

**TOWN OF
APPLE VALLEY, CALIFORNIA**

AGENDA MATTER

Subject Item:

TOWN OF APPLE VALLEY COMPLIANCE WITH THE STATE OF CALIFORNIA VOLUNTARY ALTERNATIVE REDEVELOPMENT PROGRAM PURSUANT TO PART 1.9 OF DIVISION 24 OF THE CALIFORNIA HEALTH AND SAFETY CODE AS PROVIDED BY ABx1 27.

Summary Statement:

On or about June 28, 2011, Governor Brown signed two budget trailer bills affecting redevelopment that, if left to stand, will significantly modify the California Redevelopment Law (CRL): ABx1 26 (the "Dissolution Act") and ABx1 27 (the "Voluntary Program Act"), together called the "Redevelopment Restructuring Acts". If upheld against constitutional challenge filed by the California Redevelopment Association and the League of California Cities, the Redevelopment Restructuring Acts will fundamentally alter the future of California redevelopment.

Working in tandem, ABx1 26 and ABx1 27 will accomplish the following key changes to redevelopment programs administered by California's approximately 500 redevelopment agencies:

1. The Dissolution Act immediately suspends all new redevelopment activities, including the incurrence of indebtedness, and dissolves redevelopment agencies (RDAs) effective October 1, 2011; and,
2. The Voluntary Program Act enables RDAs to avoid dissolution under the Dissolution Act by opting into an "alternative voluntary redevelopment program" and making required, specified, substantial, annual contributions to local schools and special districts. The "Voluntary Program" is designed to recover from RDAs approximately \$1.7 billion for the 2011/12 fiscal year for state budget purposes, and approximately \$400-million in each succeeding year subject to certain adjustments.

(Summary Statement Continued)

Recommendation:

That the Town Council adopt the attached urgency Ordinance No. 421 which, upon adoption, will enable the AVRDA to opt into the state's Voluntary Alternative Redevelopment Program. Further, that the Town Council introduce Ordinance No. 422 for the purpose of enabling the Town of Apple Valley to opt into the state's Voluntary Alternative Redevelopment Program.

Proposed by: Economic and Community Development Item Number _____

Town Manager Approval: _____ Budgeted Item Yes No N/A

The actions by the Legislature and Governor have been taken in a fluid, ever-evolving environment, with several pieces of conceptual, clean-up legislation yet to be introduced (one would allow agencies to make their "Continuation Payments" over a period of years and require the repayment of any housing funds used to make the initial 2011/12 Continuation Payment), and several other redevelopment bills that have been introduced but have yet to be acted upon by the entire Legislature: SB 450 (Lowenthal) would enact major reforms to the affordable housing provisions of the CRL, while SB 286 (Wright) and AB 1250 (Alejo) would address major CRL reforms related to non-housing redevelopment activities (80%) and the adoption of future redevelopment plans. Against this backdrop, the Mayor and Town Council should understand that this report is merely a snapshot of the current state of affairs and that future actions will almost certainly be required of the Town and AVRDA in order to successfully implement a course of action that will be in the best interest of the community.

Analysis:

This staff report recommends the Town Council adopt the attached Ordinances, enabling the Town to opt into the state's Voluntary Program (The California Redevelopment Association and League of California Cities have strongly recommended that all RDAs should opt into the Voluntary Alternative Redevelopment Program.) If the Town Council elects to opt into the Voluntary Program, the payments required of the AVRDA are approximately \$1,412,930 for Project Area No. 1 (PA 1; VVEDA) and approximately \$1,631,773 million for Project Area No. 2 (PA 2). Together, these estimated payments total \$3,044,703 and would be in addition to the approximately \$4.6 million the state has taken from the AVRDA over the last two years. The actual amounts to be paid will be provided to localities by the state Department of Finance on August 1, 2011.

While the Continuation Payments are substantial, and continue for the life of the affected redevelopment project area, it is noted that allowing the Dissolution Act to remain in place (by not opting in), the entire Town of Apple Valley economic development program will be eliminated effective October 1, 2011, including the cessation of all business attraction, business retention, marketing and related activities. Major Town Council priorities will also be eliminated. These priorities include, but are not limited to, the redevelopment agency's funding of the North Apple Valley Industrial Specific Plan (NAVISP) infrastructure program, the Yucca Loma Bridge financing (\$13-million in redevelopment bond proceeds), the AMCAL affordable housing project, implementing the Village PBID public infrastructure program and, generally, the agency's core programs, projects and activities. In order to continue to have the opportunity to bring these projects into fruition, the Town Council should favorably consider the state's Voluntary Alternative Redevelopment Program.

While opting into the state's Voluntary Alternative Redevelopment Program for PA 2 is a, relatively, straightforward process, the same decision confronting the VVEDA board of directors (PA 1) is complicated by a number of factors, not least of which is VVEDA's total state-estimated payment of \$16,216,080. Another payment estimate has been provided to VVEDA by its consultant, RSG. The RSG total estimated VVEDA payment is \$14,943,639. These two numbers will need to be reconciled, along with a determination made regarding the method of calculation for making the SCLA and member agency payments (point of allocation or proportionate share of gross and net tax increment). Although VVEDA was formed to offset the closure of the former George AFB, and is a joint powers authority, the Redevelopment Restructuring Acts do not distinguish former military bases (VVEDA) from any other redevelopment agency; therefore, according to CRA legal counsel, both ABx1 26 and ABx1 27

apply to VVEDA and its member agencies. Further discussion of the VVEDA component of this report will take place after the Special VVEDA Technical Advisory Committee (TAC) meeting scheduled to occur on July 20, 2011, and the information will be available to the Council at its July 25, 2011 Special Meeting.

Litigation:

The California Redevelopment Association (“CRA”) and the League of California Cities (the “League”), on July 18, 2011, filed their much anticipated lawsuit challenging the validity and constitutionality of the Redevelopment Restructuring Acts on numerous grounds, including that the acts violate the following provisions of the California Constitution:

- Article XIII A, Section 25.5, which prohibits city or county property tax from being used for schools;
- Article XIII A, Section 1, which prohibits the transfer of property tax to transit districts;
- Article XIII, Section 24, which prohibits the Legislature from restricting the use of taxes imposed by local governments for their local purposes;
- Article XIII A, Section 25.5, which prohibits the indirect allocation of tax increment to schools, transit districts and fire protection districts;
- Article XVI, Section 6, which prohibits the transfer of city or county revenues to schools and transit districts and fire protection districts as an unlawful gift of public funds;
- Article XIII B, which prohibits the use of property tax to fund state mandates;
- Article XVI, Section 16, which requires all tax increment to be used to repay indebtedness incurred by the redevelopment agency to carry out its redevelopment projects; and
- Article XIII A, Section 25.5, which prohibits city and county property tax from being transferred to special districts without a 2/3 vote.

The CRA and the League have petitioned to have their lawsuit heard, initially, by the California Supreme Court to accelerate the ultimate court decision. The lawsuit seeks a court “stay”, or injunction, to prevent the Redevelopment Restructuring Acts from being operative pending the final court decision on the merits of the lawsuit. Given the complexity and magnitude of impact of the Redevelopment Restructuring Acts, it is also highly likely that these acts will engender litigation from individual RDAs regarding the constitutionality and applicability of various provisions of the acts to the litigating RDAs’ individual situations.

Notwithstanding the above, alleged violations of the state constitution, staff believes the fortunes of the CRA/League lawsuit will revolve around the Court’s analysis of Proposition 22, passed by 61% of the voters in November 2010, and its applicability to the Redevelopment Restructuring Acts. For a more detailed analysis of Proposition 22, Council may wish to engage the Town Attorney in a discussion of this matter, but it is the CRA, League and staff’s opinion that the prospects for a successful lawsuit are better than 50-50 as result of the passage of Proposition 22. According to CRA and League legal counsels, Proposition 22 was drafted with the Redevelopment Restructuring Acts in mind, as well as raids by the state on other local resources. If the CRA and League prevail in this most recent lawsuit, such a decision could favorably impact the appeal filed by the CRA and League for the Court decision sustaining the taking of \$2.05 billion from redevelopment agencies in 2009 and 2010. The very best case scenario would include the CRA and League being victorious in the instant lawsuit, winning the above referenced appeal and the Court requiring the state to reimburse redevelopment agencies for these unlawful takes. In this best case scenario, the Town would be relieved of making future Continuation Payments and would be in line to receive approximately \$4.6 million from the state taken from the Town over the course of 2009, 2010 and 2011. As summarized

above, a reading of the Dissolution Act sets forth what will happen to local RDAs in a worst case scenario.

The key point to be made with respect to this most recent litigation is that it is absolutely necessary that a stay be granted by the California Supreme Court in order to preserve the status quo pending a decision on the constitutionality of the Redevelopment Restructuring Acts. If the Court grants a stay, some or all of the provisions of the Redevelopment Restructuring Acts will be suspended until the Court makes a decision on the merits of the case. It is difficult to predict the exact parameters of a stay but, at a minimum, a stay should suspend the dissolution of agencies and the time for making Continuation Payments.

Impact on Town Budget:

If the AVRDA is dissolved pursuant to ABx1 26, the proposed \$943,271 operating transfer from the AVRDA to the Town will no longer be available for the 2011/2012 budget. If the Town opts into the Voluntary Alternative Redevelopment Program pursuant to ABx1 27 as recommended, the funds proposed for the operating transfer will be required to ensure the agency's continued ability to operate and for making the Continuation Payments scheduled to be made in two equal installments on January 15 and May 15, 2012 (totaling \$3.044 million). Other than becoming subject to the Dissolution Act, there is no further penalty that would be incurred by Sponsoring Communities (the Town) if they elect to opt into the state's Voluntary Alternative Redevelopment Program and, later on, determine that the Continuation Payments will not be made. If such circumstances were to occur, the affected redevelopment agency would become immediately subject to the Dissolution Act (ABx1 26).

If the Town opts into the Voluntary Alternative Redevelopment Program, making the annual, Continuation Payments could prevent the Town from making appropriate operating transfers between the redevelopment fund and the General Fund until such time as revenues increased. Redevelopment revenues have fallen by 30+% the last several years so there will be a significant revenue upside when the economy makes a significant turn for the better. In a better economy, and assuming victory and related reimbursements on the litigation front, the Town would be in a position to develop an appropriate operating transfer framework for the future and reconcile prior transfers with applicable provisions of the state Health & Safety Code.

Recommendation:

Based upon the foregoing, staff recommends adoption of the form motions.

ORDINANCE NO. 421

AN URGENCY ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF APPLE VALLEY COMPLYING WITH THE VOLUNTARY ALTERNATIVE REDEVELOPMENT PROGRAM PURSUANT TO PART 1.9 OF DIVISION 24 OF THE CALIFORNIA HEALTH AND SAFETY CODE, AS PROVIDED BY AB 1X 27, IN ORDER TO PERMIT THE CONTINUED EXISTENCE AND OPERATION OF THE APPLE VALLEY REDEVELOPMENT AGENCY UNDER THREAT OF DISSOLUTION

WHEREAS, the Town Council of the Town of Apple Valley ("Town") approved and adopted the Redevelopment Plan ("Redevelopment Plan") for the redevelopment project area known as the "Apple Valley Redevelopment Project Area" ("Project Area") covering certain properties within the Town; and

WHEREAS, the Apple Valley Redevelopment Agency ("Agency") is engaged in activities to execute and implement the Redevelopment Plan pursuant to the provisions of the California Community Redevelopment Law (Health and Safety Code § 33000, et seq.) ("CRL"); and

WHEREAS, since adoption of the Redevelopment Plan, the Agency has undertaken redevelopment projects in the Project Area to eliminate blight, to improve public facilities and infrastructure, to renovate and construct affordable housing, and to enter into partnerships with private industries to create jobs and expand the local economy; and

WHEREAS, over the next few years, the Agency hopes to implement a variety of redevelopment projects and programs to continue to eliminate and prevent blight, stimulate and expand the Project Area's economic growth, create and develop local job opportunities and alleviate deficiencies in public infrastructure, to name a few; and

WHEREAS, as part of the 2011-2012 State budget bill, the California Legislature has recently enacted, and the Governor has signed, companion bills AB 1X 26 and AB 1X 27, requiring that each redevelopment agency be dissolved unless the community that created it enacts an ordinance committing it to making certain payments; and

WHEREAS, specifically, AB 1X 26 prohibits agencies from taking numerous actions, effective immediately and purportedly retroactively, and additionally provides that agencies are deemed to be dissolved as of October 1, 2011; and

WHEREAS, AB 1X 27 provides that a community may participate in an "Alternative Voluntary Redevelopment Program," in order to enable a redevelopment agency within that community to remain in existence and carry out the provisions of the CRL, by enacting an ordinance agreeing to comply with Part 1.9 of Division 24 of the Health and Safety Code; and

WHEREAS, the Alternative Voluntary Redevelopment Program requires that the community agree by ordinance to remit specified annual amounts to the county auditor-controller; and

WHEREAS, under the threat of dissolution pursuant to AB 1X 26, and upon the contingencies and reservations set forth herein, the Town shall make the Fiscal Year 2011-2012 community remittance, currently estimated to be One Million Six Hundred Thirty One Thousand Seven Hundred Seventy Three Dollars (\$1,631,773) as well as the subsequent annual community remittances as set forth in the CRL; and

WHEREAS, the Town reserves the right to appeal the California Director of Finance's determination of the Fiscal Year 2011-2012 community remittance, as provided in Health and Safety Code Section 34194; and

WHEREAS, Town understands and believes that an action challenging the constitutionality of AB 1X 26 and AB 1X 27 will be filed on behalf of cities, counties and redevelopment agencies; and

WHEREAS, while the Town currently intends to make these community remittances, they shall be made under protest and without prejudice to the Town's right to recover such amounts and interest thereon, to the extent there is a final determination that AB 1X 26 and AB 1X 27 are unconstitutional; and

WHEREAS, the Town reserves the right, regardless of any community remittance made pursuant to this Urgency Ordinance, to challenge the legality of AB 1X 26 and AB 1X 27; and

WHEREAS, to the extent a court of competent jurisdiction enjoins, restrains, or grants a stay on the effectiveness of the Alternative Voluntary Redevelopment Program's payment obligation of AB 1X 26 and AB 1X 27, the Town shall not be obligated to make any community remittance for the duration of such injunction, restraint, or stay; and

WHEREAS, all other legal prerequisites to the adoption of this Urgency Ordinance have occurred.

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

Section 1. Recitals The Recitals set forth above are true and correct and incorporated herein by reference.

Section 2. Findings The adoption of this Urgency Ordinance is necessary for the immediate protection of the public peace, health and safety. In accordance with California Government Code Section 36937 and in order to protect the public peace, health and safety, the Town Council of the Town of Apple Valley further finds as follows:

- (a) AB 1X 26 prohibits agencies from taking numerous actions, until the Town Council adopts an ordinance agreeing to comply with Part 1.9 of Division 24 of the Health and Safety Code, including but not limited to incurring any new monetary or legal obligations or expanding any existing monetary or legal obligations, entering into agreements with any person for any purpose or amending or modifying any existing agreements and taking any action with respect to a redevelopment plan.
- (b) Prior to the effective date of an ordinance agreeing to comply with Part 1.9 of Division 24 of the Health and Safety Code, the Agency will be unable to continue efforts to eliminate and prevent blight (including remediation of buildings and structures which are unhealthy or unsafe to occupy or properties with hazardous waste), stimulate and expand the Project Area's economic growth, create and develop local job opportunities and alleviate deficiencies in public infrastructure.
- (c) Blighting conditions in the Project Area constitute substantial threats to public peace, health and safety, and are so prevalent they cannot be eliminated without Agency action, including but not limited to the use of Agency funds and authorization of programs.
- (d) During the current economic crisis, the Agency must have the ability to act and continue the efforts set forth in Section 2(b) above. As of May 2011, the unemployment rate in San Bernardino County was approximately 13% compared to a national average of 8.7%. The Agency must have all tools available in order to combat this problem, including implementation of the Agency's economic development programs.
- (e) Through assistance with bridge and infrastructure improvements, assistance with offsite improvements for development projects, an affordable housing down payment assistance program, a current for-sale affordable condominium project and a pending senior rental project, the Agency is actively engaged in efforts to improve the quality of life in the Town, create jobs, and provide safe and affordable housing. Adoption of this Urgency Ordinance will permit the Agency to continue these efforts immediately.

- Section 3. Participation in the Alternative Voluntary Redevelopment Program In accordance with Health and Safety Code Section 34193, and based on the Recitals set forth above, the Town Council hereby determines that the Town shall comply with the provisions of Part 1.9 of Division 24 of the Health and Safety Code, as enacted by AB 1X 27.
- Section 4. Payment Under Protest Except as set forth in Section 5, below, the Town Council hereby determines that the Town shall make the community remittances set forth in Health and Safety Code section 34194 *et seq.*
- Section 5. Effect of Stay or Determination of Invalidity Town shall not make any community remittance in the event a court of competent jurisdiction either grants a stay on the enforcement of AB 1X 26 or AB 1X 27 or determines that AB 1X 26 or AB 1X 27 are unconstitutional and therefore invalid, and all appeals therefrom are exhausted or unsuccessful, or time for filing an appeal therefrom has lapsed. Any community remittance shall be made under protest and without prejudice to the Town's right to recover such amount and interest thereon in the event that there is a final determination that AB 1X 26 and AB 1X 27 are unconstitutional. If there is a final determination that AB 1X 26 and AB 1X 27 are invalid, this Urgency Ordinance shall be deemed to be null and void and of no further force or effect.
- Section 6. Implementation The Town Council hereby authorizes and directs the Town Manager to take any action and execute any documents necessary to implement this Urgency Ordinance, including but not limited to notifying the San Bernardino County Auditor-Controller, the Controller of the State of California, and the California Department of Finance of the adoption of this Urgency Ordinance and the Town's agreement to comply with the provisions of Part 1.9 of Division 24 of the Health and Safety Code, as set forth in AB 1X 27.
- Section 7. Additional Understandings and Intent It is the understanding and intent of the Town Council that, once the Agency is again authorized to enter into agreements under the CRL, the Town will enter into an agreement with the Agency as authorized pursuant to Health and Safety Code Section 34194.2, whereby the Agency will transfer annual portions of its tax increment to the Town in amounts not to exceed the annual community remittance payments to enable the Town, directly or indirectly, to make the annual remittance payments. The Town Council does not intend, by enactment of this Urgency Ordinance, to pledge any of its general fund revenues or assets to make the remittance payments.
- Section 8. CEQA The Town Council finds, under Title 14 of the California Code of Regulations, Section 15378(b)(4), that this Urgency Ordinance is exempt from the requirements of the California Environmental Quality Act ("CEQA") in that it is not a "project," but instead consists of the creation

and continuation of a governmental funding mechanism for potential future projects and programs, and does not commit funds to any specific project or program. The Town Council, therefore, directs that a Notice of Exemption be filed with the County Clerk of the County of San Bernardino in accordance with CEQA Guidelines.

Section 9. Custodian of Records The documents and materials that constitute the record of proceedings on which these findings are based are located at the Town Clerk's office located at 14955 Dale Evans Parkway, Apple Valley, CA 92307. The custodian for these records is the Town Clerk.

Section 10. Severability If any provision of this Urgency Ordinance or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of this Urgency Ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this Urgency Ordinance are severable. The Town Council hereby declares that it would have adopted this Ordinance irrespective of the invalidity of any particular portion thereof.

Section 11. Effective Date This Urgency Ordinance shall become effective immediately upon its adoption.

Section 12. Publication The Town Clerk shall certify to the adoption of this Urgency Ordinance and cause it, or a summary of it, to be published once within 15 days of adoption in a newspaper of general circulation printed and published within the Town of Apple Valley, and shall post a certified copy of this Urgency Ordinance, including the vote for and against the same, in the Office of the Town Clerk in accordance with Government Code § 36933.

[continued on following page]

ORDINANCE NO. 421

MOVED, PASSED, AND ADOPTED at a meeting of the Town Council on the 2nd day of August, 2011.

Town of Apple Valley

Mayor

ATTEST:

Town Clerk

Approved as to form:

Approved as to content:

Town Attorney

Town Manager

ORDINANCE NO. 422

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF APPLE VALLEY COMPLYING WITH THE VOLUNTARY ALTERNATIVE REDEVELOPMENT PROGRAM PURSUANT TO PART 1.9 OF DIVISION 24 OF THE CALIFORNIA HEALTH AND SAFETY CODE, AS PROVIDED BY AB 1X 27, IN ORDER TO PERMIT THE CONTINUED EXISTENCE AND OPERATION OF THE APPLE VALLEY REDEVELOPMENT AGENCY UNDER THREAT OF DISSOLUTION

WHEREAS, the Town Council of the Town of Apple Valley ("Town") approved and adopted the Redevelopment Plan ("Redevelopment Plan") for the redevelopment project area known as the "Apple Valley Redevelopment Project Area" ("Project Area") covering those certain properties within the Town included within the Apple Valley Redevelopment Project Area; and

WHEREAS, the Apple Valley Redevelopment Agency ("Agency") is engaged in activities to execute and implement the Redevelopment Plan pursuant to the provisions of the California Community Redevelopment Law (Health and Safety Code § 33000, et seq.) ("CRL"); and

WHEREAS, since adoption of the Redevelopment Plan, the Agency has undertaken redevelopment projects in the Project Area to eliminate blight, to improve public facilities and infrastructure, to expand affordable housing, and to enter into partnerships with private industries to create jobs and expand the local economy; and

WHEREAS, over the next few years, the Agency hopes to implement a variety of redevelopment projects and programs to continue to eliminate and prevent blight, stimulate and expand the Project Area's economic growth, create and develop local job opportunities and alleviate deficiencies in public infrastructure, to name a few; and

WHEREAS, as part of the 2011-2012 State budget bill, the California Legislature has recently enacted, and the Governor has signed, companion bills AB 1X 26 and AB 1X 27, requiring that each redevelopment agency be dissolved unless the community that created it enacts an ordinance committing it to making certain payments; and

WHEREAS, specifically, AB 1X 26 prohibits agencies from taking numerous actions, effective immediately and purportedly retroactively, and additionally provides that agencies are deemed to be dissolved as of October 1, 2011; and

WHEREAS, AB 1X 27 provides that a community may participate in an "Alternative Voluntary Redevelopment Program," in order to enable a redevelopment

agency within that community to remain in existence and carry out the provisions of the CRL, by enacting an ordinance agreeing to comply with Part 1.9 of Division 24 of the Health and Safety Code; and

WHEREAS, the Alternative Voluntary Redevelopment Program requires that the community agree by ordinance to remit specified annual amounts to the county auditor-controller; and

WHEREAS, under the threat of dissolution pursuant to AB 1X 26, and upon the contingencies and reservations set forth herein, the Town shall make the Fiscal Year 2011-2012 community remittance, currently estimated to be One Million Six Hundred Thirty One Thousand Seven Hundred Seventy Three Dollars (\$1,631,773) as well as the subsequent annual community remittances as set forth in the CRL; and

WHEREAS, the Town reserves the right to appeal the California Director of Finance's determination of the Fiscal Year 2011-2012 community remittance, as provided in Health and Safety Code section 34194; and

WHEREAS, Town understands and believes that an action challenging the constitutionality of AB 1X 26 and AB 1X 27 will be filed on behalf of cities, counties and redevelopment agencies; and

WHEREAS, while the Town currently intends to make these community remittances, they shall be made under protest and without prejudice to the Town's right to recover such amounts and interest thereon, to the extent there is a final determination that AB 1X 26 and AB 1X 27 are unconstitutional; and

WHEREAS, the Town reserves the right, regardless of any community remittance made pursuant to this Ordinance, to challenge the legality of AB 1X 26 and AB 1X 27; and

WHEREAS, to the extent a court of competent jurisdiction enjoins, restrains, or grants a stay on the effectiveness of the Alternative Voluntary Redevelopment Program's payment obligation of AB 1X 26 and AB 1X 27, the Town shall not be obligated to make any community remittance for the duration of such injunction, restraint, or stay; and

WHEREAS, all other legal prerequisites to the adoption of this Ordinance have occurred.

THE TOWN COUNCIL OF THE TOWN OF APPLE VALLEY DOES HEREBY ORDAIN AS FOLLOWS:

- (a) Findings The Recitals set forth above are incorporated herein and made an operative part of this Ordinance as though fully set forth herein.
- (b) Participation in the Alternative Voluntary Redevelopment Program In accordance with Health and Safety Code Section 34193, and based on

the Recitals set forth above, the Town Council hereby determines that the Town shall comply with the provisions of Part 1.9 of Division 24 of the Health and Safety Code, as enacted by AB 1X 27.

- (c) Payment Under Protest Except as set forth in Section 4, below, the Town Council hereby determines that the Town shall make the community remittances set forth in Health and Safety Code section 34194 *et seq.*
- (d) Effect of Stay or Determination of Invalidity Town shall not make any community remittance in the event a court of competent jurisdiction either grants a stay on the enforcement of AB 1X 26 or AB 1X 27 or determines that AB 1X 26 and AB 1X 27 are unconstitutional and therefore invalid, and all appeals therefrom are exhausted or unsuccessful, or time for filing an appeal therefrom has lapsed. Any community remittance shall be made under protest and without prejudice to the Town's right to recover such amount and interest thereon in the event that there is a final determination that AB 1X 26 and AB 1X 27 are unconstitutional. If there is a final determination that AB 1X 26 and AB 1X 27 are invalid, this Ordinance shall be deemed to be null and void and of no further force or effect.
- (e) Implementation The Town Council hereby authorizes and directs the Town Manager to take any action and execute any documents necessary to implement this Ordinance, including but not limited to notifying the San Bernardino County Auditor-Controller, the Controller of the State of California, and the California Department of Finance of the adoption of this Ordinance and the Town's agreement to comply with the provisions of Part 1.9 of Division 24 of the Health and Safety Code, as set forth in AB 1X 27.
- (f) Additional Understandings and Intent It is the understanding and intent of the Town Council that, once the Agency is again authorized to enter into agreements under the CRL, the Town will enter into an agreement with the Agency as authorized pursuant to Health and Safety Code Section 34194.2, whereby the Agency will transfer annual portions of its tax increment to the Town in amounts not to exceed the annual community remittance payments to enable the Town, directly or indirectly, to make the annual remittance payments. The Town Council does not intend, by enactment of this Ordinance, to pledge any of its general fund revenues or assets to make the remittance payments.
- (g) CEQA The Town Council finds, under Title 14 of the California Code of Regulations, Section 15378(b)(4), that this Ordinance is exempt from the requirements of the California Environmental Quality Act ("CEQA") in that it is not a "project," but instead consists of the creation and continuation of a governmental funding mechanism for potential future projects and programs, and does not commit funds to any specific project or program.

The Town Council, therefore, directs that a Notice of Exemption be filed with the County Clerk of the County of San Bernardino in accordance with CEQA Guidelines.

- (h) Custodian of Records The documents and materials that constitute the record of proceedings on which these findings are based are located at the Town Clerk's office located at 14955 Dale Evans Parkway, Apple Valley, CA 92307. The custodian for these records is the Town Clerk.
- (i) 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 of this Ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this Ordinance are severable. The Town Council hereby declares that it would have adopted this Ordinance irrespective of the invalidity of any particular portion thereof.
- (j) Effective Date This Ordinance shall become effective thirty (30) days following its adoption.
- (k) Publication The Town Clerk shall certify to the adoption of this Ordinance and cause it, or a summary of it, to be published once within 15 days of adoption in a newspaper of general circulation printed and published within the Town of Apple Valley, and shall post a certified copy of this Ordinance, including the vote for and against the same, in the Office of the Town Clerk in accordance with Government Code § 36933.

[Signatures on following page]

ORDINANCE NO. 422

PASSED, APPROVED AND ADOPTED this ___ day of _____, 2011.

Town of Apple Valley

Mayor

ATTEST:

Town Clerk

Approved as to form:

Town Attorney

Approved as to content:

Town Manager