



Town Council Agenda Report

Date: December 8, 2020 Item No. 23

To: Honorable Mayor and Town Council

Subject: DEVELOPMENT CODE AMENDMENT NO. 2020-010 IS A REQUEST TO MODIFY TITLE 9 "DEVELOPMENT CODE" OF THE TOWN OF APPLE VALLEY MUNICIPAL CODE WITH THE ADDITION OF REGULATIONS RELATING TO NUISANCE LIGHTING AND GLARE BETWEEN RESIDENTIAL PROPERTIES AND REMOVAL OF ALL REFERENCES RELATING TO THE "DARK SKY POLICY".

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. 2020-008 adopted October 21, 2020, 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. 542 in its entirety and read by title only.
- D. **Introduce** Ordinance No. 542 approving Development Code Amendment No. 2020-010; and
- E. **Direct** staff to file a Notice of Exemption with the San Bernardino County Clerk of the Board.

SUMMARY

At its August 25, 2020 Town Council meeting, the Council discussed the issues relating to nuisance lighting between residential properties, and subsequently, initiated a Development Code Amendment to add regulations to the Development Code to address the issue light nuisances applicable to single-family land uses. On October 21, 2020, the Planning Commission adopted Planning Commission Resolution No. 2020-008, recommending the Town Council approved Development Code Amendment No. 2020-010.

ANALYSIS

The background and previous discussions regarding light pollution date back to the beginning of the Town's incorporation. The 1991 General Plan included a provision about protection of the "Dark Sky" by limiting the amount and size of light poles within commercial, industrial and right of ways within the Town.

In 1993, Ordinance No. 115 established Chapter 8.30 in the Municipal Code creating regulations for outdoor lighting. In 2002 light standards for commercial use was added to the Development Code consistent with this policy. Under Section 9.70 "Performance Standards" for new development, light fixtures in non-single-family residential areas were required to be directed down and limited on the height of the pole. This Section replaced Chapter 8.30 of the Municipal Code that was repealed in 1999.

At the time of the repeal of Chapter 8.30 "Outdoor Lighting", the General Plan was not modified or updated regarding the provision referring to a "Dark Sky". Subsequently, in the 2009 General Plan Comprehensive Update, the reference to a "Dark Sky Policy" was removed for consistency with the previous actions of repealing Chapter 8.30. There are sections of the Development Code that refer to a Dark Sky Policy that does not exist. The current provisions under the Performance Standards, pertain only to new development and do not address lighting nuisances in existing single-family residential neighborhoods.

Staff reports back in 1999 and 2002 reference that Municipal Code Chapter 6.30 "Nuisance" would allow Code Enforcement the ability to regulate light nuisances between any two property owners. Through legal interpretation and court proceedings, it has been determined that we cannot regulate light nuisances between two properties through the currently language regarding public nuisances.

When it comes to regulations of lighting between single-family residences, there isn't a provision in the Municipal Code that would allow the Town to enforce this type of nuisance. It leaves the issue between the two property owners to deal with the matter themselves or through a civil legal proceeding. The Planning Commission recommends that regulations for residential lighting be added to Development Code Section 9.70 "Performance Standards", requiring all residential lighting to be directed down with shields. It is further recommended to clean-up areas of the Development Code to eliminate the discussion of a "Dark Sky Policy".

The following are strike-thru/bold underline modifications as recommended by the Planning Commission:

It is recommended to modify Section 9.70.020(H) "Light and Glare" of Chapter 9.70 "Performance Standards" with the addition of Paragraph 7 as follows:

7. Security or accent lighting for single-family residences shall be shielded to project downward or in a manner that the light is directed away from streets and adjoining properties.

It is further recommended to eliminate of any reference to the "Dark Sky Policy" with the following modification to Paragraph (A)(1) of Section 9.47.090 "Lighting" of Chapter 9.47 "Industrial Design Standards" as follows:

1. Lighting shall be used only for the functional requirements of safety, security, and identification. Unnecessary lighting is prohibited in the interest of energy efficiency and ~~maintenance of the Town's Dark Sky Policy~~ **preservation of the night sky views.**

Paragraph D of Section 9.77.110 of Chapter 9.77 "Wireless Telecommunications Towers and Antennas should also be modified as follows to remove reference to the Dark Sky Policy:

- D. **Lighting.** Towers shall not be artificially lighted, unless required by the FAA or other applicable authority. If lighting is required, the lighting alternatives and design chosen must cause the least disturbance to the surrounding **properties and the night sky views** and ~~must conform to the Town's "Dark Sky" policy.~~

FINDINGS

An Amendment to the Development Code requires two (2) "Findings", as listed within Development Code Section 9.06.060. For consideration, the required Findings are listed below, along with a comment addressing each. If there is concurrence with these comments, it 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 Land Use Element focuses on the protection and enhancement of existing neighborhoods and establishes goals, policies and programs to assure that development in the future enhances what already exists in Town. The proposed amendment will create regulations relating to nuisance lighting, which will enhance existing and future residential neighborhoods, consistent with the goals and policies of 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 create regulations relating to nuisance lighting, which will enhance existing and future residential neighborhoods. Therefore, the amendment will not be materially detrimental to the public health, safety or welfare of the Town or its residents.

NOTICING

Development Code Amendment No. 2020-010 was advertised as a public hearing in the Apple Valley News newspaper on November 27, 2020.

ENVIRONMENTAL REVIEW

It has been determined 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.

FISCAL IMPACT

None

ATTACHMENTS:

1. Ordinance No. 542
2. Planning Commission Resolution No. 2020-008

ORDINANCE NO. 542

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 9.70.020(H) “LIGHT AND GLARE” BY ADDING REGULATIONS TO CONTROL NUISANCE LIGHTING AND GLARE BETWEEN RESIDENTIAL PROPERTIES AND TO REMOVE ALL REFERENCES RELATING TO THE “DARK SKY POLICY” WITHIN THE DEVELOPMENT CODE.

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 August 25, 2020, the Town Council initiated a Development Code Amendment directing staff to work with the Planning Commission to add regulations to the Development Code that would address the issue of light nuisances within single-family land uses;

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 October 21, 2020, the Planning Commission of the Town of Apple Valley conducted a duly noticed public hearing on Development Code Amendment No. 2020-010, inviting testimony from the public and adopting Planning Commission Resolution No. 2020-008 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 adding regulations to control nuisance lighting and glare between residential properties and to remove all references relating to the “Dark Sky Policy”; and

WHEREAS, Development Code Amendment No. 2020-010 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, 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 will have a significant effect on the environment and, therefore, the Amendment is EXEMPT from further environmental review.; and

WHEREAS, On November 27, 2020, Development Code Amendment No. 2020-010 was duly noticed in the Apple Valley News, a newspaper of general circulation within the Town of Apple Valley; and

WHEREAS, On December 8, 2020, the Town Council of the Town of Apple Valley conducted a duly noticed and advertised public hearing on Development Code Amendment No. 2020-010, receiving testimony from the public and

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

Section 1. Find that the changes proposed by Development Code Amendment No. 2020-010 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. 2020-010 will have a significant effect on the environment and, therefore, the Amendment is EXEMPT from further environmental review.

Section 3. Add Paragraph 7 to Section 9.70.020(H) “Light and Glare” of Chapter 9.70 “Performance Standards” as follows:

“7. Security or accent lighting for single-family residences shall be shielded to project downward or in a manner that the light is directed away from streets and adjoining properties.”

Section 4. Eliminate the reference to the “Dark Sky Policy” with the following modification to Paragraph (A)(1) of Section 9.47.090 “Lighting” of Chapter 9.47 “Industrial Design Standards” as follows:

“1. Lighting shall be used only for the functional requirements of safety, security, and identification. Unnecessary lighting is prohibited in the interest of energy efficiency and preservation of the night sky views.”

Section 5. Modify Paragraph D of Section 9.77.110 of Chapter 9.77 “Wireless Telecommunications Towers and Antennas” to remove reference to the Dark Sky Policy as follows:

“D. **Lighting.** Towers shall not be artificially lighted, unless required by the FAA or other applicable authority. If lighting is required, the lighting alternatives and design chosen must cause the least disturbance to the surrounding properties and the night sky views.

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 ____ day of _____, 2021.

Honorable Scott Nassif, Mayor

ATTEST:

Ms. La Vonda M. Pearson, Town Clerk

Approved as to form:

Approved as to content:

Mr. Thomas Rice, Town Attorney

Mr. Douglas B. Robertson, Town Manager

PLANNING COMMISSION RESOLUTION NO. 2020-008

A RESOLUTION OF THE PLANNING COMMISSION OF THE TOWN OF APPLE VALLEY, CALIFORNIA, RECOMMENDING THAT THE TOWN COUNCIL ADOPT DEVELOPMENT CODE AMENDMENT NO. 2020-010 AMENDING TITLE 9 “DEVELOPMENT CODE” ADDING REGULATIONS TO CONTROL NUISANCE LIGHTING AND GLARE BETWEEN RESIDENTIAL PROPERTIES AND TO REMOVE ALL REFERENCES RELATING TO THE “DARK SKY POLICY”.

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, On August 25, 2020, the Town Council initiated a Development Code Amendment directing staff to work with the Planning Commission to add regulations to the Development Code that would address the issue of light nuisances within single-family land uses;

WHEREAS, Specific changes are proposed to Title 9 “Development Code” of the Town of Apple Valley Municipal Code by amending Chapter 9.70 “Performance Standards” to add regulations to control residential nuisance lighting and remove references to the “Dark Sky Policy” throughout the Code; and

WHEREAS, on October 9, 2020, Development Code Amendment No. 2020-010 was duly noticed in the Apple Valley News, a newspaper of general circulation within the Town of Apple Valley; and

WHEREAS, Development Code Amendment No. 2020-010 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.

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 October 21, 2020 the Planning Commission of the Town of Apple Valley conducted a duly noticed and advertised the public hearing on Development Code Amendment No. 2020-010 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 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. 2020-010 are 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.

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. Add Paragraph 7 to Section 9.70.020(H) "Light and Glare" of Chapter 9.70 "Performance Standards" as follows:

"7. Security or accent lighting for single-family residences shall be shielded to project downward or in a manner that the light is directed away from streets and adjoining properties."

Section 4. Eliminate the reference to the "Dark Sky Policy" with the following modification to Paragraph (A)(1) of Section 9.47.090(A) "Lighting" of Chapter 9.47 "Industrial Design Standards" as follows:

"1. Lighting shall be used only for the functional requirements of safety, security, and identification. Unnecessary lighting is prohibited in the interest of energy efficiency and preservation of the night sky views."

Section 5. Modify Paragraph D of Section 9.77.110 of Chapter 9.77 "Wireless Telecommunications Towers and Antennas" to remove reference to the Dark Sky Policy as follows:

"D. **Lighting.** Towers shall not be artificially lighted, unless required by the FAA or other applicable authority. If lighting is required, the lighting alternatives and design chosen must cause the least disturbance to the surrounding properties and the night sky views.

Approved and Adopted by the Planning Commission of the Town of Apple Valley this 21st day of October 2020.

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 21st day of October 2020, by the following vote, to-wit:

AYES:

NOES:

ABSENT:

ABSTAIN:

Ms. Maribel Hernandez, Planning Commission Secretary