

**TOWN OF
APPLE VALLEY, CALIFORNIA**

AGENDA MATTER

Subject Item:

ADOPT ORDINANCE NO. 408 – AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF APPLE VALLEY ADDING CHAPTERS 5.02.330-5.02.360 INVESTIGATION, INSPECTION AND REPORTING OF JUNK DEALERS, ADDING CHAPTERS 5.02.370-5.02.450 TOBACCO RETAILERS PERMIT REGULATIONS AND AMENDING CHAPTER 5.02.010 DEFINITIONS

SUMMARY STATEMENT

At its meeting of April 27, 2010, the Town Council reviewed and introduced Ordinance No. 408 amending Title 5 of the Town of Apple Valley Municipal Code. The recommended additions and amendments introduced at this meeting will assist the Town of Apple Valley Police Department with additional tools to help reduce crime and increase public safety.

Recommended Action:

Adopt Ordinance No. 408.

Proposed by: Apple Valley Police Department **Item Number** _____

T. M. Approval: _____ **Budgeted Item** **Yes** **No** **N/A**

ORDINANCE NO. 408

**AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF APPLE VALLEY
ADDING CHAPTERS 5.02.330-5.02.360 INVESTIGATION, INSPECTION AND
REPORTING OF JUNK DEALERS, ADDING CHAPTERS 5.02.370-5.02.450
TOBACCO RETAILERS PERMIT REGULATIONS AND AMENDING CHAPTER
5.02.010 DEFINITIONS OF THE APPLE VALLEY MUNICIPAL CODE**

WHEREAS, the Town Council has a desire to reduce residential and commercial burglaries;

WHEREAS, in order to ensure police personnel can inspect junk dealers, pawn shops, and second hand dealers for possible stolen items;

WHEREAS, the Town Council desires to establish additional comprehensive regulations applicable to junk dealers;

WHEREAS, in order to better protect the health, safety, and welfare of its citizens and to complement the provisions of the Apple Valley Municipal Code related to business licensing;

WHEREAS, it is in the best interest of the Town to amend the provisions of Chapter 5.02 (entitled "Business Regulations") of Title 5 of the Apple Valley Municipal Code;

WHEREAS, The Town Council desires to provide the Police Department with all the Municipal Codes necessary to ensure all children who should be in school are in school and

NOW, THEREFORE, THE TOWN COUNCIL OF THE TOWN OF APPLE VALLEY DOES ORDAIN AS FOLLOWS:

Section 1. Chapter 5.02 of Title 5 of the Town of Apple Valley Municipal Code is hereby amended to add the following Sections:

5.02.330 Investigation

5.02.340 Inspection of Junk Dealers

5.02.350 Property

5.02.360 Daily Reports and Purchase Forms

5.02.330 Investigation.

Upon receipt of a complete application with all required documentation and fees, the collector shall refer copies of the application to the building, planning, fire and police departments for investigation concerning the applicant's business and character. These investigating departments shall report their findings, together with their approval of or objection to the issuance of a license to the collector within ten business days of the referral. The collector shall, upon receipt of these reports and any recommendations either issue or deny the issuance of the license.

5.02.340 Inspection of Junk Dealers

Every junk dealer, pawnbroker, secondhand dealer and salvage collector shall hold and keep exposed any property acquired by them in the course of their business for inspection on their business premises during business hours.

5.02.350 Property.

Junk dealers shall hold all personal property received as received except automobile bodies until the expiration of three days after the submission of the daily report required by this chapter.

5.02.360 Daily Reports and Purchase Forms.

(a) Junk dealers, pawnbrokers and secondhand dealers licensed under this chapter shall report in writing to the police department, in a manner as approved by the police department, all personal property requiring reporting by this chapter. The daily reports shall be accompanied by a purchase form for each individual transaction. The specific information required on the purchase form is as follows;

1. Dealer's name, business, address and telephone number;
2. Date of purchase;
3. Seller's name, description, residence address, vehicle license number, driver's license or county business license number;
4. Material category descriptions;
5. Weight of material, amount paid and time of payment;
6. Description and identification number of automobile and automobile bodies. Such information may be provided by submission of a vehicle report

completed by the seller of any automobile or automobile body. The vehicle report forms will be made available by the police department.

(b) The purchase forms and daily reports shall include a general description as to the composition of scrap or junk. Products such as castings, wire, tubing, pipe, or similar items may be commonly described. Nonferrous materials shall be reported and ferrous materials including fence material, pipe, chain, machinery parts, foundry castings, cable, automobiles, and automobile bodies shall be reported.

(c) Transactions totaling five dollars (\$5.00) or less need not be reported except for automobiles or automobile bodies, which may be reported in accordance with subsection (a)(6) of this section.

(d) Pawnbrokers and secondhand dealers shall make their reports in compliance with the provisions of Business and Professions Code, Section 21628 and Financial Code Section 21208, of the state of California.

(e) Salvage collectors shall maintain purchase records.

(f) The daily reports and purchase forms shall be written in the English language in a clear and legible manner. The records required by this section shall be retained by the applicant for a period of three years and shall be available for inspection upon demand by any law enforcement officer. The failure to complete, file and retain the records required pursuant to Section 5.02.360 is a violation of this chapter and is unlawful.

Amending Section 5.02.010 "Definitions" by adding the following:

5.02.010 Definitions

(h) "Junk Dealer" means any person having a fixed place of business and conducting, managing or maintaining any place where secondhand and used machinery and scrap metals, including automobiles, tools, implements, or parts or portions thereof, are gathered together, stored, purchased or kept for shipment, sale or transfer.

(i) "Salvage collector" means a person not having a fixed place of business who goes from house to house or place to place gathering, collecting, buying, selling, or otherwise dealing in secondhand and used machinery and scrap metals including automobiles, tools, implements, or parts or portions thereof, or other articles commonly known as salvage.

(j) "Pawnbroker" means any person engaged in any one or more of the following businesses:

- (1) Pawnbroking;

(2) Lending money for himself or any other person on personal property, pawns, or pledges in the possession of the lender;

(3) Purchasing articles of personal property and reselling or agreeing to resell such articles to the vendors or assignees at prices agreed upon at or before the time of such purchase.

(k) "Secondhand dealer" means any person, co-partnership, firm or corporation whose principal business is that of engaging in buying, selling, trading, accepting for sale or consignment, accepting for auctioning, or auctioning secondhand personal property.

(l) "**Proprietor**" shall mean a person with ownership or managerial interest in the business. An ownership interest shall be deemed to exist when a person has ten percent or greater interest in the stock, assets, or income of a business. A managerial interest shall be deemed to exist when a person can or does, have or share ultimate control over the day-to-day operations of the business.

(m) "**Tobacco paraphernalia**" shall mean cigarette papers or wrappers, pipes, holders of smoking materials of all types, cigarette rolling machines, and any other item designed for the smoking, preparation, storing, or consumption of tobacco products.

(n) "**Tobacco product**" shall mean any substance containing tobacco leaf, including but not limited to cigarettes, cigars, pipe tobacco, snuff, chewing tobacco, dipping tobacco, bidis or beedies, hookah tobacco or any other preparation of tobacco.

(o) "**Tobacco retailer**" shall mean any person or proprietor who sells, offers for sale, or exchanges or offers to exchange for any form of consideration, tobacco, tobacco products or tobacco paraphernalia; "**tobacco retailing**" shall mean engaging in any of the above.

(p) "**Arm's length transaction**" shall mean a sale in good faith and for valuable consideration that reflects the fair market value in the open market between two informed and willing parties, neither of which is under any compulsion to participate in the transaction. A sale between relatives, related companies or partners, or a sale for which a significant purpose is to avoid the effect of the violations of this article is not an arm's length transaction.

Amending Chapter 5.02 of Title 5 of the Town of Apple Valley Municipal Code is hereby amended to add the following Sections:

- 5.02.370 Tobacco Retailer's Permit Required**
- 5.02.380 Application Procedure**
- 5.02.390 Issuance of Permit**
- 5.02.400 Display of Permit**

- 5.02.410 Permits Not Transferable**
- 5.02.420 Administrative Violations**
- 5.02.430 Penalties**
- 5.02.440 Right to Administrative Hearing**
- 5.02.450 Severability**

5.02.370 Tobacco Retailer's Permit Required.

A. (1) It shall be a misdemeanor for any person or proprietor, within the Town of Apple Valley, to act as a tobacco retailer at a location for which a valid Tobacco Retailer's Permit has not been issued pursuant to this article. A separate Tobacco Retailer's Permit is required for each location at which tobacco retailing is to occur. No permit shall be issued to authorize tobacco retailing at any place other than a fixed location. Tobacco retailing from any non-permanent location, including from vehicles, is prohibited. No permit shall be issued for residences, newsstands, or locations where engaging in tobacco retailing is prohibited by federal, state or local law.

(2) A person or proprietor without a valid Tobacco Retailer's Permit, including a person or proprietor whose permit has been suspended, shall keep all tobacco products and tobacco paraphernalia out of public view. The public display of tobacco products or tobacco paraphernalia in violation of this provision shall constitute tobacco retailing without a permit.

(3) Each day that a person or proprietor sells or offers for sale tobacco, tobacco products or tobacco paraphernalia without a valid Tobacco Retailer's Permit shall constitute a separate violation.

5.02.380 Application Procedure.

A. (1) Application for a Tobacco Retailer's Permit shall be submitted to the Town Finance Department by any proprietor of a business seeking the permit, with at least one proprietor personally identifying himself or herself with valid government-issued identification at the time the application is submitted. An authorized agent of a business or corporation may submit an application for a Tobacco Retailer's Permit if the application has been completed, signed and notarized by at least one proprietor or corporate officer. Each applicant shall be responsible for reviewing the conditions of conducting retail tobacco sales within the Town of Apple Valley and shall agree to abide by these conditions by signing the application under penalty of perjury. All applications shall be submitted on a form supplied by the Town and shall contain the following information:

(2) The business name, address and telephone number of the location for which the Tobacco Retailer's Permit is sought;

(3) The name, mailing address and telephone number of the proprietor or person authorized to receive communications and notices required by or authorized by this article. If this information is not supplied, each proprietor shall be understood to consent to the provision of notice at the business address of the location for which the Tobacco Retailer's Permit is sought;

(4) The type and identifying number of the government-issued identification presented with the application; and

(5) Other information the Town Attorney deems necessary for enforcement of this ordinance.

(6) A Tobacco Retailer's Permit must be obtained prior to the sale of any tobacco product or tobacco paraphernalia. A new Tobacco Retailer's Permit must be obtained upon change of ownership or upon change of form of ownership prior to the sale of any tobacco product, including but not limited to a sole proprietor becoming a corporation.

5.02.390 Issuance of Permit.

A. (1) The permit shall state the following on its face:

(a) Legal owner,

(b) Doing Business As (D.B.A.),

(c) Town of Apple Valley Municipal Code section regulating Tobacco Retailer's Permits,

(d) Business and mailing addresses,

(e) Date permit was issued and permit expiration date,

(f) Account number.

(g) Upon the receipt of an application for a Tobacco Retailer's the Finance Department shall issue a permit, unless the Assistant Town Manager of Finance and Administration demonstrates one of the following bases for denial:

(1) The application is incomplete or inaccurate; or

(2) The application seeks authorization for tobacco retailing at a location for which a suspension is in effect.

(3) The application seeks authorization for tobacco retailing that is unlawful pursuant to any section of this article or any federal, state or local law.

B. It shall be the responsibility of the Town Manager or his/her designee to enforce all provisions set forth in this article, which includes but is not limited to the following:

(1) Investigate and prosecute tobacco retailers who fail to obtain and/or maintain a Tobacco Retailer's Permit.

(2) Conduct any and all audits that may be necessary in the investigation of tobacco retailers.

C. Finance Department Responsibilities. It shall be the duty of the Finance Department to administer and process the Tobacco Retailer's Permit application and mail renewal notices.

5.02.400 Display of Permit.

A. Any Tobacco Retailer's Permit issued pursuant to this article shall be prominently displayed in public view at the location for which it is issued.

5.02.410 Permits Not Transferable.

A. A Tobacco Retailer's Permit is non-transferable. If a new person or proprietor acquires a business engaged in tobacco retailing, that person or proprietor must apply for a new permit before engaging in the sale of tobacco products or tobacco paraphernalia.

5.02.420 Administrative Violations.

A. (1) Cumulative to Other Violations. The violations set forth in this section are cumulative to, and in addition to, any other violations of federal, state or local law and shall be punished as specified in Section 5.02.430

(2) **Failure to Comply With Federal, State or Local Law.** Any tobacco retailer for whom a duly certified abstract of the record of any court or administrative adjudicative proceeding has been received by the Town Manager or designee showing that the tobacco retailer has violated any federal, state or local law regarding the sale, advertisement or display of tobacco products shall be guilty of an administrative violation. An administrative penalty will be imposed under Section 5.02.430 when the person or proprietor has either been:

(3) determined to be in violation of any federal, state or local law by an appropriate governmental administrative agency, or

(4) determined to be in violation of any federal, state or local law by a court of competent jurisdiction including but not limited to the entry of a plea of guilty or "no contest" in a criminal case.

5.02.430 Penalties

A. (1) Any tobacco retailer determined by the Town Manager or his/her designee to have violated a section of this chapter shall be subject to the penalties of this section. The Town Manager or his/her designee shall notify the tobacco retailer that there has been an initial determination of violation under the provisions of this ordinance, and shall specify the violation and the penalty imposed, including the effective date of the suspension, if any. The notice shall further state that the tobacco retailer may, within 15 calendar days of receipt of the notice, submit to the Town Manager or designee any written or documentary evidence to contest the initial determination of violation. After receiving and considering the evidence that is provided, the Town Manager or his/her designee shall prepare a final written decision with findings, and shall serve this final determination upon the tobacco retailer.

(2) Administrative penalties shall be imposed as follows:

(a) For the first violation in any five-year period, the tobacco retailer shall receive a letter of reprimand from the Town and in accordance with Business and Professions Code Section 22958 (a) a \$400 penalty.

(b) For the second violation in any five-year period, the Tobacco Retailer's Permit shall be suspended for 30 calendar days and in accordance with Business and Professions Code Section 22958 (a) a \$950 penalty.

(c) For a third violation in any five-year period, the Tobacco Retailer's Permit shall be suspended for 90 calendar days and in accordance with Business and Professions Code Section 22958 (a) a \$1500 penalty.

(d) For a fourth or subsequent violation in any five-year period, the Tobacco Retailer's Permit shall be suspended for 12 months and in accordance with Business and Professions Code Section 22958 (a) a \$3500 penalty.

(3) Notwithstanding any other provision of this article, prior violations at a location shall continue to be counted against a location and permit suspension periods shall continue to apply to a location unless:

(a) the location has been fully transferred to a new proprietor or proprietors; and

(b) the new proprietor(s) provide the Assistant Town Manager of Finance and Administration or his/her designee with clear and convincing evidence that the new proprietor(s) have acquired or is acquiring the location in an arm's length transaction.

B. In addition to the administrative penalties, any person who violates a section of the chapter shall be guilty of a misdemeanor subject to section 1.01.200.

5.02.440 Right to Administrative Hearing

A. (1) The tobacco retailer shall have the right to an administrative review of the final determination of the Town Manager. The administrative review shall be conducted by the Town Manager or designee to obtain an administrative review of the Town Manager's final determination, the tobacco retailer must complete the request for administrative hearing form available at the Town Clerk's Office, within 15 calendar days of its receipt of the Town Manager's final determination. The amount of the fine must be deposited with the Town. The timely filing of a request for an administrative review shall hold in abeyance any permit suspension until the administrative review is heard and decided.

(2) Notice of Review. If a review is requested pursuant to Section 5.02.440 (A)1 The hearing shall be set for a date that is not less than fifteen (15) and not more than sixty (60) days from the date that the "request for hearing" is filed in accordance with the provisions of AVMC section 1.01.205. The person requesting the hearing shall be notified of the time and place set for the hearing at least seven (7) days prior to the date of the hearing.

(3) Review Procedure. The hearing officer shall only consider evidence that is relevant to whether the violation occurred and whether the responsible person has caused or maintained the violation of the municipal Code on the date(s) specified in the violation notice. The responsible person contesting the administrative citation shall be given the opportunity to testify and present witnesses and evidence concerning the administrative citation. After considering all of the testimony and evidence submitted at the hearing, the hearing officer may immediately issue a verbal decision or may issue a written decision within ten (10) days of the hearing. The decision shall include the reasons for the decision and such decision shall be final. If the hearing officer determines that the violation should be upheld, then the fine amount on deposit with the town shall be retained by the town. If the hearing officer determines that the violation should be cancelled and the fine was deposited with the town, then the town shall promptly refund the amount of the deposited fine.

(4) Finality of The Town Manager or designee's decision. The decision of the Hearing Officer shall be the final decision by the Town.

5.02.450 Severability.

A. If any section, subsection, subdivision, paragraph, sentence, clause or phrase of this Ordinance is for any reason held to be invalid or unenforceable, such invalidity or unenforceability shall not affect the validity or enforceability of

the remaining sections, subsections, subdivisions, paragraphs, sentences, clauses or phrases of this Ordinance or the rules adopted hereby. The Town Council of the Town of Apple Valley hereby declares that it would have adopted independently each section, subsection, subdivision, paragraph, sentence, clause or phrase hereof, irrespective of the fact that any one or more other sections, subsections, subdivisions, paragraphs, sentences, clauses or phrases hereof be declared invalid or unenforceable.

Section 3. Except as expressly amended and repealed hereby, all other provisions of Title 5 of the Town of Apple Valley Municipal Code shall remain in effect.

Section 4. Invalidation. The amendments by this ordinance of Chapter 5.02 of Title 5 of the Town of Apple Valley Municipal Code as previously in effect shall not be construed to invalidate any entitlement exercised or proceeding taken pursuant to the Chapter while the same was in effect.

Section 6. Effective Date. This ordinance shall become effective thirty days from and after its adoption.

Section 7. 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.

PASSED, APPROVED and ADOPTED by the Town Council and signed by the Mayor and attested by the Town Clerk this day 11 of May 2010.

Mayor

Attest:

La Vonda Pearson, Town Clerk

Approved as to form:

John Brown, Town Attorney

Approved as to content:

Frank W. Robinson, Town Manager