY: SYNERGY | APV.: AD

LICENSURE:

SHEET TITLE:
PROPOSED EQUIPMENT PLAN, AND ANTENNA LAYOUT PLAN

SHEET NUMBER: A-2 | REVISION: E


NORTH-WEST ELEVATION
2
SOUTH-WEST ELEVATION
1
T-Mobile
Stick Together
PROJECT INFORMATION:
(NSB)
IE95002A
APPLE VALLEY 1ST ASSEMBLY
OF GOD CHURCH
CURRENT ISSUE DATE:
10/28/19
ISSUED FOR:
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DESCRIPTION
BY
PLANS PREPARED BY:
Synergy
advantage engineers
CONSULTANT:
Synergy
advantage engineers
DRAWN BY:
CHK
APPV
BK
EDWARDY
AD
LICENSURE:
SHEET TITLE:
NORTH-WEST AND
SOUTH-WEST
ELEVATIONS
SHEET NUMBER:
REVISION:
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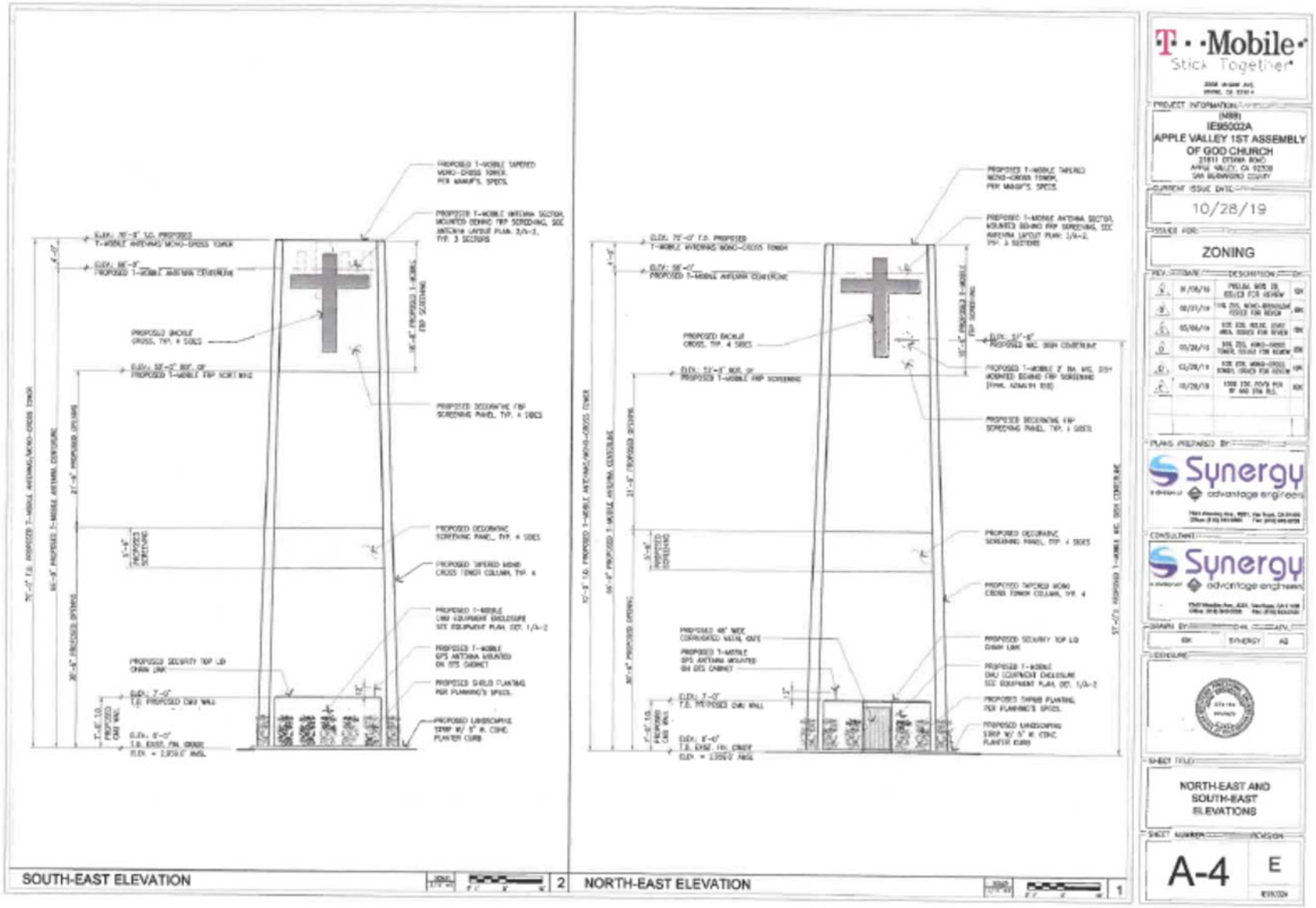

SOUTH-EAST ELEVATION
2
NORTH-EAST ELEVATION
1
T-Mobile
Stick Together
PROJECT INFORMATION:
(MBB)
IE95002A
APPLE VALLEY 1ST ASSEMBLY OF GOD CHURCH
21911 OTOKA ROAD
APPLE VALLEY, CA 92308
SAN BERNARDINO COUNTY
CURRENT ISSUE DATE:
10/28/19
ISSUED FOR:
ZONING
REV. DATE DESCRIPTION BY
PLANS PREPARED BY:
Synergy
advantage engineers
CONSULTANT:
Synergy
advantage engineers
DRAWN BY: CHK APV
EK SYNERGY AQ
LICENSURE
SHEET TITLE:
NORTH-EAST AND SOUTH-EAST ELEVATIONS
SHEET NUMBER REVISION
A-4
E

6. Granting of the variance does not allow a use or activity which is not otherwise expressly authorized by the regulations governing the subject parcel.

N/A

Please read and initial the following statement:

I understand that in lieu of a Variance I have the option of altering my plan and requesting a Deviation Permit in conformance with Section 9.03.0500 of the Town of Apple Valley Development Code._____

FINDING REQUIRED TO GRANT A DEVIATION

1. Granting the deviation will not be materially detrimental to the public health, safety or welfare, or injurious to the property or improvements in the vicinity and land use district in which the property is located.

The deviation being requested is due to the restriction on wireless facilities being zoned in a residential area. Granting the deviation request will allow the wireless facility to operate in a residentially zoned area under the conditions of approval given by the Towne of Apple Valley.

Signed _____ Date _____

Print Name T-Mobile West LLC // Jillianne Newcomer

DEVIATION PERMIT FINDINGS FOR A WIRELESS TELECOMMUNICATION FACILITY

1. That the applicant has provided supporting documentation of the identified need that cannot be met in any other manner;

The proposed T-Mobile site will serve to bridge a coverage gap in this area. Collocation with another carrier would not meet this need at the proposed rad center and thus would not be effective in serving the community at large. Per the FCC's mandated requirements, T-Mobile is required to provide sufficient coverage to the area to facilitate the needs of the community.

2. That there are unique circumstances associated with the proposed location necessitating the requested Deviations;

The proposed height by T-Mobile West LLC is 75 feet and is within a preferred area(Church). The zoning height per section 9.77.130 grants an extension from 50 feet in height to 75 feet in height per planning commission approval of a Conditional Use Permit.

3. That there are no reasonable alternative sites available to provide the services offered;

Other locations in the area would not serve to optimize this site's coverage in the area. This T-Mobile Wireless site will serve to bridge a gap in coverage along with providing greater service to the community and to emergency services networks. Possible Collocations in the area would not adequately serve to meet the mandated requirements outlined by the FCC of cellular carriers. As such, this site provides the greatest possibility of meeting the standards that are expected of wireless telecommunication facilities.

4. That the submitted information and testimony from the applicant, staff and public illustrates a reasonable probability that allowance of the Deviation will have minimal or no adverse impacts to the site, surrounding area or the community in general; and

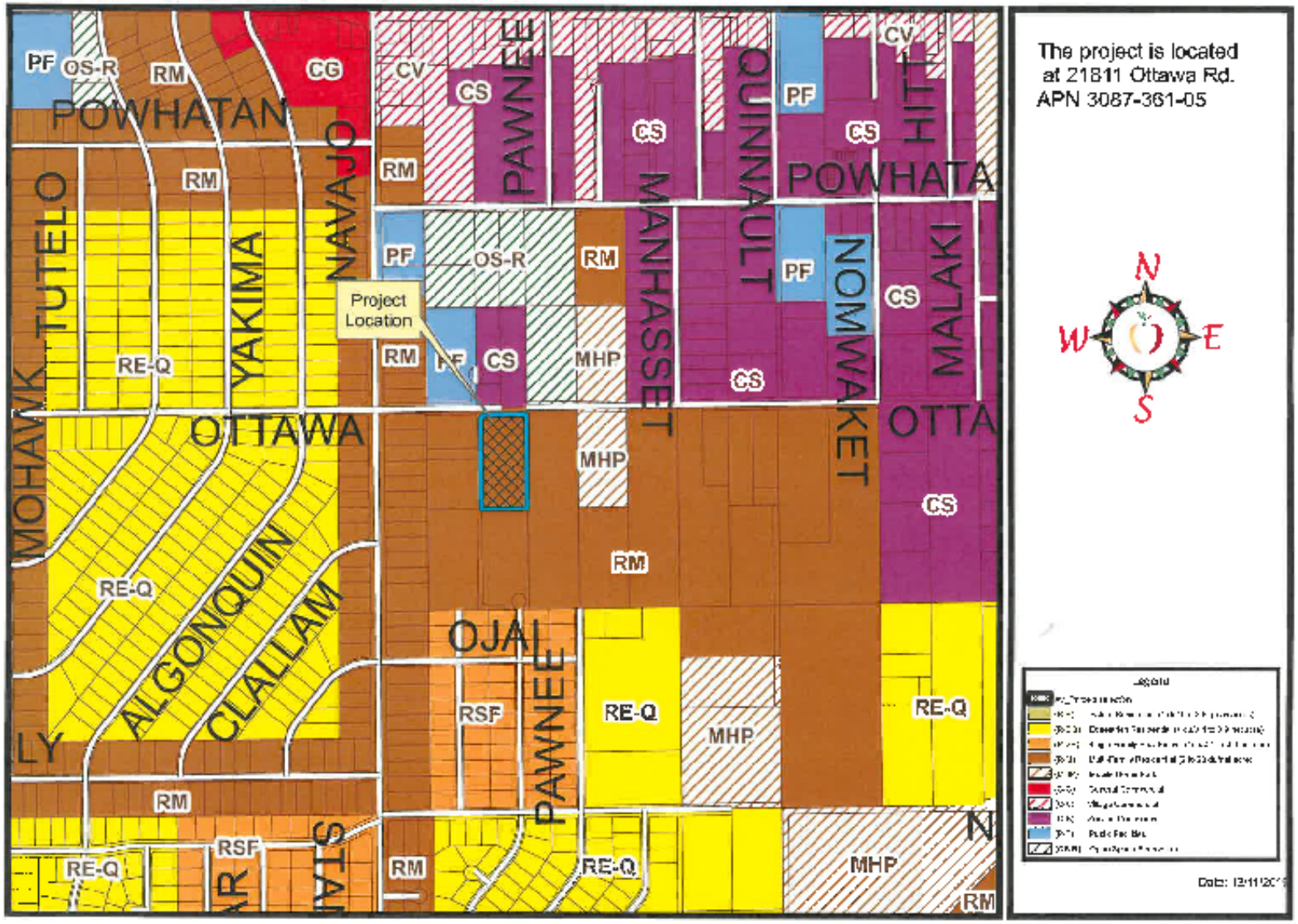
The submitted information provides that no negative impacts will come of the site. The proposed wireless telecommunications facility will not generate waste, sounds, or any adverse affects to the wildlife, people, or property in the area. Also, it will not contribute to traffic in the area as i as it will remain unmanned with the exception of monthly maintenance visits. The site has been specifically developed as to minimize the impact on nearby buildings and residencies.

5. That the Commission finds that the proposed deviation will not be materially detrimental to the public health, safety or general welfare, or injurious to the property or improvements in the vicinity and land use districts in which the property is located.

Granting a deviation will facilitate adding greater coverage to emergency services and the community at large. It will provide a public service to the area through greater cell coverage and expanded capacity. This wireless telecommunications site will not produce any harmful byproducts, waste, or any chemical or odor that the commission would find to be harmful to the community, adjacent properties, or the local desert ecosystems.

ZONING/LOCATION MAP

Conditional Use Permit No. 2019-003
& Deviation Permit No. 2019-002



Planning Commission Agenda Report

DATE:	December 18, 2019	Item No. 2
CASE NUMBER:	Development Code Amendment No. 2019-017 (*continued from December 4, 2019)*	
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 accessory dwelling units as required for compliance with recently approved State legislation.	
LOCATION:	Residential Zoning Districts Town-wide	
ENVIRONMENTAL DETERMINATION:	Pursuant to Section 21080.17 of the State Guidelines to Implement the California Environmental Quality Act (CEQA), this proposal is exempt because CEQA does not apply to the adoption of an ordinance by a city or county to implement the provisions of Section 65852.1 or Section 65852.2 of the Government Code.	
PREPARED BY:	Ms. Pam Cupp, Senior Planner	
RECOMMENDATION:	Adopt Planning Commission Resolution No. 2019-020.	

BACKGROUND

On October 9, 2019, Governor Newsome signed into law SB 13, AB 68 and AB 881, all of which amend Government Code 65852.2 by further restricting the Town's land use authority over accessory dwelling units. The effective date for these modifications is January 1, 2020.

ANALYSIS

Government Code Section 65852.2 allows local governments to determine where accessory dwelling units are permitted, based upon adequacy of water and sewer services and the impact of accessory dwelling units on traffic flow and public safety. Local governments may also impose standards on accessory dwelling units that include, but are not limited to, parking, height, setback, lot coverage, landscape, architectural review, maximum size of a unit, and standards that prevent adverse impacts on any real property that is listed in the California Register of Historic Resources. It should be further noted that the State provides minimum standards and the Town cannot be more restrictive.

As proposed, the development standards previously adopted will remain when not in conflict with the new legislation. New standards adopted by the State include:

- Accessory dwelling units are now permitted on lots with an existing multi-family dwelling;
- Until January 1, 2025, owner occupancy is no longer a requirement for an accessory dwelling unit; however, the Town may require owner occupancy for properties with a junior accessory dwelling unit;
- Legal nonconforming zoning conditions do not need correction for the creation of an accessory dwelling unit.
- A junior accessory dwelling unit may be located within either the primary dwelling or the accessory dwelling unit.
- Lot coverage or size of existing dwelling unit shall not preclude a minimum of one (1) 800-square foot accessory dwelling unit on any lot with a proposed or existing single-family residence, or two (2), 800 square foot accessory dwelling units on any lot with an existing multi-family dwelling.

The legislation clearly separates accessory dwelling units from junior accessory dwelling units where density is concerned. The previous Code did not include provisions for junior accessory dwelling units; therefore, pursuant to Government Code Section 95852.22, staff has added this specific language to the Development Code.

Staff has provided a strike-though/underline version of the State required modifications. Only substantive modifications are shown.

Staff is recommending the following changes to Chapter 9.08 "Definitions" by modifying the definition of an accessory dwelling unit and adding a definition for "junior accessory dwelling unit" to align with the State's definition, as follows:

ACCESSORY DWELLING UNIT An attached or detached residential dwelling unit that 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 **or multifamily dwelling is** or will be situated. **An accessory dwelling unit also includes** an efficiency unit, as defined in Section 17958.1 of the California Health and Safety Code **or a manufactured home, as defined in Section 18007 of the Health and Safety Code. A junior accessory dwelling unit is not considered an accessory dwelling unit under this definition.**

JUNIOR ACCESSORY DWELLING UNIT, as defined in Government Code Section 65852.22, means a unit that is no more than 500 square feet in size and contained entirely within an existing dwelling unit. It shall include an efficiency kitchen and may have private sanitation facilities or share sanitation facilities with the existing dwelling.

Staff is recommending the following changes to Section 9.29.120 "Accessory Dwelling Units" of Chapter 9.29 "Specific Use Regulations for Residential Districts" as required by

SB 13, AB 68 and AB 881:

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 requirements of Government Code 65852.2, the provisions of this Chapter shall apply to all accessory dwelling units located within **any zoning designation for single-family, multifamily or mixed-uses, or any property with an existing single-family or multi-family dwelling. A legal nonconforming zoning condition will not preclude a property from having an accessory dwelling unit.** ~~lots that are occupied with a single-family, dwelling unit and zoned residential.~~

C. ***Permit Requirements.*** **All accessory dwelling units shall be subject to a building permit and comply will all Building and Fire Codes.** Applications for accessory dwelling units shall be approved or disapproved ministerially pursuant to the requirements of this Section within ~~120~~ **sixty (60)** days of a determination that the application is complete, as required by Gov. Code, § 65852.2(b).

D. Density. As provided by Government Code Section 65852.2(a)(1)(C), accessory dwelling units are exempt from the density limitations of the General Plan and subject to the following:

1. Lots with an existing or proposed single-family dwelling may be permitted (1) accessory dwelling unit, **and one (1) junior accessory dwelling unit.**

2. Lots with existing multifamily units may incorporate accessory dwelling units into non-habitable areas of the existing structure. The number of these types of accessory dwelling units is limited to one (1), or twenty-five (25) percent of the existing multifamily dwelling units within the building, whichever is greater, and no more than two (2), detached accessory dwelling units may be permitted on a lot that has an existing multifamily dwelling.

E. Public Utility Requirements.

1. The**re shall be adequate utilities available to serve the** accessory dwelling unit and adequate water supply pursuant to specifications of the Uniform Plumbing Code.

2. Construction of an accessory dwelling unit will require the entire property be connected to sewer, when available. When public sewer is not available, and in compliance with the State of California Lahontan Regional Water

Quality Control Board, the following provisions apply:

a. The accessory dwelling unit will occupy bedrooms within an existing single-family dwelling with an onsite wastewater system sized appropriately for the use as determined by the Building Official.

b. An accessory structure constructed prior to January 1, 2020 may be converted to an accessory dwelling unit when connected to an existing, onsite wastewater system sized appropriately for the use, as determined by the Building Official.

3. No onsite wastewater systems shall be installed or expanded for an accessory dwelling unit unless the site is one (1) acre or more in size.

F. Use of Property.

1. On properties with an existing or proposed single-family residence, the primary dwelling or accessory dwelling unit, must be occupied by the property owner. ***(This provision suspended for all permits issued between 1/1/2020 and 1/1/2025.)***

~~***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 property may only contain one (1) rented unit.~~

2. The creation of a junior accessory dwelling unit shall require the owner to occupy either the primary dwelling, accessory dwelling, or junior accessory dwelling unit. This provision does not apply if the owner is a governmental agency, land trust, or housing organization.

3. The accessory dwelling unit or junior accessory dwelling unit may be rented separate from the primary residence but may not be sold or otherwise conveyed separate from the primary residence.

4. The rental term for an accessory dwelling unit or junior accessory dwelling unit shall not be less than thirty (30) days.

5. The correction of a legal nonconforming zoning condition shall not be required for the creation of an accessory dwelling unit or junior accessory dwelling unit.

6. **When constructed concurrently with a primary dwelling, the accessory dwelling unit shall not receive its final inspection for occupancy prior to that of the primary dwelling.**

G. Design and Development Standards

~~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.~~

1. An accessory dwelling unit may be attached **to,** or detached from**, an existing or proposed single-family residence** ~~the existing primary dwelling~~ or converted from an existing accessory structures, attached garages, storage areas or other similar non-habitable uses. **An accessory dwelling may be converted from non-habitable space within, or detached from, an existing multi-family structure.**

2. An accessory dwelling unit shall be located on the same lot as the proposed or existing primary dwelling.

3. **The accessory dwelling unit or junior accessory dwelling unit may include an expansion of not more than 150 square feet beyond the same physical dimensions as the existing primary dwelling or converted accessory structure. An expansion beyond the physical dimensions of the existing structure shall be limited to accommodating ingress and egress.**

4. **An attached accessory dwelling unit or junior accessory dwelling unit must have separate, exterior access from the proposed or existing primary dwelling.**

5. **The accessory dwelling unit may be combined with a junior accessory dwelling unit.**

6. **When a garage, carport, or covered parking structure is demolished in conjunction with the construction of an accessory dwelling unit or converted to an accessory dwelling unit, those off-street parking spaces do not need to be replaced.**

7. **No parking shall be required for any accessory dwelling unit; however, the accessory dwelling unit may have an attached garage if the total footprint of the accessory dwelling unit with the garage does not exceed seventy-five (75) percent of the total area under roof of the primary dwelling. Paved access must be provided to any attached garage.**

8. Accessory dwelling units shall not be required to provide fire sprinklers if they are not required for the primary residence.

9. **Each accessory dwelling unit and junior accessory dwelling unit shall be provided with a minimum of 450 square feet of shared or private usable open**

space, which may not be located within the required front or street side yard setback.

10. 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 and a 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.~~

11. **No provisions within this Code, including lot coverage or legal nonconformity, shall preclude either an attached or detached 800 square foot accessory dwelling unit that is at least sixteen (16) feet in height with (4) four-foot side yare and rear yard setbacks, outside any recorded easements, and that is constructed in compliance with all other development standards.**

12. 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.

13. The driveway serving the primary dwelling shall be used to serve the accessory dwelling unit whenever feasible.

14. The accessory dwelling unit may be metered separately from the main dwelling for gas, electricity and water/sewer services.

15. **No setback shall be required for an existing living area or accessory structure or a structure constructed in the same location and to the same dimensions as an existing structure that is converted to an accessory dwelling unit or to a portion of an accessory dwelling unit.**

~~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.~~

H. Junior Accessory Dwelling Units (Pursuant to Government Code Section 65852.22).

1. **Owner occupancy shall be required on the property which the junior accessory dwelling unit will be permitted. The owner may reside in either the remaining portion of the primary or accessory dwelling unit or the junior accessory dwelling unit. This provision does not apply if the owner is a governmental agency, land trust, or housing organization.**

2. **The junior accessory dwelling unit shall be provided with interior access to the proposed or existing single-family residence or accessory dwelling unit.**

3. **The junior accessory dwelling unit shall be provided with a separate exterior entrance from the main entrance to the proposed or existing single-family residence or accessory dwelling unit. The separate entrance may not be on the same elevation as the primary entrance to the proposed or existing single-family residence or accessory dwelling unit.**

4. **The accessory dwelling unit may be combined with a junior accessory dwelling unit.**

5. **The junior accessory dwelling unit must include an efficiency kitchen that includes a cooking facility with appliances, a food preparation counter and storage cabinets that are of reasonable size in relation to the size of the junior accessory dwelling unit.**

6. **Floor area for junior accessory dwelling unit shall not be less than 150 square feet or greater than 500 square feet, excluding bathroom.**

7. **The junior accessory dwelling unit may have bathroom or share with the proposed or existing single-family dwelling or accessory dwelling unit.**

8. **Additional parking shall not be required.**

I. ***Attached Accessory Dwelling Units.***

1. **The** maximum size for an attached accessory dwelling unit is ~~thirty (30)~~ **fifty (50)** percent of the habitable floor area of the primary dwelling ~~not to exceed~~ **or** 1,200 square feet, **whichever is greater.**

2. **An attached accessory dwelling unit shall architecturally match the primary dwelling and not alter the single-family character of the structure.**

3. Independent access to the accessory dwelling unit shall not be located on the same elevation as the access to the primary dwelling.

4. **The new construction of an attached accessory dwelling unit shall not be permitted with an existing multi-family dwelling; however, conversion of existing non-habitable space may be permitted subject to the above density provisions.**

***J. Detached Accessory Dwelling Units*.**

1. Detached accessory dwelling units are subject to all provision within Section 9.29.020 “Accessory Uses and Structures”.

2. **On lots with an existing multifamily dwelling, the maximum size shall be 800 square feet with a maximum height of sixteen (16) feet and minimum rear yard and side yard setbacks of four (4)-foot, outside of any recorded easement.**

3. **The** accessory dwelling unit shall be located upon a permanent foundation and architecturally compatible with the main dwelling which could include the use of similar colors, materials and architectural style of the primary dwelling unit.

4. For lots less than two and one-half (2-1/2) acres in size, detached accessory dwelling units **on property with an existing or proposed single-family dwelling** shall comply with the following:

   a. Shall be located to the rear of the primary dwelling unit;

   b. On corner lots, the minimum front or street side yard setback of the accessory dwelling unit shall be at least ten (10) feet greater than the primary dwelling or have its access from the street opposite that of the primary dwelling. Notwithstanding the foregoing, an accessory dwelling unit may be in front of the primary dwelling when architectural consistent.

   c. The maximum habitable floor area shall be fifty (50) percent of the total footprint of the primary dwelling, **or 1,200 square feet, whichever is greater.**

   d. Lots one (1) acre or more in size may be permitted a larger accessory dwelling unit with the **Planning Commission's** approval of a Minor Development Permit.

5. For lots two and one-half (2-1/2) acres or more in size, detached accessory dwelling units **on property with an existing or proposed single-family dwelling** shall comply with the following:

   a. The maximum habitable floor area shall be fifty (50) percent of the total footprint of the primary dwelling, **or 1,200 square feet, whichever is greater.**

   b. The maximum habitable floor area of an accessory dwelling unit may **exceed the above, with habitable floor area** based upon lot coverage, ~~not based upon the size of the primary dwelling unit.~~ **subject to the Planning Commission's approval of a Minor Development Permit.**

NOTICING

Development Code Amendment No. 2019-017 was advertised as a public hearing in the Apple Valley News newspaper on November 22, 2019.

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. 2017-017 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. 2017-017 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

ENVIRONMENTAL REVIEW

Pursuant to Section 21080.17 of the State Guidelines to Implement the California Environmental Quality Act (CEQA), this proposal is exempt because CEQA does not apply to the adoption of an ordinance by a city or county to implement the provisions of Section 65852.1 or Section 65852.2 of the Government Code.

RECOMMENDATION

Following receipt of public input and discussion by the Commission, it is recommended that the Commission move to approve Planning Commission Resolution No. 2019-020 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.

Attachment:

1. Draft Planning Commission Resolution No. 2019-020
2. SB 13
3. AB 68
4. AB 881

PLANNING COMMISSION RESOLUTION NO. 2019-020

A RESOLUTION OF THE PLANNING COMMISSION OF THE TOWN OF APPLE VALLEY, CALIFORNIA, RECOMMENDING THAT THE TOWN COUNCIL ADOPT DEVELOPMENT CODE AMENDMENT NO. 2019-017 AMENDING TITLE 9 "DEVELOPMENT CODE" OF THE TOWN OF APPLE VALLEY MUNICIPAL CODE, AS REQUIRED BY SB 13, AB 68 AND AB 881, BY MODIFYING CHAPTER 9.29 "SPECIFIC USE REGULATIONS" AS IT PERTAINS TO ACCESSORY DWELLING UNITS AND CHAPTER 9.08 "DEFINITIONS" AS IT RELATES TO ACCESSORY DWELLING UNITS AND JUNIOR 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 9.29 "Specific Use Regulations" and Chapter 9.08 "Definitions" as it pertains to accessory dwelling units and junior accessory dwelling units; and,

WHEREAS, on November 22, 2019, Development Code Amendment No. 2019-017was duly noticed in the Apple Valley News, a newspaper of general circulation within the Town of Apple Valley; and

WHEREAS, staff has determined that pursuant to Section 21080.17 of the State Guidelines to Implement the California Environmental Quality Act (CEQA), this proposal is exempt because CEQA does not apply to the adoption of an ordinance by a city or county to implement the provisions of Section 65852.1 or Section 65852.2 of the Government Code; and

WHEREAS, on December 18, 2019 the Planning Commission of the Town of Apple Valley conducted a duly noticed and advertised the public hearing on Development Code Amendment No. 2019-017 receiving testimony from the public; and

WHEREAS, Development Code Amendment No. 2019-017 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. 2019-017 are consistent with the Goals and Policies of the Town of Apple Valley adopted General Plan.

Section 2. Pursuant to Section 21080.17 of the State Guidelines to Implement the California Environmental Quality Act (CEQA), this proposal is exempt because CEQA does not apply to the adoption of an ordinance by a city or county to implement the provisions of Section 65852.1 or Section 65852.2 of the Government Code; and,

Section 3. Modify Chapter 9.08 "Definitions" to modify the definition of Accessory Dwelling Unit as follows:

"**ACCESSORY DWELLING UNIT**
An attached or detached residential dwelling unit that 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 or multifamily dwelling is or will be situated. An accessory dwelling unit also includes an efficiency unit, as defined in Section 17958.1 of the California Health and Safety Code or a manufactured home, as defined in Section 18007 of the Health and Safety Code. A junior accessory dwelling unit is not considered an accessory dwelling unit under this definition."

Section 4. Modify Chapter 9.08 "Definitions" to alphabetically add the following:

"JUNIOR ACCESSORY DWELLING UNIT
As defined in Government Code Section 65852.22, means a unit that is no more than 500 square feet in size and contained entirely within an existing dwelling unit. It shall include an efficiency kitchen and may have private sanitation facilities or share sanitation facilities with the existing dwelling."

Section 5. Replace Section 9.29.120 "Accessory Dwelling Units" of Chapter 9.29 "Specific Use Regulations for Residential Districts" 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 requirements of Government Code 65852.2, the provisions of this Chapter shall apply to all accessory dwelling units located within any zoning designation for single-family, multifamily or mixed-uses, or any property with an existing single-family or multi-family dwelling. A legal nonconforming zoning condition will not preclude a property from having an accessory dwelling unit.

C. ***Permit Requirements.*** All accessory dwelling units shall be subject to a building permit and comply will all Building and Fire Codes. Applications for accessory dwelling

units shall be approved or disapproved ministerially pursuant to the requirements of this Section within sixty (60) days of a determination that the application is complete, as required by Gov. Code, § 65852.2(b).

D. ***Density.*** As provided by Government Code Section 65852.2(a)(1)(C), accessory dwelling units are exempt from the density limitations of the General Plan and subject to the following:

1. Lots with an existing or proposed single-family dwelling may be permitted (1) accessory dwelling unit, and one (1) junior accessory dwelling unit.

2. Lots with existing multifamily units may incorporate accessory dwelling units into non-habitable areas of the existing structure. The number of these types of accessory dwelling units is limited to one (1), or twenty-five (25) percent of the existing multifamily dwelling units within the building, whichever is greater, and no more than two (2), detached accessory dwelling units may be permitted on a lot that has an existing multifamily dwelling.

E. Public Utility Requirements.

1. There shall be adequate utilities available to serve the accessory dwelling unit and adequate water supply pursuant to specifications of the Uniform Plumbing Code.

2. Construction of an accessory dwelling unit will require the entire property be connected to sewer, when available. When public sewer is not available, and in compliance with the State of California Lahontan Regional Water Quality Control Board, the following provisions apply:

a. The accessory dwelling unit will occupy bedrooms within an existing single-family dwelling with an onsite wastewater system sized appropriately for the use as determined by the Building Official.

b. An accessory structure constructed prior to January 1, 2020 may be converted to an accessory dwelling unit when connected to an existing, onsite wastewater system sized appropriately for the use, as determined by the Building Official.

3. No onsite wastewater systems shall be installed or expanded for an accessory dwelling unit unless the site is one (1) acre or more in size.

F. Use of Property.

1. On properties with an existing or proposed single-family residence, the primary dwelling or accessory dwelling unit, must be occupied by the property owner. *(This provision suspended for all permits issued between 1/1/2020 and 1/1/2025.)*

2. The creation of a junior accessory dwelling unit shall require the owner to occupy either the primary dwelling, accessory dwelling, or junior accessory dwelling unit. This provision does not apply if the owner is a governmental agency, land trust, or

housing organization.

3. The accessory dwelling unit or junior accessory dwelling unit may be rented separate from the primary residence but may not be sold or otherwise conveyed separate from the primary residence.

4. The rental term for an accessory dwelling unit or junior accessory dwelling unit shall not be less than thirty (30) days.

5. The correction of a legal nonconforming zoning condition shall not be required for the creation of an accessory dwelling unit or junior accessory dwelling unit.

6. When constructed concurrently with a primary dwelling, the accessory dwelling unit shall not receive its final inspection for occupancy prior to that of the primary dwelling.

G. Design and Development Standards.

1. An accessory dwelling unit may be attached to, or detached from, an existing or proposed single-family residence or converted from an existing accessory structures, attached garages, storage areas or other similar non-habitable uses. An accessory dwelling may be converted from non-habitable space within, or detached from, an existing multi-family structure.

2. An accessory dwelling unit shall be located on the same lot as the proposed or existing primary dwelling.

3. The accessory dwelling unit or junior accessory dwelling unit may include an expansion of not more than 150 square feet beyond the same physical dimensions as the existing primary dwelling or converted accessory structure. An expansion beyond the physical dimensions of the existing structure shall be limited to accommodating ingress and egress.

4. An attached accessory dwelling unit or junior accessory dwelling unit must have separate, exterior access from the proposed or existing primary dwelling.

5. The accessory dwelling unit may be combined with a junior accessory dwelling unit.

6. When a garage, carport, or covered parking structure is demolished in conjunction with the construction of an accessory dwelling unit or converted to an accessory dwelling unit, those off-street parking spaces do not need to be replaced.

7. No parking shall be required for any accessory dwelling unit; however, the accessory dwelling unit may have an attached garage if the total footprint of the accessory dwelling unit with the garage does not exceed seventy-five (75) percent of the total area under roof of the primary dwelling. Paved access must be provided to any attached garage.

8. Accessory dwelling units shall not be required to provide fire sprinklers if they are not required for the primary residence.

9. Each accessory dwelling unit and junior accessory dwelling unit shall be provided with a minimum of 450 square feet of shared or private usable open space, which may not be located within the required front or street side yard setback.

10. At no time may the primary dwelling unit be converted to the extent that it becomes substandard in size as a single-family residence

11. No provisions within this Code, including lot coverage or legal nonconformity, shall preclude either an attached or detached 800 square foot accessory dwelling unit that is at least sixteen (16) feet in height with (4) four-foot side yare and rear yard setbacks, outside any recorded easements, and that is constructed in compliance with all other development standards.

12. 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.

13. The driveway serving the primary dwelling shall be used to serve the accessory dwelling unit whenever feasible.

14. The accessory dwelling unit may be metered separately from the main dwelling for gas, electricity and water/sewer services.

15. No setback shall be required for an existing living area or accessory structure or a structure constructed in the same location and to the same dimensions as an existing structure that is converted to an accessory dwelling unit or to a portion of an accessory dwelling unit.

H. Junior Accessory Dwelling Units (Pursuant to Government Code Section 65852.22).

1. Owner occupancy shall be required on the property which the junior accessory dwelling unit will be permitted. The owner may reside in either the remaining portion of the primary or accessory dwelling unit or the junior accessory dwelling unit. This provision does not apply if the owner is a governmental agency, land trust, or housing organization.

2. The junior accessory dwelling unit shall be provided with interior access to the proposed or existing single-family residence or accessory dwelling unit.

3. The junior accessory dwelling unit shall be provided with a separate exterior entrance from the main entrance to the proposed or existing single-family residence or accessory dwelling unit. The separate entrance may not be on the same elevation as the primary entrance to the proposed or existing single-family residence or accessory dwelling unit.

4. The accessory dwelling unit may be combined with a junior accessory dwelling unit.

5. The junior accessory dwelling unit must include an efficiency kitchen that includes a cooking facility with appliances, a food preparation counter and storage cabinets that are of reasonable size in relation to the size of the junior accessory dwelling unit.

6. Floor area for junior accessory dwelling unit shall not be less than 150 square feet or greater than 500 square feet, excluding bathroom.

7. The junior accessory dwelling unit may have bathroom or share with the proposed or existing single-family dwelling or accessory dwelling unit.

8. Additional parking shall not be required.

I. ***Attached Accessory Dwelling Units.***

1. The maximum size for an attached accessory dwelling unit is fifty (50) percent of the habitable floor area of the primary dwelling or 1,200 square feet, whichever is greater.

2. An attached accessory dwelling unit shall architecturally match the primary dwelling and not alter the single-family character of the structure.

3. Independent access to the accessory dwelling unit shall not be located on the same elevation as the access to the primary dwelling.

4. The new construction of an attached accessory dwelling unit shall not be permitted with an existing multi-family dwelling; however, conversion of existing non-habitable space may be permitted subject to the above density provisions.

J. Detached Accessory Dwelling Units.

1. Detached accessory dwelling units are subject to all provision within Section 9.29.020 “Accessory Uses and Structures”.

2. On lots with an existing multifamily dwelling, the maximum size shall be 800 square feet with a maximum height of sixteen (16) feet and minimum rear yard and side yard setbacks of four (4)-foot, outside of any recorded easement.

3. The accessory dwelling unit shall be located upon a permanent foundation and architecturally compatible with the main dwelling which could include the use of similar colors, materials and architectural style of the primary dwelling unit.

4. For lots less than two and one-half (2-1/2) acres in size, detached accessory dwelling units on property with an existing or proposed single-family dwelling shall comply with the following:

a. Shall be located to the rear of the primary dwelling unit;

b. On corner lots, the minimum front or street side yard setback of the accessory dwelling unit shall be at least ten (10) feet greater than the primary dwelling or have its access from the street opposite that of the primary dwelling. Notwithstanding the foregoing, an accessory dwelling unit may be in front of the primary dwelling when architectural consistent.

c. The maximum habitable floor area shall be fifty (50) percent of the total footprint of the primary dwelling, or 1,200 square feet, whichever is greater.

d. Lots one (1) acre or more in size may be permitted a larger accessory dwelling unit with the Planning Commission's approval of a Minor Development Permit.

5. For lots two and one-half (2-1/2) acres or more in size, detached accessory dwelling units on property with an existing or proposed single-family dwelling shall comply with the following:

a. The maximum habitable floor area shall be fifty (50) percent of the total footprint of the primary dwelling, or 1,200 square feet, whichever is greater.

b. The maximum habitable floor area of an accessory dwelling unit may exceed the above, with habitable floor area based upon lot coverage, not based upon the size of the primary dwelling unit subject to the Planning Commission's approval of a Minor Development Permit.

Approved and Adopted by the Planning Commission of the Town of Apple Valley this 18th day of December 2019.

_____

Vice Chairman Bruce Kallen

ATTEST:

I, Maribel Hernandez, 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 18th day of December 2019, by the following vote, to-wit:

AYES:

NOES:

ABSENT:

ABSTAIN:

_____

Ms. Maribel Hernandez, Planning Commission Secretary

Planning Commission Agenda Report

DATE:	December 18, 2019	Item No. 3
CASE NUMBER:	Development Code Amendment No. 2019-016	
APPLICANT:	Town of Apple Valley	
PROPOSAL:	An amendment to Title 9 "Development Code" of the Town of Apple Valley Municipal Code amending Section 9.36.230 and adding Section 9.29.210 as it relates to cannabis cultivation for personal recreational purposes and penalties for cannabis cultivation violations.	
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.	
PREPARED BY:	Ms. Carol Miller, Assistant Director of Community Development	
RECOMMENDATION:	Adopt Planning Commission Resolution No. 2019-019	

BACKGROUND

On November 9, 2016, Proposition 64 was approved, which among other controls, allows indoor cultivation in private residences for up to six marijuana plants. Since the Town's Code adoption in 2016 to align with State law, there have been significant changes to the State law since the adoption of Development Code Section 9.36.230 and the number of illegal cannabis cultivation operations and problems associated with them has grown

exponentially. A typical illegal cannabis cultivation operation consists of an entire single-family residence converted completely to accommodate a grow. These grows will often have more than 1,000 plants at various stages of growth and the hazards associate with them. The hazards commonly found at the operations include, but are not limited to, mold, dampness of habitable areas, structural damage, penetrations in drywall and exterior weather protective surfaces, hazardous electrical such as electrical wiring without conduit running throughout the home and in damp, often wet, areas, overloaded electric meters, electric service risers that have been compromised or damaged due to pirated connections to facilitate the theft of electricity, storage of fertilizers and other noxious chemicals that frequently leak, and window and door deletions that inhibit sufficient means of egress.

This amendment serves to change the language of the Town's Development Code for the following reasons: to align the Town's Development Code with current State law; to provide residents with a means of cultivating cannabis for personal recreational purposes with reasonable regulations; to define penalties specifically associated with personal cultivation of cannabis in excess of that which is allowed by State law; to provide Town Code Enforcement Officers a more effective and efficient means of enforcement, and to relocate provisions within Section 9.36.230 (Specific Use Regulations for Commercial Districts) related to indoor cultivation in private residences to a newly created Section 9.29.210 (Specific Use Regulations for Residential Districts). Currently, all Cannabis regulations are located within Section 9.36.230 (Specific Use Regulations for Commercial Districts), including provisions related to indoor cultivation in private residences. As a cleanup item, all existing and proposed regulations related to indoor cultivation will be placed within the Specific Use Regulations for Residential District chapter where it is most appropriate.

The amendment also seeks to align the Town's Development Code with current State laws, such as California Health and Safety Code sections 11362.1 and 11362.2 et al., that define what a person can and cannot do with cannabis recreationally and California Business and Professions Code section 26001(f), that provides additional definitions of cannabis.

Presently, the Development Code prohibits all cultivation of cannabis, except personal cultivation for recreational purposes as allowed by State law. While State law allows jurisdictions to issue permits to residents for cultivation, these permits typically require that residents pay fees, submit plans that must be reviewed by agency personnel, and allow agency personnel to inspect and monitor the cultivation activity. There is a fair number of jurisdictions that require permits and charge large amounts of money applied as "fees". Many of these jurisdictions are being challenged in court and their regulations are frequently struck down in their entirety as contrary to the intent of Prop. 64. Requiring a permit as the Code currently requires would be an undue burden on the Town and its residents. Whereas the proposed regulations in this amendment are the least burdensome and are consistent with the intent of Prop. 64 and the council's intent of the Development and Municipal Codes. The expectation is that those who wish to comply, will do so with a certificate and the Town's Code Enforcement Department will continue

to accept complaints regarding those activities that are unpermitted, illegal, and in violation of State or local law.
The amendment continues to allow residents to cultivate the six or fewer plants for personal recreational purposes as allowed by State law but will be required to submit a self-completed certificate of compliance. The certificate of compliance will be maintained by the Town and certifies that the resident is complying with State law and the local regulations included in this amendment.

ANALYSIS

Staff has prepared the following modifications for the Commission's consideration. The additional language is shown in underline and the removed language is shown as ~~strike out~~.

"**9.36.230 - CANNABIS DISPENSARIES, CANNABIS MANUFACTURERS, AND THE CULTIVATION AND DELIVERY OF CANNABIS**

A. **Purpose.** The purpose of this Section is to regulate personal, medical, and commercial marijuana uses in the Town. Nothing in this Section shall preempt or make inapplicable any provision of State or Federal law. No provisions of this Section shall hinder or supersede any other applicable State or Federal statute.

B. **Definitions.** For purposes of this Section, the following definitions shall apply:

1. "Commercial marijuana activity" includes the cultivation, possession, manufacture, distribution, processing, storing, laboratory testing, labeling, transportation, distribution, delivery or sale of marijuana and marijuana products.

2. "Cultivation" means any activity involving the planting, growing, harvesting, drying, curing, grading, or trimming of marijuana.

3. "Delivery" means the commercial transfer of marijuana or marijuana products to a customer. "Delivery" also includes the use by a retailer of any technology platform owned and controlled by the retailer, or independently licensed under California law, that enables customers to arrange for or facilitate the commercial transfer by a licensed retailer of marijuana or marijuana products.

4. "Distribution" means the procurement, sale, and transport of marijuana and marijuana products between entities for commercial use purposes.

5. "Licensee" means the holder of any State issued license related to marijuana activities, including but not limited to licenses issued under Division 10 of the Business & Professions Code.

6. "Manufacture" means to compound, blend, extract, infuse, or otherwise make or prepare a marijuana product.

7. "Marijuana" means all parts of the plant Cannabis sativa L. Linnaeus, Cannabis indica, or Cannabis ruderalis, whether growing or not; the seeds thereof; the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds or resin. It does not include:

a. Industrial hemp, as defined in Section 11018.5 of the California Health & Safety Code; or

b. The weight of any other ingredient combined with marijuana to prepare topical or oral administrations, food, drink, or other product.

8. "Marijuana accessories" means any equipment, products or materials of any kind which are used, intended for use, or designed for use in planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, smoking, vaporizing, or containing marijuana, or for ingesting, inhaling, or otherwise introducing marijuana or marijuana products into the human body.

9. "Marijuana products" means marijuana that has undergone a process whereby the plant material has been transformed into a concentrate, including, but not limited to, concentrated cannabis, or an edible or topical product containing marijuana or concentrated cannabis and other ingredients.

10. "Person" includes any individual, firm, co-partnership, joint venture, association, corporation, limited liability company, estate, trust, business trust, receiver, syndicate, or any other group or combination acting as a unit, and the plural as well as the singular.

~~11. "Private residence" means a house, an apartment unit, a mobile home, or other similar dwelling.~~

11. "Sale" includes any transaction whereby, for any consideration, title to marijuana is transferred from one person to another, and includes the delivery of marijuana or marijuana products pursuant to an order placed for the purchase of the same and soliciting or receiving an order for the same, but does not include the return of marijuana or marijuana products by a licensee to the licensee from whom such marijuana or marijuana product was purchased.

12. Any term defined in this Section also means the very term as defined in the California Business & Professions Code or the California Health & Safety Code, unless otherwise specified.

~~**C. Personal Use**~~

~~1. For purposes of this subsection, personal recreational use, possession, purchase, transport, or dissemination of marijuana shall be considered unlawful in all areas of the Town to the extent it is unlawful under California law.~~

~~2. **Outdoor Cultivation.** A person may not plant, cultivate, harvest, dry, or process marijuana plants outdoors in any zoning district of the Town. No use permit, building permit, variance, or any other permit or entitlement, whether administrative or discretionary, shall be approved or issued for any such use or activity.~~

D. ~~Indoor Cultivation~~

a. ~~A person may not plant, cultivate, harvest, dry, or process marijuana plants inside a private residence, or inside an accessory structure to a private residence located upon the grounds of a private residence, or inside any other enclosed structure within any zoning district of the Town. No use permit, building permit, variance, or any other permit or entitlement, whether administrative or discretionary, shall be approved or issued for any~~

~~such use or activity.~~

b. ~~To the extent a complete prohibition on indoor cultivation is not permitted under California law, a person may not plant, cultivate, harvest, dry, or process marijuana plants inside a private residence, or inside an accessory structure to a private residence located upon the grounds of a private residence, unless the person is issued an indoor cultivation permit by the Planning Division. A person may not plant, cultivate, harvest, dry, or process marijuana plants inside any enclosed structure within any zoning district of the Town which is not either a private residence or an accessory structure to a private residence located upon the grounds of a private residence.~~

c. ~~The Planning Division will issue application and processing guidelines for the indoor cultivation permit. No indoor cultivation permit shall be issued prior to the release of these guidelines, and no permit shall be granted which has not complied fully with the application and processing requirements.~~

~~1. Cultivation of medical marijuana pursuant to Section 11362.77 of the California Health & Safety Code is subject to the cultivation requirements laid out in Subsection (C) of this Section.~~

~~2. The establishment or operation of any medical marijuana collective, cooperative, dispensary, delivery service, operator, establishment, or provider shall be considered a prohibited use in all zoning districts of the Town. No use permit, variance, building permit, or any other entitlement or permit, whether administrative or discretionary, shall be approved or issued for the establishment of any collective, cooperative, dispensary, delivery service, operator, establishment, or provider in any zoning district, and no person shall otherwise establish such businesses or operations in any zoning district.~~

C. Commercial Use

1. Medical marijuana shall be pursuant to Section 11362.77 of the California Health & Safety Code.

2. The establishment or operation of any medical marijuana collective, cooperative, dispensary, delivery service, operator, establishment, or provider shall be considered a prohibited use in all zoning districts of the Town and no use permit, variance, building permit, or any other entitlement or permit, whether administrative or discretionary, shall be approved or issued for the establishment of any collective, cooperative, dispensary, delivery service, operator, establishment, or provider in any zoning district, and no person shall otherwise establish such businesses or operations in any zoning district.

3. The establishment or operation of any business of commercial marijuana activity is prohibited. No use permit, variance, building permit, or any other entitlement or permit, whether administrative or discretionary, shall be approved or issued for the establishment or operation of any such business or operation. Such prohibited businesses or operations may include, but are not limited to:

   a. The transportation, delivery, storage, distribution, or sale of marijuana, marijuana products, or marijuana accessories, except to the extent allowed under California Code of Regulations, Title 16, Division 42, Section 5416;

   b. The cultivation of marijuana;

   c. The manufacturing or testing of marijuana, marijuana products, or marijuana accessories;

or

d. Any other business licensed by the State or other government entity under Division 10 of the California Business & Professions Code, as it may be amended from time to time.

D. **Penalty for Violation.** No person, whether as principal, agent, employee or otherwise, shall violate, cause the violation of, or otherwise fail to comply with any of the requirements of this Section. Every act prohibited or declared unlawful, and every failure to perform an act made mandatory by this Section shall be a misdemeanor or an infraction, at the discretion of the Town Attorney or the District Attorney. In addition to the penalties provided in this Section, any condition caused or permitted to exist in violation of any of the provisions of this Section is declared a public nuisance and may be abated as provided in Article III of Chapter 1.01 and Chapter 6.30 of the Apple Valley Municipal Code and/or under any other applicable provision of State law."

9.29.210 *CANNABIS CULTIVATION FOR PERSONAL RECREATIONAL PURPOSES*

A. Purpose. The purpose of this Section is to regulate cannabis cultivation for personal recreational purposes within the Residential Zoning Districts. Nothing in this Section shall preempt or make inapplicable any provision of State or Federal law. No provisions of this Section shall hinder or supersede any other applicable State or Federal statute. Further, for purposes of this section, personal recreational use, possession, purchase, transport, or dissemination of marijuana shall be considered unlawful in all areas of the Town to the extent it is unlawful under California law.

B. Definitions. For purposes of this Section, the following definitions shall apply:

1. "Person" includes any individual, firm, co-partnership, joint venture, association, corporation, limited liability company, estate, trust, business trust, receiver, syndicate, or any other group or combination acting as a unit, and the plural as well as the singular.

2. "Private residence" means a house, an apartment unit, a mobile home, or other similar dwelling.

3. Any term defined in this Section also means the very term as defined in the California Business & Professions Code or the California Health & Safety Code, unless otherwise specified.

C. Outdoor Cultivation. A person may not plant, cultivate, harvest, dry, or process marijuana plants outdoors in any Residential Zoning District of the Town. No use permit, building permit, variance, or any other permit or entitlement, whether administrative or discretionary, shall be approved or issued for any such use or activity.

D. Indoor Cultivation

1. A person may not plant, cultivate, harvest, dry, or process marijuana plants inside a private residence, or inside an accessory structure to a private residence located upon the grounds of a private residence, or inside any other enclosed structure within any zoning district of the Town. No use permit, building permit, variance, or any other permit or entitlement, whether administrative or discretionary, shall be approved or issued for any such use or activity, except when such cultivation occurs on property with a private residence and in accordance with the following regulations.

2. A person may not plant, cultivate, harvest, dry, or process marijuana plants inside a private residence, or inside an accessory structure to a private residence located upon the grounds of a private residence, unless the person completes a Certificate of Compliance form administered by the Code Enforcement Division. A person may not plant, cultivate, harvest, dry, or process marijuana plants inside any enclosed structure within any zoning district of the Town which is not either a private residence or an accessory structure to a private residence located upon the grounds of a private residence. There shall be no more than six (6) plants of personal cannabis cultivation per residence, regardless of the number of people who reside at the residence.

3. Marijuana cultivation is permitted only on a property with a private residence.

4. Marijuana cultivation may not displace any required enclosed parking.

5. Volatile solvents (solvents that are or produce a flammable gas or vapor that, when present in the air in sufficient quantities, will create explosive or ignitable mixtures), including but not limited to butane, propane, hexane and ethanol, are strictly prohibited and may not be used for the cultivation or processing of marijuana.

6. Only chemicals or substances approved for agricultural use in the State of California may be used, applied, or stored for the cultivation of marijuana at any property where marijuana is cultivated.

7. Cultivation, including the installation and operation of lights, heaters, fans, generators, or other mechanical equipment, must fully comply with all provisions of the Apple Valley Municipal Code and the State's building codes set forth in Title 24 of the California Code of Regulations, as adopted and amended by the Apple Valley Municipal Code.

8. All alterations done to the interior of a home or accessory structure to accommodate or prepare for cultivation must fully comply with all provisions of the Apple Valley Municipal Code and the State's Building Codes set forth in Title 24 of the California Code of Regulations, as adopted and amended by the Apple Valley Municipal Code.

9. All cultivation lighting systems and fixtures must be shielded to confine light and glare to the interior of the residence, fully enclosed and secure accessory structure, or greenhouse.

10. All marijuana plants, including any structure or enclosure used for marijuana cultivation, must be locked and reasonably secured to prevent access by minors or theft.

11. Marijuana cultivation must be concealed from public view at all stages of growth. Marijuana plants must not be visible with normal unaided vision from a public place or adjacent parcel.

12. A portable fire extinguisher, that complies with the regulations and standards adopted by the California State Fire Marshal and other applicable law, shall be kept in the area of cultivation at all times in a location that is easily accessible.

13. Accessory structures used for cultivation of marijuana shall not be located in the front yard of the property.

14. A self-completed certificate of compliance must be completed, executed, and returned to

the Code Enforcement Division before any cultivation or construction of any accessory structure used for growing marijuana. The marijuana cultivation must be for personal, non-commercial, recreational purposes only.

15. The Code Enforcement Officer, Building Official, Planning Director, Sheriff Officer, Fire Inspector, or a designee, is authorized to enter upon and inspect private properties to ensure compliance with the provisions of this section. Reasonable advance notice of any such entry and inspection shall be provided and, before entry, consent shall be obtained in writing from the owner or other persons in lawful possession of the property. If consent cannot for any reason be obtained, a warrant shall be obtained from a court of law before any such entry and inspection.

E. **Penalty for Violation.** No person, whether as principal, agent, employee or otherwise, shall violate, cause the violation of, or otherwise fail to comply with any of the requirements of this Section. Every act prohibited or declared unlawful, and every failure to perform an act made mandatory by this Section shall be a misdemeanor or an infraction, at the discretion of the Town Attorney or the District Attorney. In addition to the penalties provided in this Section, any condition caused or permitted to exist in violation of any of the provisions of this Section is declared a public nuisance and may be abated as provided in Article III of Chapter 1.01 and 6.30 of the Apple Valley Municipal Code and/or under any other applicable provision of State law."

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 proposed amendments are consistent with the General Plan, as they implement General Plan objectives and policies that promote the establishment and operation of land uses that maintain or enhance quality of life; that are compatible with surrounding uses; and that protect and maintain public health, safety, and welfare. The goals, policies, and programs within the General Plan aim to encourage quality of life and to ensure the Town's character and quality of life are available to all residents.

Illegal indoor marijuana cultivation specifically pose hazards commonly found at the operations include, but are not limited to, mold, dampness of habitable areas, structural damage, penetrations in drywall and exterior weather protective surfaces, hazardous electrical such as electrical wiring without conduit running throughout the home and in

damp, often wet, areas, overloaded electric meters, electric service risers that have been compromised or damaged due to pirated connections to facilitate the theft of electricity, storage of fertilizers and other noxious chemicals that frequently leak, and window and door deletions that inhibit sufficient means of egress. These uses are inconsistent with the General Plan, and thus the proposed amendments further the General Plan objectives and policies.

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

Comment: The Town has been negatively impacted by illegal cannabis cultivation within single family residences. The amendment related to cannabis cultivation for personal recreational purposes and penalties for cannabis cultivation violations will not adversely impact the public health, safety, and welfare, since they continue to prohibit land uses to protect the public health, safety, and welfare from potentially negative impacts of marijuana cultivation, manufacturing, testing, delivery, and dispensaries to the extent allowed under California law.

NOTICING

Development Code Amendment No. 2019-016 was advertised as a public hearing in the Apple Valley News newspaper on December 6, 2019.

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. 2019-019 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.

Attachment:

Draft Planning Commission Resolution No. 2019-019

PLANNING COMMISSION RESOLUTION NO. 2019-019

A RESOLUTION OF THE TOWN OF APPLE VALLEY PLANNING COMMISSION RECOMMENDING TO THE TOWN COUNCIL TO ADOPT DEVELOPMENT CODE AMENDMENT NO. 2019-016 BY AMENDING SECTION 9.36.230 AND ADDING SECTION 9.29.210 OF THE APPLE VALLEY DEVELOPMENT CODE AS IT RELATES TO CANNABIS CULTIVATION FOR PERSONAL RECREATIONAL PURPOSES AND PENALTIES FOR CANNABIS CULTIVATION VIOLATIONS.

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, The General Plan of the Town of Apple Valley was adopted by the Town Council on August 11, 2009; and

WHEREAS, Development Code Amendment No. 2019-016 is consistent with the General Plan and Municipal Code of the Town of Apple Valley;

WHEREAS, Specific changes are proposed to Title 9 "Development Code" of the Town of Apple Valley Municipal Code by adding Section 9.29.210 related to Cannabis cultivation for personal recreational purposes and penalties; and,

WHEREAS, on December 6, 2019, Development Code Amendment No. 2019-016 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 December 18, 2019 the Planning Commission of the Town of Apple Valley conducted a duly noticed and advertised the public hearing on Development Code Amendment No. 2019-016 receiving testimony from the public; and

WHEREAS, Development Code Amendment No. 2019-016 is consistent with the Land Use Element goals and policies of 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.

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. 2019-016 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. Section 9.36.230 of Chapter 9.36 of Title 9 of the Town of Apple Valley Development Code is hereby amended to read in its entirety as follows:

"**9.36.230 - CANNABIS DISPENSARIES, CANNABIS MANUFACTURERS, AND THE CULTIVATION AND DELIVERY OF CANNABIS**

A. **Purpose.** The purpose of this Section is to regulate personal, medical, and commercial marijuana uses in the Town. Nothing in this Section shall preempt or make inapplicable any provision of State or Federal law. No provisions of this Section shall hinder or supersede any other applicable State or Federal statute.

B. **Definitions.** For purposes of this Section, the following definitions shall apply:

1. "Commercial marijuana activity" includes the cultivation, possession, manufacture, distribution, processing, storing, laboratory testing, labeling, transportation, distribution, delivery or sale of marijuana and marijuana products.

2. "Cultivation" means any activity involving the planting, growing, harvesting, drying, curing, grading, or trimming of marijuana.

3. "Delivery" means the commercial transfer of marijuana or marijuana products to a customer. "Delivery" also includes the use by a retailer of any technology platform owned and controlled by the retailer, or independently licensed under California law, that enables customers to arrange for or facilitate the commercial transfer by a licensed retailer of marijuana or marijuana products.

4. "Distribution" means the procurement, sale, and transport of marijuana and marijuana products between entities for commercial use purposes.

5. "Licensee" means the holder of any State issued license related to marijuana activities, including but not limited to licenses issued under Division 10 of the Business & Professions Code.

6. "Manufacture" means to compound, blend, extract, infuse, or otherwise make or prepare a marijuana product.

7. "Marijuana" means all parts of the plant Cannabis sativa L. Linnaeus, Cannabis indica, or Cannabis ruderalis, whether growing or not; the seeds thereof; the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds or resin. It does not include:

   a. Industrial hemp, as defined in Section 11018.5 of the California Health & Safety Code; or

   b. The weight of any other ingredient combined with marijuana to prepare topical or oral administrations, food, drink, or other product.

8. "Marijuana accessories" means any equipment, products or materials of any kind which are used, intended for use, or designed for use in planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, smoking, vaporizing, or containing marijuana, or for ingesting, inhaling, or otherwise introducing marijuana or marijuana products into the human body.

9. "Marijuana products" means marijuana that has undergone a process whereby the plant material has been transformed into a concentrate, including, but not limited to, concentrated cannabis, or an edible or topical product containing marijuana or concentrated cannabis and other ingredients.

10. "Person" includes any individual, firm, co-partnership, joint venture, association, corporation, limited liability company, estate, trust, business trust, receiver, syndicate, or any other group or combination acting as a unit, and the plural as well as the singular.

11. "Sale" includes any transaction whereby, for any consideration, title to marijuana is transferred from one person to another, and includes the delivery of marijuana or marijuana products pursuant to an order placed for the purchase of the same and soliciting or receiving an order for the same, but does not include the return of marijuana or marijuana products by a licensee to the licensee from whom such marijuana or marijuana product was purchased.

12. Any term defined in this Section also means the very term as defined in the California Business & Professions Code or the California Health & Safety Code, unless otherwise specified.

C. **Commercial Use**

1. Medical marijuana shall be pursuant to Section 11362.77 of the California Health & Safety Code.

2. The establishment or operation of any medical marijuana collective, cooperative, dispensary, delivery service, operator, establishment, or provider shall be considered a prohibited use in all zoning districts of the Town and no use permit, variance, building permit, or any other entitlement or permit, whether administrative or discretionary, shall be approved or issued for the establishment of any collective, cooperative, dispensary, delivery service, operator, establishment, or provider in any zoning district, and no person shall otherwise establish such businesses or operations in any zoning district.

3. The establishment or operation of any business of commercial marijuana activity is prohibited. No use permit, variance, building permit, or any other entitlement or permit, whether

administrative or discretionary, shall be approved or issued for the establishment or operation of any such business or operation. Such prohibited businesses or operations may include, but are not limited to:

a. The transportation, delivery, storage, distribution, or sale of marijuana, marijuana products, or marijuana accessories, except to the extent allowed under California Code of Regulations, Title 16, Division 42, Section 5416;

b. The cultivation of marijuana;

c. The manufacturing or testing of marijuana, marijuana products, or marijuana accessories; or

d. Any other business licensed by the State or other government entity under Division 10 of the California Business & Professions Code, as it may be amended from time to time.

D. **Penalty for Violation.** No person, whether as principal, agent, employee or otherwise, shall violate, cause the violation of, or otherwise fail to comply with any of the requirements of this Section. Every act prohibited or declared unlawful, and every failure to perform an act made mandatory by this Section shall be a misdemeanor or an infraction, at the discretion of the Town Attorney or the District Attorney. In addition to the penalties provided in this Section, any condition caused or permitted to exist in violation of any of the provisions of this Section is declared a public nuisance and may be abated as provided in Article III of Chapter 1.01 and Chapter 6.30 of the Apple Valley Municipal Code and/or under any other applicable provision of State law."

Section 4. Section 9.29.210 of Chapter 9.29 of Title 9 of the Town of Apple Valley Development Code is hereby added to read in its entirety as follows:

9.29.210 ***CANNABIS CULTIVATION FOR PERSONAL RECREATIONAL PURPOSES***

A. **Purpose.** The purpose of this Section is to regulate cannabis cultivation for personal recreational purposes within the Residential Zoning Districts. Nothing in this Section shall preempt or make inapplicable any provision of State or Federal law. No provisions of this Section shall hinder or supersede any other applicable State or Federal statute. Further, for purposes of this section, personal recreational use, possession, purchase, transport, or dissemination of marijuana shall be considered unlawful in all areas of the Town to the extent it is unlawful under California law.

B. **Definitions.** For purposes of this Section, the following definitions shall apply:

1. "Person" includes any individual, firm, co-partnership, joint venture, association, corporation, limited liability company, estate, trust, business trust, receiver, syndicate, or any other group or combination acting as a unit, and the plural as well as the singular.

2. "Private residence" means a house, an apartment unit, a mobile home, or other similar dwelling.

3. Any term defined in this Section also means the very term as defined in the California Business & Professions Code or the California Health & Safety Code, unless otherwise specified.

C**.** **Outdoor Cultivation.** A person may not plant, cultivate, harvest, dry, or process marijuana plants outdoors in any Residential Zoning District of the Town. No use permit, building permit, variance, or any other permit or entitlement, whether administrative or discretionary, shall be approved or issued for any such use or activity.

D. **Indoor Cultivation**

1. A person may not plant, cultivate, harvest, dry, or process marijuana plants inside a private residence, or inside an accessory structure to a private residence located upon the grounds of a private residence, or inside any other enclosed structure within any zoning district of the Town. No use permit, building permit, variance, or any other permit or entitlement, whether administrative or discretionary, shall be approved or issued for any such use or activity, except when such cultivation occurs on property with a private residence and in accordance with the following regulations.

2. A person may not plant, cultivate, harvest, dry, or process marijuana plants inside a private residence, or inside an accessory structure to a private residence located upon the grounds of a private residence, unless the person completes a Certificate of Compliance form administered by the Code Enforcement Division. A person may not plant, cultivate, harvest, dry, or process marijuana plants inside any enclosed structure within any zoning district of the Town which is not either a private residence or an accessory structure to a private residence located upon the grounds of a private residence. There shall be no more than six (6) plants of personal cannabis cultivation per residence, regardless of the number of people who reside at the residence.

3. Marijuana cultivation is permitted only on a property with a private residence.

4. Marijuana cultivation may not displace any required enclosed parking.

5. Volatile solvents (solvents that are or produce a flammable gas or vapor that, when present in the air in sufficient quantities, will create explosive or ignitable mixtures), including but not limited to butane, propane, hexane and ethanol, are strictly prohibited and may not be used for the cultivation or processing of marijuana.

6. Only chemicals or substances approved for agricultural use in the State of California may be used, applied, or stored for the cultivation of marijuana at any property where marijuana is cultivated.

7. Cultivation, including the installation and operation of lights, heaters, fans, generators, or other mechanical equipment, must fully comply with all provisions of the Apple Valley Municipal Code and the State's building codes set forth in Title 24 of the California Code of Regulations, as adopted and amended by the Apple Valley Municipal Code.

8. All alterations done to the interior of a home or accessory structure to accommodate or prepare for cultivation must fully comply with all provisions of the Apple Valley Municipal Code and the State's Building Codes set forth in Title 24 of the California Code of Regulations, as adopted and amended by the Apple Valley Municipal Code.

9. All cultivation lighting systems and fixtures must be shielded to confine light and glare to the interior of the residence, fully enclosed and secure accessory structure, or greenhouse.

10. All marijuana plants, including any structure or enclosure used for marijuana cultivation, must be locked and reasonably secured to prevent access by minors or theft.

11. Marijuana cultivation must be concealed from public view at all stages of growth. Marijuana plants must not be visible with normal unaided vision from a public place or adjacent parcel.

12. A portable fire extinguisher, that complies with the regulations and standards adopted by the California State Fire Marshal and other applicable law, shall be kept in the area of cultivation at all times in a location that is easily accessible.

13. Accessory structures used for cultivation of marijuana shall not be located in the front yard

of the property.

14. A self-completed certificate of compliance must be completed, executed, and returned to the Code Enforcement Division before any cultivation or construction of any accessory structure used for growing marijuana. The marijuana cultivation must be for personal, non-commercial, recreational purposes only.

15. The Code Enforcement Officer, Building Official, Planning Director, Sheriff Officer, Fire Inspector, or a designee, is authorized to enter upon and inspect private properties to ensure compliance with the provisions of this section. Reasonable advance notice of any such entry and inspection shall be provided and, before entry, consent shall be obtained in writing from the owner or other persons in lawful possession of the property. If consent cannot for any reason be obtained, a warrant shall be obtained from a court of law before any such entry and inspection.

E. **Penalty for Violation.** No person, whether as principal, agent, employee or otherwise, shall violate, cause the violation of, or otherwise fail to comply with any of the requirements of this Section. Every act prohibited or declared unlawful, and every failure to perform an act made mandatory by this Section shall be a misdemeanor or an infraction, at the discretion of the Town Attorney or the District Attorney. In addition to the penalties provided in this Section, any condition caused or permitted to exist in violation of any of the provisions of this Section is declared a public nuisance and may be abated as provided in Article III of Chapter 1.01 and 6.30 of the Apple Valley Municipal Code and/or under any other applicable provision of State law."

Approved and Adopted by the Planning Commission of the Town of Apple Valley this 18th day of December 2019.

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Vice-Chairman Bruce Kallen

ATTEST:

I, Maribel Hernandez, 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 18th day of December 2019, by the following vote, to-wit:

AYES:

NOES:

ABSENT:

ABSTAIN:

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Ms. Maribel Hernandez, Planning Commission Secretary