

**1TOWN OF  
APPLE VALLEY, CALIFORNIA**

**AGENDA MATTER**

**Subject Item:**

**ADOPT ORDINANCE NO. 399 - AMENDING TITLE 9 "DEVELOPMENT CODE" OF THE TOWN OF APPLE VALLEY MUNICIPAL CODE, BY AMENDING SECTION 9.29.140 "RESIDENTIAL CARE FACILITIES, GROUP HOMES AND SEXUAL OFFENDER RESIDENCY" TO CHAPTER 9.29 "SPECIFIC USE REGULATIONS FOR RESIDENTIAL DISTRICTS" OF TITLE 9 "DEVELOPMENT CODE" OF THE APPLE VALLEY MUNICIPAL CODE AND ESTABLISH SEPARATE REQUIREMENTS FOR RESIDENTIAL CARE FACILITIES FOR THE ELDERLY.**

**Summary Statement:**

At its June 23, 2009 meeting, the Town Council reviewed and introduced Ordinance No. 399 as it relates to amending Title 9 "Development Code" of the Town of Apple Valley Municipal Code, by amending Section 9.29.140 "Residential Care Facilities, Group Homes and Sexual Offender Residency" to Chapter 9.29 "Specific Use Regulations For Residential Districts" of Title 9 "Development Code" of the Apple Valley Municipal Code and establish separate requirements for Residential Care Facilities for the Elderly. As part of the requirements to adopt a new Ordinance, Ordinance No. 399 has been scheduled for adoption at the July 14, 2009 Town Council meeting.

**Recommended Action:**

Adopt Ordinance No. 399

**Proposed by:** \_\_\_\_\_ **Planning Division** \_\_\_\_\_ **Item Number** \_\_\_\_\_

Town Manager Approval: \_\_\_\_\_ Budget Item  Yes  No

Town Council Meeting: July 14, 2009

## ORDINANCE NO. 399

**AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF APPLE VALLEY, CALIFORNIA, AMENDING TITLE 9 “DEVELOPMENT CODE” OF THE TOWN OF APPLE VALLEY MUNICIPAL CODE, BY AMENDING TITLE 9 “DEVELOPMENT CODE” OF THE TOWN OF APPLE VALLEY MUNICIPAL CODE, BY AMENDING SECTION 9.29.140 “RESIDENTIAL CARE FACILITIES, GROUP HOMES AND SEXUAL OFFENDER RESIDENCY” TO CHAPTER 9.29 “SPECIFIC USE REGULATIONS FOR RESIDENTIAL DISTRICTS” OF TITLE 9 “DEVELOPMENT CODE” OF THE APPLE VALLEY MUNICIPAL CODE AND ESTABLISH SEPARATE REQUIREMENTS FOR RESIDENTIAL CARE FACILITIES FOR THE ELDERLY.**

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

### **Section 1. Recitals**

(i) Title 9 “Development Code” of the Municipal Code of the Town of Apple Valley was adopted by the Town Council on October 24, 2000; and

(ii) 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

(iii) Specific changes to Title 9 “Development Code” of the Town of Apple Valley Municipal Code include amending by amending Section 9.29.140 “Residential Care Facilities, Group Homes and Sexual Offender Residency” to Chapter 9.29 “Specific Use Regulations For Residential Districts” of Title 9 “Development Code” of the Apple Valley Municipal Code and establish separate requirements for Residential Care Facilities for the Elderly; and

(iv) On June 12 , 2009, Development Code Amendment No. 2009-003 was duly noticed in the Apple Valley News, a newspaper of general circulation within the Town of Apple Valley; and

(v) 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

(vi) On June 3, 2009, the Planning Commission of the Town of Apple Valley conducted a duly noticed and advertised public hearing on Development Code Amendment No. 2009-003, receiving testimony from the public and adopted Planning Commission Resolution No. 2009-004 recommending adoption of this Ordinance; and

(viii) Development Code Amendment No. 2009-003 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.

## **Section 2. Findings**

(i) Find that the changes proposed by Development Code Amendment No. 2009-003 are consistent with the Goals and Policies of the Town of Apple Valley adopted General Plan.

(ii) Pursuant to the State Guidelines to Implement the California Environmental Quality Act (CEQA), specifically Section 15061(b)(3), 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 may have a significant effect on the environment; the activity is exempt from, and not subject to, CEQA.

**Section 3.** Replace subsection A “Purpose” of Section 9.29.140 “Residential Care Facilities, Group Homes and Sexual Offender Residency” to Chapter 9.29 “Specific Use Regulations For Residential Districts” to read as follows:

### **A. Purpose**

The purpose of this Section is to give the Town the opportunity to regulate, review and monitor the public service needs to provide the best possible service to the residents within the Town limits with some establishment of residential care facilities, residential care facilities for the elderly, and group homes in residential zones.

**Section 4.** Insert “Elderly Person” and “Residential Care Facility for the Elderly” to subsection B “Definitions” of Section 9.29.140 “Residential Care Facilities, Group Homes and Sexual Offender Residency” to Chapter 9.29 “Specific Use Regulations For Residential Districts” to read as follows:

### **B. Definitions**

**Elderly Person** - means, for purposes of admission into a residential care facility for the elderly, a person who is sixty (60) years of age or older.

**Residential Care Facility for the Elderly (7 or more residents)** - means a housing arrangement chosen voluntarily by the resident, the resident's guardian, conservator or other responsible person; where the residents are sixty (60) years of age or older and where varying levels of care and supervision are provided, as agreed to at time of admission or as determined necessary at subsequent times of reappraisal, in accordance with the Community Care Facilities Act.

**Section 5.** Add paragraph No. 4 to subsection C “Prohibition” of Section 9.29.140 “Residential Care Facilities, Group Homes and Sexual Offender Residency” to Chapter 9.29 “Specific Use Regulations For Residential Districts” to read as follows:

***A. Prohibition***

4. No Residential Care Facility for the Elderly shall be made available to an individual who has demonstrated, by prior behavior, actions and/or criminal convictions, or as a resident, that he or she:
  - a. May be determined to be or does, constitute a substantial risk or direct threat to the health or safety of other individuals; or
  - b. Has or may engage in conduct resulting in substantial physical damage to the property of others.

**Section 6.** Replace paragraph Nos. 2 and 3 and add No. 7 to subsection D “Conditional Use Permit” of Section 9.29.140 “Residential Care Facilities, Group Homes and Sexual Offender Residency” to Chapter 9.29 “Specific Use Regulations For Residential Districts” to read as follows:

***B. Conditional Use Permit***

2. Large Residential Care Facilities and Residential Care Facilities for the Elderly, licensed by the State of California that were unlawfully established prior to the effective date of this Ordinance.
3. Any change in the operating conditions or facility type of existing Group Homes, Large Residential Care Facilities or Residential Care Facility for the Elderly, lawfully established prior to, or after, the effective date of this Ordinance.
7. The Conditional Use Permit granted and permitted by this section for a Residential Care Facility for the Elderly is non-transferable and terminates if the structure is devoted to any use other than as a residential facility for the elderly or if the structure fails to comply with the applicable health, safety, zoning and building codes.

**Section 7.** Replace paragraph Nos. 1, 3 and 4 of subsection E “Locational Requirements” of Section 9.29.140 “Residential Care Facilities, Group Homes and Sexual Offender Residency” to Chapter 9.29 “Specific Use Regulations For Residential Districts” to read as follows:

***E. Locational Requirements***

1. In evaluating requests for a Large Residential Care Facility, Residential Care Facility for the Elderly, or Group Home, particular attention will be directed to the physical relationship and proximity of the proposed use

to similar uses within the surrounding neighborhood and ensuring no adverse effects on the character of a residential neighborhood and public health, safety or general welfare will be created by the proposed use.

3. When a Conditional Use Permit for a Large Residential Care Facility, Residential Care Facility for the Elderly or Group Home is requested, other than for renewal, ownership transfer or expansion of an existing facility/home, a minimum separation distance of 2,000 feet is required from another Large Residential Care Facility, Residential Care Facility for the Elderly or Group Home.
4. When a Conditional Use Permit for a Large Residential Care Facility, Residential Care Facility for the Elderly or Group Home is requested and includes the new construction or remodel of an existing residential structure or unit to expand the square footage, attention shall be directed toward the size, scale and architectural compatibility of the residential structure or unit to ensure that it is compatible with the surrounding residential neighborhood and that it maintains the residential character and appearance of the area.

**Section 8.** Replace paragraph Nos 1, 2, 5, 6, 8 and 9 of subsection F “Operational/Requirements/Conditions” of Section 9.29.140 “Residential Care Facilities, Group Homes and Sexual Offender Residency” to Chapter 9.29 “Specific Use Regulations For Residential Districts” to read as follows:

***F. Operational Requirements/Conditions***

1. Large Residential Care Facilities, Residential Care Facilities for the Elderly, and Group Homes shall obtain annually a Town of Apple Valley Business License.
2. Only one resident or two (2) residents related by blood, marriage or legal adoption shall be allowed to occupy one bedroom in a Large Residential Care Facility, Residential Care Facility for the Elderly or Group Home.
3. The property owner, or designated on-site manager, that is not on parole/probation or a registered 290 sex offender, must live on the site of the Large Residential Care Facility, Residential Care Facility for the Elderly, and/or Group Home. The name and a copy of legal identification of the property owner/on-site manager shall be provided to the Town of Apple Valley with the business license.
4. All required State and Federal licenses for Large Residential Care Facilities, Residential Care Facility for the Elderly and Group Homes shall be posted within the premises and a copy shall be provided to the Town of Apple Valley Planning Division.

8. Residential Care Facilities for the Elderly shall meet all applicable building codes, zoning regulations and the Americans with Disabilities Act, applicable to single-family or similar dwellings; except as modified by the provisions of this Chapter.
9. A Residential Care Facility for the Elderly shall conform to the minimum site development standards as those for a dwelling unit in the zone in which the facility is located. The facility shall be capable of being used as a Residential Care Facility for the Elderly without structural or landscaping alterations that would change the structure's residential character.

**Section 9.** Invalidation. The amendment by this Ordinance of Title 9 "Development Code" of the Town of Apple Valley Municipal Code as previously in effect, or of any other prior enactment, shall not be construed to invalidate any entitlement exercised or proceeding taken pursuant to such Title or other enactment while the same was in effect.

**Section 10.** 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 11.** Effective Date. The Ordinance shall become effective thirty (30) days after the date of its adoption.

**Section 12.** 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 provision of the Ordinance is declared to be severable.

Adopted by the Town Council and signed by the Mayor and attested by the Town Clerk this 14<sup>th</sup> day of July, 2009.

\_\_\_\_\_  
Honorable Rick Roelle, 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. John Brown, Town Attorney

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Mr. Frank Robinson, Town Manager