



## Town Council Agenda Report

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Date: August 25, 2020 Item No. 7

To: Honorable Mayor and Town Council

Subject: DEVELOPMENT CODE AMENDMENT NO. 2020-006 IS AN AMENDMENT TO TITLE 9 "DEVELOPMENT CODE" OF THE TOWN OF APPLE VALLEY MUNICIPAL CODE BY MODIFYING PROVISIONS RELATING TO THE LOCATION REGULATIONS FOR GASOLINE/SERVICE STATIONS AND ABOVE GROUND PETROLEUM TANKS.

From: Douglas Robertson, Town Manager

Submitted by: Lori Lamson, Assistant Town Manager

Budgeted Item:  Yes  No  N/A

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### RECOMMENDED ACTION:

- A. **Determine** that, Pursuant to Section 21080.17 of the State Guidelines to Implement the California Environmental Quality Act (CEQA), this proposal 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.
- B. **Find** the facts presented within the staff report, including the attached Planning Commission Resolution No. 2020-004 adopted July 15, 2020, together with subsequent attorney comments, 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. 535 in its entirety and read by title only.
- D. **Introduce** Ordinance No. 535 approving Development Code Amendment No. 2020-006; and
- E. **Direct** staff to file a Notice of Exemption with the San Bernardino County Clerk of the Board.

## **SUMMARY:**

The Town Council initiated a Development Code Amendment on May 1, 2019 to consider limiting the number of gasoline/service stations to no more than two (2) on any hard corner at the intersection of two (2) or more streets. On November 12, 2019 a Development Code Amendment was initiated by the Council to consider modifying the requirements for above-ground petroleum tanks. The Council has requested that staff present language to the Planning Commission that would reduce and better define the standards for above ground tanks in commercial development and provide regulations to preserve the hard corners of the intersection of two (2) streets from being proliferated with an abundance of gasoline/service stations.

On July 15, 2020, the Planning Commission reviewed the modifications proposed under Development Code Amendment No. 2020-006. Upon presentation of the staff report and subsequent Commission discussion, Planning Commission Resolution No. 2020-004 was approved recommending the Town Council modify the Development Code.

## **ANALYSIS:**

In a majority of intersections within the High Desert and in most areas of Southern California, there typically isn't more than two (2) gasoline/service stations on the hard corners of two (2) or more intersecting streets. Inquiries to staff regarding the location of more than two (2) gasoline/service stations at existing intersections throughout Town, has been a recent interest of land owners and developers, alike. There are no current regulations regarding the number of gasoline/service stations at an intersection, allowing for potential proliferation of these uses at the Town's developable intersections. Such regulation, as presented, would require a third or fourth station to be setback a distance of 300 or more feet from the hard corner, encouraging a variety of commercial types on the highly visible corners.

The initial discussion by the Council also discussed allowing some flexibility in the placement requirements of above ground petroleum tanks and allowing tanks over 200 gallons. Recently a Development Code Amendment changed the entitlement requirement from a Conditional Use Permit to a Special Use Permit. This amendment would further clarify and allow flexibility in the location of these tanks. Provided are clear standards that allow for placement within the landscape planters and setbacks that is currently not permitted by Code.

Staff and the Planning Commission are recommending the following modifications to incorporate the changes discussed above. The text provided in underline is new and the strikethrough text is proposed for removal:

### **Gasoline/Service Stations**

Amend subsection C. "Minimum Development Standards" of Section 9.36.190 "Service (Gasoline) Stations by adding a new paragraph No. 1 and renumber existing 1 through 14 sequentially...

1. No more than two (2) gasoline/service stations can be located on the hard corners of an intersection of two or more streets. Additional gasoline/service stations must be located

a minimum of 300 feet from the intersection of two (2) or more streets, if more than two (2) gasoline/service stations have already been entitled or legally built at said intersection on the hard corners. The existing entitlement must be valid and not expired.

Add footnote No. 14 to subparagraph a. “Gasoline stations and/or Carwash” of Paragraph 1. “Automotive services, including motorcycles, boats, motorhomes, trailers, and campers” of Section G. “Services” of Table 9.35.030-A. “Permitted Uses” to read as follows:

TYPE OF USE <sup>(1)</sup>	DISTRICT <sup>(1)</sup>					
	O-P	C-G	C-S	C-R	C-V	M-U

**G. Services**

1. Automotive services, including motorcycles, boats, motorhomes, trailers, and campers						
a. Gasoline stations and/or Carwash <sup>14</sup>	-	SUP	SUP	SUP	SUP	SUP

*Footnote No. 14 – Refer to Section 9.36.190.C.1. for location restrictions for gasoline/service stations.*

**Above Ground Petroleum Tanks**

Amend subsection D. “Accessory Uses” of Section 9.36.190 “Service (Gasoline) Stations”, by adding paragraph No. 6 to read as follows:

6. Above ground liquid petroleum or natural gas tanks shall be permitted as an accessory use subject to the following:
- a. Above ground tanks can be located in landscaped areas provided that there is a ten (10)-foot setback from ultimate right-of-way and shall be maintained in accordance with the Fire Code. Tanks shall not be located within the required clear-sight-triangle.
  - b. Three (3) sides of the tank shall be screened with a block wall and spacing between the wall and the tank shall comply with Fire Code standards.
  - c. Tanks must be accessible to recreational vehicles, trailers and large vehicles and shall not interfere with vehicular circulation of the site or with access to required parking spaces.

## **NOTICING**

Development Code Amendment No. 2020-006 was advertised as a public hearing in the Apple Valley News newspaper on August 14, 2020.

## **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 amendment to the Development Code regarding location regulations of gasoline/service stations and above ground petroleum tanks will be consistent with the goals, policies and objectives in the General Plan for commercial development. The amended standards will continue to encourage creative, high quality design of commercial projects as described in Land Use Program 6.B.1. of the General Plan while providing flexibility and relief in the standards to encourage a variety of development and promote the local economy.

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

Comment: The amendment to the Development Code provides flexibility in the commercial development regulations for location of above ground petroleum tanks that provides a safe and healthy environment and benefits the welfare of the Town and its residents. It also encourages a variety of commercial development by limiting the proliferation of gasoline/service stations on the hard corners of a traditional two (2) street intersection with four corners.

## **ENVIRONMENTAL REVIEW**

Development Code Amendment No. 2020-006 will modify the regulations for location of above ground petroleum tanks in commercial development and limit the proliferation of gasoline/service stations at the intersection of two (2) streets, with four (4) corners within Commercial Land Use designations. Public and environmental noticing requirements remain the same and each project as proposed for development will be subject to separate noticing and environmental review standards. The land use patterns remain the same as approved in the General Plan. 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.

**Fiscal Impact:**

Not Applicable

**Attachments:**

Ordinance No. 535

Planning Commission Resolution No. 2020-004

## ORDINANCE NO. 535

**AN ORDINANCE OF THE TOWN OF APPLE VALLEY, CALIFORNIA, ADOPTING DEVELOPMENT CODE AMENDMENT NO. 2020-006 AMENDING TITLE 9 “DEVELOPMENT CODE” OF THE TOWN OF APPLE VALLEY MUNICIPAL CODE, BY MODIFYING CHAPTER 9.35 “PERMITTED USES” AND CHAPTER 9.36 “SPECIFIC USE REGULATIONS/COMMERCIAL AND OFFICE DISTRICTS”, SPECIFICALLY SECTION 9.72.190 “SERVICE (GASOLINE) STATIONS” AS IT PERTAINS TO THE LOCATION CRITERIA OF SERVICE (GASOLINE) STATIONS AND THE PLACEMENT REGULATIONS OF ABOVE GROUND PETROLEUM TANKS IN COMMERCIAL DEVELOPMENT**

**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**, specific changes are proposed to Title 9 “Development Code” of the Town of Apple Valley Municipal Code by amending Chapter 9.35 “Permitted Uses” and Chapter 9.36 “Specific Use Regulations/Commercial and Office Districts”, as it pertains to the location criteria for service (gasoline) stations and the regulations regarding the location of above ground petroleum tanks; 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 July 15, 2020 the Planning Commission of the Town of Apple Valley conducted a duly noticed and advertised the public hearing on Development Code Amendment No. 2020-006 receiving testimony from the public and adopted Planning Commission Resolution No. 2020-004; and

**WHEREAS**, Development Code Amendment No. 2020-006 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.

**WHEREAS**, on August 14, 2020, Development Code Amendment No. 2020-006 was duly noticed in the Apple Valley News, a newspaper of general circulation within the Town of Apple Valley; and

**WHEREAS**, on August 25, 2020 the Town Council of the Town of Apple Valley conducted a duly noticed and advertised the public hearing on Development Code Amendment No. 2020-006 receiving testimony from the public; and

**NOW, THEREFORE, BE IT RESOLVED** that in consideration of the evidence presented at the public hearing, and for the reasons discussed by the Town Council at said hearing, the Town Council of the Town of Apple Valley, California, does hereby resolve, order and determine as follows, make the following findings and take the following actions:

**Section 1.** Find that the changes proposed by Development Code Amendment No. 2020-006 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.** Amend subsection C. “Minimum Development Standards” of Section 9.36.190 “Service (Gasoline) Stations by adding a new paragraph No. 1 and renumber existing 1 through 14 sequentially...

1. No more than two (2) gasoline/service stations can be located on the hard corners of an intersection of two (2) or more streets. Additional gasoline/service stations, and access thereto, must be located a minimum of 300 feet from the intersection of two (2) or more streets, if more than two (2) gasoline/service stations have already been entitled or legally built at said intersection on the hard corners. The existing entitlement must be valid and not expired.

**Section 4.** Add footnote No. 14 to subparagraph a. “Gasoline stations and/or Carwash” of Paragraph 1. “Automotive services, including motorcycles, boats, motorhomes, trailers, and campers” of Section G. “Services” of Table 9.35.030-A. “Permitted Uses” to read as follows:

TYPE OF USE <sup>(1)</sup>	DISTRICT <sup>(1)</sup>					
	O-P	C-G	C-S	C-R	C-V	M-U

**G. Services**

1. Automotive services, including motorcycles, boats, motorhomes, trailers, and campers						
a. Gasoline stations and/or Carwash <sup>14</sup>	-	SUP	SUP	SUP	SUP	SUP

*Footnote No. 14 – Refer to Section 9.36.190.C.1. for location restrictions for gasoline/service stations.*

**Section 5.** Amend subsection D. “Accessory Uses” of Section 9.36.190 “Service (Gasoline) Stations”, by adding paragraph No. 6 to read as follows:

6. Above ground liquid petroleum or natural gas tanks shall be permitted as an accessory use subject to the following:
  - a. Above ground tanks can be located in landscaped areas provided that there is a ten (10)-foot setback from ultimate right-of-way and shall be maintained in accordance with the Fire Code. Tanks shall not be located within the required clear-sight-triangle.
  - b. Three sides of the tank shall be screened with a block wall and spacing between the wall and the tank shall comply with Fire Code standards.
  - c. Tanks must be accessible to recreational vehicles, trailers and large vehicles and shall not interfere with vehicular circulation of the site or with access to required parking spaces.

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

**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 8th day of September, 2020.

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Honorable Scott Nassif, Mayor

ATTEST:

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Ms. La Vonda M. Pearson, Town Clerk

Approved as to form:

Approved as to content:

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Mr. Thomas Rice, Town Attorney

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Mr. Douglas B. Robertson, Town Manager

**PLANNING COMMISSION RESOLUTION NO. 2020-004**

**A RESOLUTION OF THE PLANNING COMMISSION OF THE TOWN OF APPLE VALLEY, CALIFORNIA, RECOMMENDING THAT THE TOWN COUNCIL ADOPT DEVELOPMENT CODE AMENDMENT NO. 2020-006 AMENDING TITLE 9 “DEVELOPMENT CODE” OF THE TOWN OF APPLE VALLEY MUNICIPAL CODE, BY MODIFYING CHAPTER 9.35 “PERMITTED USES” AND CHAPTER 9.36 “SPECIFIC USE REGULATIONS/COMMERCIAL AND OFFICE DISTRICTS”, SPECIFICALLY SECTION 9.72.190 “SERVICE (GASOLINE) STATIONS” AS IT PERTAINS TO THE LOCATION CRITERIA OF SERVICE (GASOLINE) STATIONS AND THE PLACEMENT REGULATIONS OF ABOVE GROUND PETROLEUM TANKS IN COMMERCIAL DEVELOPMENT**

**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 9.35 “Permitted Uses” and Chapter 9.36 “Specific Use Regulations/Commercial and Office Districts”, as it pertains to the location criteria for service (gasoline) stations and the regulations regarding the location of above ground petroleum tanks; and,

**WHEREAS**, on July 3, 2020, Development Code Amendment No. 2020-006 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 July 15, 2020 the Planning Commission of the Town of Apple Valley conducted a duly noticed and advertised the public hearing on Development Code Amendment No. 2020-006 receiving testimony from the public; and

**WHEREAS**, Development Code Amendment No. 2020-006 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. 2020-006 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.** Amend subsection C. “Minimum Development Standards” of Section 9.36.190 “Service (Gasoline) Stations by adding a new paragraph No. 1 and renumber existing 1 through 14 sequentially...

2. No more than two (2) gasoline/service stations can be located on the hard corners of an intersection of two (2) or more streets. Additional gasoline/service stations, and access thereto, must be located a minimum of 300 feet from the intersection of two (2) or more streets, if more than two (2) gasoline/service stations have already been entitled or legally built at said intersection on the hard corners. The existing entitlement must be valid and not expired.

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**G. Services**

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*Footnote No. 14 – Refer to Section 9.36.190.C.1. for location restrictions for gasoline/service stations.*

**Section 5.** Amend subsection D. “Accessory Uses” of Section 9.36.190 “Service (Gasoline) Stations”, by adding paragraph No. 6 to read as follows:

6. Above ground liquid petroleum or natural gas tanks shall be permitted as an accessory use subject to the following:
  - a. Above ground tanks can be located in landscaped areas provided that there is a ten (10)-foot setback from ultimate right-of-way and shall be maintained in accordance with the Fire Code. Tanks shall not be located within the required clear-sight-triangle.
  - b. Three sides of the tank shall be screened with a block wall and spacing between the wall and the tank shall comply with Fire Code standards.
  - c. Tanks must be accessible to recreational vehicles, trailers and large vehicles and shall not interfere with vehicular circulation of the site or with access to required parking spaces.

Approved and Adopted by the Planning Commission of the Town of Apple Valley this 15th day of July 2020.

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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 15th day of July 2020, by the following vote, to-wit:

AYES:

NOES:

ABSENT:

ABSTAIN:

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Ms. Maribel Hernandez, Planning Commission Secretary