

**TOWN OF
APPLE VALLEY, CALIFORNIA**

AGENDA MATTER

Subject Item:

ADOPT 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

Summary Statement:

At the Town Council Meeting on August 2, 2011, the Town Council reviewed and introduced 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. As part of the requirements to adopt a new Ordinance, Ordinance 422 has been scheduled for adoption at the August 9, 2011 Town Council Meeting.

Recommendation:

Adopt Ordinance No. 422

Proposed by: Economic and Community Development

Item Number _____

Town Manager Approval: _____

Budgeted Item Yes No N/A

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 9th day of August, 2011.

Town of Apple Valley

Mayor

ATTEST:

Town Clerk

Approved as to form:

Town Attorney

Approved as to content:

Town Manager