



Town Council Agenda Report

Date: February 11, 2020 Item No. 14

To: Honorable Mayor and Town Council

Subject: DEVELOPMENT CODE AMENDMENT NO. 2019-012 IS A REQUEST TO AMEND TITLE 9 "DEVELOPMENT CODE" OF THE TOWN OF APPLE VALLEY MUNICIPAL CODE, TO ALLOW ADMINISTRATIVE REVIEW OF AMENDMENTS TO PREVIOUSLY APPROVED PROJECTS.

From: Douglas Robertson, Town Manager

Submitted by: Pam Cupp, Senior Planner
Planning Department

Budgeted Item: Yes No N/A

RECOMMENDED ACTION

- A. **Determine** that, pursuant to Section 15061(b)(3) of the State Guidelines to Implement the California Environmental Quality Act (CEQA), the project is exempt from environmental review because the activity is covered by the general rule that CEQA applies only to projects that have the potential for causing a significant effect on the environment. Where it can be seen with certainty that there is no possibility that the activity in question, the proposed Code Amendment, may have a significant effect on the environment, the activity is not subject to CEQA.
- B. **Find** the facts presented within the staff report, including the attached Planning Commission Resolution No. 2019-016 adopted November 6, 2019, support the required Findings for approval of the proposed Development Code Amendment and adopt the Findings.
- C. **Move** to waive the reading of Ordinance No. 527 in its entirety and read by title only.
- D. **Introduce** Ordinance No. 527 approving Development Code Amendment No. 2019-012; and
- E. **Direct** staff to file a Notice of Exemption with the San Bernardino County Clerk of the Board.

BACKGROUND/SUMMARY

At the May 1, 2019 joint meeting of the Town Council and Planning Commission, staff was directed by the Council to work with the Planning Commission to modify the Development Code to allow administrative review of Amendments to approved projects.

At its November 6, 2019 meeting, the Planning Commission unanimously approved Planning Commission Resolution No. 2019-006, which recommends the Town Council modify the Development Code to provide the ability for any land use entitlement to be amended administratively under certain circumstances. At no time would an Amendment be approved that does not meet the regulations set forth in the Development Code.

ANALYSIS

Currently, the Development Code requires that any modification or amendment to an approved Development Permit, Conditional Use Permit, Special Use Permit or Variance be processed in the same manner as the original entitlement. The Director has authority over minor revisions; however, it is left to the Director to determine what would be considered a “minor revision”.

Modification to an approved land use entitlement can include site plan revisions, expansion of floor area; changes to the Conditions of Approval or modifications to the hours of operation. The Planning Commission recommendation is to modify the Code to provide the ability for any land use entitlement to be amended administratively. The proposed amendment shall meet all regulations set forth in the Development Code and shall not create any additional effects upon the environment that were not previously addressed within the project’s Initial Study and subsequent Environmental Determination.

An Amendment application would require public notification in the same manner as the original project, and at the Director’s discretion, may be referred to the Planning Commission for its consideration. The project applicant, or any member of the public, may appeal any Director decision to the Planning Commission.

A complete strike-through/underline version of the proposed revisions can be reviewed within the attached Planning Commission staff report.

NOTICING

Development Code Amendment No. 2019-012 was advertised as a public hearing in the Apple Valley News newspaper on January 31, 2020.

ENVIRONMENTAL REVIEW

Development Code Amendment No. 2019-012 will modify the review authority for amendments to previously approved projects. Public and environmental noticing requirements remain the same and there are no modifications to development standards proposed. As such, this amendment will not promote development beyond that anticipated within the Environmental Impact Report prepared for the Town’s General Plan.

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.

FINDINGS

An amendment to the Development Code requires that the Town Council address two (2) required “Findings”, as listed within Development Code Section 9.06.060. For Council consideration, the required Findings are listed below, along with a comment addressing each. If the Council concurs with these comments, they may be adopted. If the Council wishes to modify the offered comments, after considering input and public testimony at the public hearing, modifications to the Findings and Code Amendment can be included.

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 proposed amendment does not modify any development standards or processing requirement. It will, however, modify the review authority for requests to amend previously approved development proposals. Therefore, as proposed, this amendment is consistent with the General Plan.

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

Comment: The proposed amendment will modify the review authority for amendments to previously approved projects. There will be no modifications to development standards and public noticing requirements remain the same. Therefore, the changes proposed under Development Code Amendment No. 2019-012 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.

FISCAL IMPACT

None

ATTACHMENTS

Ordinance No. 527
Planning Commission Staff Report
Planning Commission Resolution No. 2019-016

ORDINANCE NO. 527

AN ORDINANCE OF THE TOWN OF APPLE VALLEY, CALIFORNIA, AMENDING TITLE 9 “DEVELOPMENT CODE” OF THE TOWN OF APPLE VALLEY MUNICIPAL CODE, BY MODIFYING SECTION 9.12.230 “MODIFICATIONS OR AMENDMENTS” OF CHAPTER 9.12 “PERMIT PROCESS AND APPROVALS” TO ALLOW FOR ADMINISTRATIVE REVIEW OF AMENDMENTS TO APPROVED PROJECTS.

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

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

WHEREAS, On May 1, 2019, the Town Council initiated a Development Code Amendment to allow administrative review of amendments to approved projects; 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, On November 6, 2019, the Planning Commission of the Town of Apple Valley conducted a duly noticed public hearing on Development Code Amendment No. 2019-012, receiving testimony from the public and adopting Planning Commission Resolution No. 2019-016 forwarding a recommendation to the Council; and

WHEREAS, Specific changes are proposed to Title 9 “Development Code” of the Town of Apple Valley Municipal Code by amending Section 9.12.230 “Modifications or Amendments” of Chapter 9.12 “Permit Process and Approvals” to allow for administrative review of Amendments to approved projects; and,

WHEREAS, Development Code Amendment No. 2019-012 is consistent with the Town's General Plan and Title 9 "Development Code" of the Municipal Code of the Town of Apple Valley and shall promote the health, safety, and general welfare of the citizens of the Town of Apple Valley; and

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

WHEREAS, On January 31, 2020, Development Code Amendment No. 2019-012 was duly noticed in the Apple Valley News, a newspaper of general circulation within the Town of Apple Valley; and

WHEREAS, On February 11, 2020, the Town Council of the Town of Apple Valley conducted a duly noticed and advertised public hearing on Development Code Amendment No. 2019-012, receiving testimony from the public.

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

Section 1. Find that the changes proposed by Development Code Amendment No. 2019-012 are consistent with the Goals and Policies of the Town of Apple Valley adopted General Plan.

Section 2. Pursuant to Section 15061(b)(3) of the State Guidelines to Implement the California Environmental Quality Act (CEQA), it can be determined that the Code amendment is covered by the general rule that CEQA applies only to projects that have the potential for causing a significant effect on the environment. Where it can be seen with certainty, as with the proposed Code Amendment, that there is no possibility that the proposal approved under Development Code Amendment No. 2019-013 will have a significant effect on the environment and, therefore, the Amendment is EXEMPT from further environmental review.

Section 3. Amend Section 9.12.230 “Modifications or Amendments” of Chapter 9.12 “Permit Process and Approvals” as follows:

“9.12.230 Modification or Amendments

- A. A modification or amendment to an approved application may be requested for any approved land use entitlement.
- B. Amendments to any subdivision are subject to the requirements set forth in Section 9.71.130 “Corrections and Amendment of Maps”.
- C. Amendments may include, but are not limited to, change in conditions, site plan, elevations, expansion, intensity or hours of operation.
- D. The request shall be processed in the same manner as the original application and be approved by the same decision authority, except that under the following circumstances an amendment may be approved by the Director:
 - 1. The proposed Amendment is in compliance with the previously approved Environmental Determination.
 - 2. The proposed Amendment is in compliance with all Development Code regulations. Any request to further reduce development standards previously granted through a Variance shall require Planning Commission review.”

Section 6. Notice of Adoption. The Town Clerk of the Town of Apple Valley shall certify to the adoption of this ordinance and cause publication to occur in a newspaper of general circulation and published and circulated in the Town in a manner permitted under Section 36933 of the Government Code of the State of California.

Section 7. Effective Date. This Ordinance shall become effective thirty (30) days after the date of its adoption.

Section 8. Severability. If any provision of this Ordinance, or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications and, to this end, the provisions of this Ordinance are declared to be severable.

Approved and Adopted by the Town Council and signed by the Mayor and attested to by the Town Clerk this 28th day of February, 2020.

Honorable Scott Nassif, Mayor

ATTEST:

Ms. LaVonda M. Pearson, Town Clerk

Approved as to form:

Approved as to content:

Mr. Thomas Rice, Town Attorney

Mr. Douglas B. Robertson, Town Manager



Planning Commission Agenda Report

DATE: November 6, 2019 Item No. 2

CASE NUMBER: Development Code Amendment No. 2019-012

APPLICANT: Town of Apple Valley

PROPOSAL: An amendment to Title 9 "Development Code" of the Town of Apple Valley Municipal Code that would allow for administrative review of Amendments to approved projects.

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. Pam Cupp, Senior Planner

RECOMMENDATION: Adopt Planning Commission Resolution No. 2019-016

BACKGROUND

At the May 1, 2019 joint meeting of the Town Council and Planning Commission. Staff was directed by the Council to work with the Planning Commission to modify the Development Code to allow administrative review of amendments to approved projects.

ANALYSIS

Currently, the Development Code requires that any modification or amendment to an

approved Development Permit, Conditional Use Permit, Special Use Permit or Variance be processed the same as the original entitlement. The Director has authority over minor revisions; however, it is left to the Director to determine what would be considered a “minor revision”.

Specific modification to an approved land use entitlement can include site plan revisions, expansion of floor area; changes to the Conditions of Approval or modifications to the hours of operation. Staff is recommending modifying the Code to provide the ability for any land use entitlement to be amended administratively under certain circumstances, and at no time would an Amendment be approved that does not meet the regulations set forth in the Development Code. It should be further noted that, if the modification no longer complies with the original Environmental Determination, it would be subject to review by the original review authority.

An Amendment application would require public notification in the same manner as the original project, and at the Director’s discretion, may be referred to the Planning Commission for its consideration. The project applicant, or any member of the public, may appeal any Director decision to the Planning Commission.

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

Staff is recommending a modification to Chapter 9.12 “Permit Process and Approvals” by modifying Section 9.12.230 as follows:

9.12.230 Modification or Amendments

- ~~A.~~ **A.** A modification or amendment to an approved application may be requested by the applicant. ~~A modification or amendment to~~ **for any** approved Development Permit, Conditional Use Permit, Special Use Permit, or Variance **land use entitlement**.
- B. Amendments to any subdivision are subject to the requirements set forth in Section 9.71.130 “Corrections and Amendment of Maps”.**
- C. Amendments** may include, but **are** not limited to, change in conditions, **site plan, elevations,** expansion, intensity or hours of operation.
- D.** The request shall be processed in the same manner as the original application and be approved by the same decision authority, except that **under the following circumstances** ~~minor revisions may be approved by the~~ **an amendment may be approved by the** Director:
 - 1. The proposed Amendment is in compliance with the previously approved Environmental Determination.** ~~if they conform to the approved plan.~~
 - 2. The proposed Amendment is in compliance with all Development Code regulations. Any request to further reduce development standards**

previously granted through a Variance shall require Planning Commission review.

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 proposed amendment does not modify any development standards or processing requirement. It will, however, modify the review authority for requests to amend previously approved development proposals. Therefore, as proposed, this amendment is consistent with the General Plan.

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

Comment: The proposed amendment will modify the review authority for amendments to previously approved projects. There will be no modifications to development standards and public noticing requirements remain the same. Therefore, the changes proposed under Development Code Amendment No. 2019-012 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.

NOTICING

Development Code Amendment No. 2019-012 was advertised as a public hearing in the Apple Valley News newspaper on October 25, 2019.

ENVIRONMENTAL REVIEW

Development Code Amendment No. 2019-012 will modify the review authority for amendments to previously approved projects. Public and environmental noticing requirements remain the same and there are no modifications to development standards

proposed. As such, this amendment will not promote development beyond that anticipated within the Environmental Impact Report prepared for the Town's General Plan.

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. 2019-017 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. 2019-016

PLANNING COMMISSION RESOLUTION NO. 2019-016

A RESOLUTION OF THE PLANNING COMMISSION OF THE TOWN OF APPLE VALLEY, CALIFORNIA, RECOMMENDING THAT THE TOWN COUNCIL ADOPT DEVELOPMENT CODE AMENDMENT NO. 2019-012 AMENDING TITLE 9 “DEVELOPMENT CODE” OF THE TOWN OF APPLE VALLEY MUNICIPAL CODE, BY MODIFYING SECTION 9.12.230 “MODIFICATIONS OR AMENDMENTS” OF CHAPTER 9.12 “PERMIT PROCESS AND APPROVALS” TO ALLOW FOR ADMINISTRATIVE REVIEW OF AMENDMENTS TO APPROVED PROJECTS.

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

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, Development Code Amendment No. 2019-012 is consistent with the General Plan and Municipal Code of the Town of Apple Valley;

WHEREAS, On May 1, 2019, the Town Council initiated a Development Code Amendment, directing staff to modify the Development Code to allow administrative review of amendments to approved projects;

WHEREAS, Specific changes are proposed to Title 9 “Development Code” of the Town of Apple Valley Municipal Code by amending Section 9.12.230 “Modifications or Amendments” of Chapter 9.12 “Permit Process and Approvals” to allow for administrative review of Amendments to approved projects; and,

WHEREAS, on October 25, 2019, Development Code Amendment No. 2019-012 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 November 6, 2019 the Planning Commission of the Town of Apple Valley conducted a duly noticed and advertised the public hearing on Development Code

Amendment No. 2019-012 receiving testimony from the public; and

WHEREAS, Development Code Amendment No. 2019-012 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. 2019-012 are consistent with the Goals and Policies of the Town of Apple Valley adopted General Plan.

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

Section 3. Amend Section 9.12.230 "Modifications or Amendments" of Chapter 9.12 "Permit Process and Approvals" as follows:

"9.12.230 Modification or Amendments

- A. A modification or amendment to an approved application may be requested for any approved land use entitlement.
- B. Amendments to any subdivision are subject to the requirements set forth in Section 9.71.130 "Corrections and Amendment of Maps".
- C. Amendments may include, but are not limited to, change in conditions, site plan, elevations, expansion, intensity or hours of operation.
- D. The request shall be processed in the same manner as the original application and be approved by the same decision authority, except that under the following circumstances an amendment may be approved by the Director:
 - 1. The proposed Amendment is in compliance with the previously approved Environmental Determination.

2. The proposed Amendment is in compliance with all Development Code regulations. Any request to further reduce development standards previously granted through a Variance shall require Planning Commission review.”

Approved and Adopted by the Planning Commission of the Town of Apple Valley this 6th day of November 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 6th day of November 2019, by the following vote, to-wit:

AYES:

NOES:

ABSENT:

ABSTAIN:

Ms. Maribel Hernandez, Planning Commission Secretary