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TOWN OF APPLE VALLEY PLANNING COMMISSION

Staff Report

AGENDA DATE:	August 7, 2013
CASE NUMBER:	Development Code Amendment No. 2013-03
APPLICANT:	Town of Apple Valley
PROPOSAL:	Discussion of Town's Existing Urgency Ordinance clarifying the scope of the Town's prohibition of Medical Marijuana Dispensaries and recent laws regarding the banning and regulation of such dispensaries
LOCATION:	Town-wide
ENVIRONMENTAL DETERMINATION:	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.
PROJECT PLANNER:	Haviva Shane, Deputy Town Attorney
RECOMMENDATION:	Discuss the Town's existing prohibition of medical marijuana dispensaries, the status of California law concerning the Town's ability to ban or regulate these dispensaries, and enforcement alternatives and costs.

SUMMARY:

On May 28, 2013, the Town Council adopted Urgency Ordinance No. 447 to expressly clarify the Town's prohibition of medical marijuana dispensaries ("MMD's") within every zoning district of the Town. On July 9, 2013, the Town Council extended the Ordinance to be effective until May 27, 2014. The issue is now before the Planning Commission for a discussion of this Ordinance, the current status of federal and California law on the ability of the Town to ban or regulate MMD's and any associated risks, and enforcement alternatives and costs.

DISCUSSION:

State and Federal Law

In 1996, California voters approved Proposition 215, entitled "The Compassionate Use Act" (the "CUA"), which provides seriously ill Californians "the right to obtain and use marijuana for medical purposes" once a physician has deemed the use beneficial to the patient's health. The CUA regulates several forms through which marijuana can be distributed, such as "a medical marijuana cooperative, collective, dispensary, operator, establishment, or provider that is authorized by law to possess, cultivate, or distribute medical marijuana and that has a storefront or mobile retail outlet which ordinarily requires a local business license." By its own terms, nothing in CUA prohibits a city from adopting policies further restricting the location or establishment of such operations. Accordingly, a city may impose such restrictions on any medical marijuana distributor, whether it operates via a storefront or via a mobile retail delivery.

In 2003, the State legislature enacted SB 420 to clarify the CUA's scope and to allow cities to adopt and enforce rules and regulations consistent with its provisions. SB 420 is also known as the "Medical Marijuana Program Act" ("MMP") and provides additional statutory guidance for those involved with medical marijuana use. The CUA and MMP allow for the use and operation of collectives or cooperatives by qualified medical marijuana patients and primary caregivers, and provide narrow affirmative defenses for criminal prosecutions of persons for drug possession. Notwithstanding the CUA and MMP, the Federal Controlled Substance Act makes it unlawful to manufacture, process, distribute or dispense marijuana. In fact, the United States Supreme Court, in both 2001 and 2005, held that Federal law continues to apply in California despite the CUA and that no medical necessity exceptions exist.

After the initial passage of the CUA, some cities and counties across California began to experience a proliferation of storefront medical marijuana dispensaries claiming to be legal collectives or cooperatives. Aside from the fact that the use and distribution of marijuana in any form is illegal under federal law, the existence of storefront dispensaries is usually illegal under California law because it is nearly impossible to comply with the CUA and MMP while catering to a large membership. Moreover, storefront dispensaries also create significant crime, health, and safety concerns for the surrounding areas. After studying these concerns, some municipalities chose to adopt comprehensive bans on storefront medical marijuana dispensaries and collectives, based upon their knowledge of how these dispensaries operated at that time.

Concerns about recreational marijuana use in connection with medical marijuana distribution operations have been recognized by Federal and State courts. In the 2012 case of *People v. Leal*, the Court noted, that the legal protection of State law "has proven irresistible to those illegally trafficking marijuana . . . that there is obviously widespread abuse of the CUA and

the MMP identification card scheme by illicit sellers of marijuana. . . . [and] that many citizens, judges undoubtedly among them, believe the CUA has become a charade enabling the use of marijuana much more commonly for recreational than for genuine medical uses.”

On May 6, 2013, in the case of *City of Riverside v. Inland Empire Patients Health and Wellness Center*, the California Supreme Court held that local governments can ban medical marijuana dispensaries because California’s marijuana laws do not expressly or impliedly limit a local jurisdiction’s land use authority, including the authority to prohibit facilities for the distribution of medical marijuana. In this opinion, the court ruled that the California Constitution grants cities and counties broad power to determine the permitted uses of land within their borders, that the CUA and MMP do not restrict that power, and that a local ban on MMD’s does not conflict with these laws because they do no more than exempt certain activities from State criminal and nuisance laws. Given the clarity offered by this decision upholding a municipality’s ability to ban MMD’s, several municipalities have chosen to ban MMD’s or re-visit their existing bans of MMD’s. Further, this decision has opened the door for discussion of a municipality’s ability to regulate MMD’s instead of banning them altogether.

In the few weeks since the Supreme Court of California’s decision in *City of Riverside v. Inland Empire Patients Health and Wellness Center, Inc.*, marijuana advocates have pledged to narrowly interpret the Court’s holding by: (1) dispensing marijuana from mobile or off-site delivery sources and not from a stationary storefront and (2) by operating offices that handle or process the paperwork for joining a medical marijuana dispensary or medical marijuana collective, receive donations or financial contributions for the marijuana, or give vouchers or other indicia of membership to individuals. These operators have also stated that they intend to apply for business licenses for the dispersal of marijuana under this alternative method and for offices to operate in accordance with these standards and to have mobile MMD operations that deliver marijuana within the municipality they are based in, as well as to other nearby municipalities.

Mobile Marijuana Dispensaries

Medical marijuana advocates have taken a narrow interpretation of the California Supreme Court’s holding by arguing that the Court merely upheld local prohibitions on the dispensing of marijuana from a *stationary storefront*. Therefore, these advocates have advised MMD’s to create “hybrid” operations - storefront offices only to process paperwork for joining a MMD, to receive payment/donations for the marijuana, and to give vouchers or membership documents to new members – or purely “mobile” dispensaries where marijuana would be distributed through use of mobile means, such as a vehicle, whether or not the dispensary was based in the Town or outside Town limits. Under the “hybrid” approach, operators later dispense the marijuana from a mobile or on or offsite standalone delivery source independent of the office. Further, even since the Town adopted Urgency Ordinance No. 447, MMD operators have contemplated getting around bans of MMD’s like the Town’s by arguing that MMD deliveries in a municipality like the Town that has banned MMD’s originate from MMD’s based outside of that municipality’s boundaries or that the delivery is intended for recipients outside of the municipality’s limits. Further, Town action clarifying its ban of MMD’s would need to address these novel approaches to MMD operation.

The exact number of mobile, “hybrid,” or on or offsite standalone delivery services operating in California is unclear, since the State does not keep a registry of these distributors. In July 2013, at least five services within 10 miles of Apple Valley advertised direct delivery of marijuana within the Town on “Weedmaps.com,” an Internet commercial listing service. An increase in mobile dispensaries has been found to coincide with successful enforcement

actions involving storefront dispensaries. This is also an attractive business model given the lower overhead of operating out of a home using a personal vehicle. In other parts of the State, shuttered businesses turned to delivery services instead. There is reason to expect the same in the Town of Apple Valley in light of the Supreme Court's recent ruling.

Mobile MMD's have been strongly associated with criminal activity. Delivery drivers, for example, are targets of armed robbers and many reportedly carry weapons or have armed guards as protection. Examples in the media include the following:

- a. In March 2013, a West Covina deliveryman was reportedly robbed after making a delivery. The deliveryman told police that he was approached by two subjects in ninja costumes who chased him with batons. He was scared and dropped a bag with some marijuana and money, which was taken by the suspects.
- b. In February 2013, a Temecula deliveryman was reportedly robbed of cash outside of a Denny's restaurant, which led to a vehicular chase that continued until the robbers' vehicle eventually crashed on a freeway on ramp.
- c. In January 2013, marijuana deliverymen in Imperial Beach were reportedly robbed after being stopped by assailants (one with a brandished semi-automatic handgun) after making a stop.
- d. In January 2013, a deliveryman was reportedly robbed of three ounces of marijuana while making a delivery outside a Carl's Jr. restaurant in Riverside, and he told police that the suspect may have had a gun.
- e. In May 2012, a 23-year-old deliverywoman in La Mesa was reportedly shot in the face with a pellet gun. After running away, the assailants carjacked her vehicle.
- f. In August 2011, a medical marijuana deliveryman was reportedly robbed of \$20,000 worth of his marijuana (approximately nine pounds) and a cellular phone in Fullerton. The driver suffered a cut to the head during the crime.
- g. In June 2011, a marijuana delivery from a Los Angeles mobile dispensary turned deadly in Orange County when four individuals reportedly ambushed the mobile dispensary driver and his armed security guard and tried to rob them. One of the suspects approached the delivery vehicle and confronted the driver and a struggle ensued. A second suspect armed with a handgun, approached the security guard, who fired at the suspect hitting him multiple times.
- h. In April 2011, a customer reportedly made arrangements for a medical marijuana deliveryman to meet him in a Safeway parking lot in Salinas. The deliveryman had about \$1,000 in cash and 1.5 pounds of marijuana. As the deliveryman began weighing the order, he looked up and saw a silver handgun in his face. The customer stole money and marijuana. The judge sentenced the customer to five years in state prison.
- i. In May 2010, a college student who delivers medical marijuana door-to-door was reportedly robbed at gunpoint in Richmond. The assailants took \$1,000 in cash and a pound of marijuana.

Despite the CUA and the MMP, the United States Attorneys in California have taken action to enforce the federal Controlled Substances Act against MMD's, and have issued letters stating that California cities and officials face possible criminal prosecution for enabling MMD's to

violate Federal law. The failure to prohibit mobile marijuana dispensaries or medical marijuana dispensaries may encourage the proliferation of MMD's in the Town and expose the Town to costs related to regulation, enforcement, and the negative secondary effects of dispensaries including an increase in violent crime.

Town's Current Prohibition of MMD's

Section 9.05.020 of the Town's Development Code requires all land, buildings, and structures in the Town shall be used in accordance with the Town's Development Code, including obtaining any requisite permits prior to the initiation of such use. Section 9.05.020 further provides that the use of buildings and land in the Town shall comply with the provisions of the Development Code subject to all applicable provisions of all Town ordinances, including the Town's Municipal Code. For a specific use to be valid under the Town's Development Code, the use must either be expressly permitted or be deemed a "similar use" to an expressly permitted use. Section 9.05.070 (D) of the Town's Development Code states that uses such as "medical marijuana dispensaries" which are unlawful under federal or state law cannot be treated as permitted or similar uses under the Town's Development Code. Effectively, this is a ban on all MMD's in the Town.

Chapter 9.08 of the Town's Development Code provides a detailed definition of MMD's under the Code. The existing definition of MMD in the Town's Code includes the stationary storefront and "hybrid" methods of operation referenced above, but does not expressly prohibit the other novel approaches to MMD operation that have surfaced in the recent weeks (i.e. MMD's making deliveries into the Town from MMD's based outside of the Town's limits). These hybrid approaches, however, are likely included in the Town's current prohibition of MMD's, as evidenced in the Urgency Ordinance. The existing definition also does not expressly declare MMD's to be a public nuisance and does not go so far as to prohibit any attempt to locate, operate, own, lease, supply, allow to operate or aid, abet or assist MMD operation in the Town. These additional prohibitions have appeared in the bans imposed by other southern California municipalities in the recent weeks.

Enforcement under the Town's Code and under State Law and Costs

Sections 1.01.200(d) and 1.01.250 of the Town's Municipal Code deem any condition caused or permitted in violation of the Code, or any such threatened violation, to be a public nuisance subject to summary abatement by the Town or by a civil judicial action for abatement. Section 1.01.260 governs the procedures by which the Town could recover the costs it incurs for abating a public nuisance, whether such nuisance is premised on a violation of state law, the Town's Code, or otherwise. These procedures require the Town to give the violator notice to cease and desist the maintenance of a nuisance condition and, should the violator not correct the nuisance condition within a reasonably specified time, such noncomplying person is liable to the Town for any and all costs incurred by the Town for such abatement. Monies owed pursuant to these procedures can be recovered in a civil action as necessary to collect.

Should a MMD, as presently defined in the Urgency Ordinance or as such definition is amended, commence operation within the Town, such operation would likely be in violation of the Town's Code, deemed a public nuisance, and subject to abatement through civil litigation. Should the Town be successful in such abatement efforts, cost recovery is available. It is important to note that the Town's Urgency Ordinance does not prohibit the use, possession, or cultivation of medical marijuana by any individual. Instead, the Ordinance simply restricts the distribution of marijuana through dispensaries, as defined.

Further, California's Health & Safety Code also limits the handling of marijuana by prohibiting its unauthorized possession (Section 11357), possession for sale (11359), and transportation, importation, sale or gift (11360). The CUA and the MMP craft narrow affirmative defenses for particular individuals to these criminal charges. All possession or use of marijuana which falls outside of the CUA and MMP's narrow parameters remains illegal under California law. The only permissible production and distribution of marijuana under California law exists either in true cooperatives and collectives, which are anticipated by the MMP, or directly from caregivers to patients. True cooperatives and collectives do not generally operate as storefront businesses (although one could conceivably exist). The reality is that most MMD operators claim to be operating as permissible cooperatives or collectives (i.e. individuals that associate "collectively or cooperatively" in not-for-profit operations to cultivate medical marijuana to meet their collective medicinal needs), but do not follow these parameters in practice. Certain labeling laws for medicinal drugs under the Sherman Food, Drug, and Cosmetic Law (Health & Safety Code § 109875 *et. seq.*) may also apply to the sale of marijuana for "medicinal" purposes. Thus, in addition to violating the Town's Code, MMD operators may also violate state law. The Town Attorney can enforce these laws. However, it is much more difficult to enforce these laws versus a Townwide ban. Notwithstanding, the same cost recovery provisions apply should the Town Attorney be used to enforce these laws.

Risk of Merely Regulating, and Not Banning, MMD's

In *City of Riverside v. Inland Empire Patients Health and Wellness Center*, the California Supreme Court upheld the right of local governments to ban MMD's. The question of whether local governments can regulate MMD's was not directly before the court. However, in its holding, the Court opined "localities in California are left free to accommodate such [MMD] conduct if they so choose, free of state interference." (*City of Riverside, supra*, 56 Cal. 4th at 762.) Thus, the Court clearly held that a local government may ban MMD's, but was less clear on the parameters, if any, for which a municipality can regulate MMD's. Further, the decision in *City of Riverside* does not specifically mention local regulation of the cultivation of marijuana. Where and how marijuana is grown may rightly be of great concern to local entities.

Local governments cannot "permit" or "authorize" any activity that violates federal or state law; in fact, federal and state law pre-empts any such attempt. Accordingly, should a municipality decide to regulate, and not ban, MMD's, at least one appellate court (whose opinion has since been de-published due to the City of Long Beach amending its MMD regulation) held in 2011 that a municipality's regulation sanctioning the issuance of "permits" for MMD's was not allowed because the scheme crossed the line by authorizing an illegal activity. (See *Pack v. Superior Court* (Cal. App. 2d Dist. 2011) 199 Cal. App. 4th 1070 [de-published]). In other words, a court could find that the Town is pre-empted by federal law from regulating MMD's because the Town cannot "permit" or "authorize" a medical marijuana business and marijuana related activities, which activities are prohibited by federal law (i.e. the Federal Controlled Substance Act). To get around this pre-emption issue, the State of California has merely decriminalized certain State penalties, but has not, and cannot, permit or authorize any right in violation of federal law. Thus, the law is not clear on the ability of a local government to regulate MMD's. Not only will any such regulation need to be crafted in a way so as to avoid any Federal pre-emption issues, it would also require the Town to expend resources to ensure that MMD's are not operating in violation of the Town's regulations and to defend any legal challenges to any such Town regulation.

Notwithstanding this lack of clarity on whether a municipality can regulate MMD's or, if they can, the scope of such power, some local jurisdictions within California have passed MMD regulations. One example is the City of Los Angeles. Originally, Los Angeles attempted to regulate MMD's. However, in 2012 after years of defending numerous lawsuits over the legality of these regulations, the City of Los Angeles repealed its MMD regulations in light of the *Pack* decision (the City of Long Beach's MMD regulations were based on the then-existing MMD regulations by the City of Los Angeles) and instead banned MMD's altogether. In doing so, the City of Los Angeles cited to the several threats of litigation brought by marijuana advocates should the City of Los Angeles adopt registration provisions for MMD's and to the December 2011 opinion of the California Attorney General Kamala Harris that several laws concerning the regulation of medical marijuana were "unclear," particularly the rules for MMD operation. However, in May 2013, the City of Los Angeles voters approved Measure D, effectively ending the City's ban of MMD's. Measure D (1) allows the 135 dispensaries in existence when the City passed its initial "interim control ordinance" in September 2007 to stay open, if they follow the city's rules on proximity to schools, churches and neighborhood (600 feet) and (2) places a new tax of \$60 per \$1,000 of marijuana sold. Those MMD's that opened after 2007 will be ordered to close.

Time will tell whether Measure D will survive a legal challenge, including a legal challenge under the *Pack* reasoning as to whether the City of Los Angeles now effectively "permits" or "authorizes" activity that is illegal under federal law. Further, the prospect of taxing MMD operations is potentially problematic, given that true marijuana collectives and cooperatives must operate as "non-profits." Dispensaries also typically operate as entirely cash-based enterprises because banks will not give them accounts out of fear of violating federal laws. Accordingly, auditing such operations may prove to be extremely difficult. In addition, the CUA and MMP do not create an exemption for the sale of marijuana, which is still illegal under federal and state law.

Lastly, there have been several studies documenting the public health and safety concerns associated with the operation of MMD's, in addition to those mentioned herein. Should the Town decide to regulate MMD's, it may be subject to legal challenges on the regulation giving the lack of clarity on the law and such regulation may encourage MMD operators to target the Town as a prime location for MMD operations.

Hesperia: In 2011, the City of Hesperia considered an Ordinance that would allow Medical Marijuana Dispensaries to operate in their city. After discussion by the City Council it was not adopted. Attached is a copy of the proposed Ordinance that was considered. Given that Hesperia considered the matter in October 2011, much of the information in this Staff Report was not available to Hesperia. Specifically, the May 2013 *City of Riverside* decision upholding the right of municipalities to ban MMD's had not yet been issued, the novel approaches to "hybrid" and "mobile" MMD operation had not yet proliferated, and the present scope of the municipalities like the City of Los Angeles' efforts to regulate MMD's had not unfolded. Although it is now clear that municipalities can ban MMD's, the issue of whether and how municipalities can regulate MMD's is less clear and will likely become more clear as courts consider the scope of any such regulation in the coming years.

CEQA:

Town staff has determined that the Ordinance is not a project within the meaning of Section 15378 of the State California Environmental Quality Act ("CEQA") Guidelines, because it has

no potential for resulting in physical change in the environment, directly or indirectly. Further, the Ordinance is exempt from CEQA under California Code of Regulations, title 14, section 15061(b)(3) because it does not 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 Ordinance, may have a significant effect on the environment, the activity is not subject to CEQA.

ATTACHMENTS:

Ordinance No. 447 (Urgency Ordinance)
City of Hesperia's proposed Ordinance that was not adopted

ORDINANCE NO. 447

AN URGENCY ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF APPLE VALLEY AMENDING ITS DEVELOPMENT CODE TO CLARIFY THE SCOPE OF THE TOWN'S REGULATION OF MEDICAL MARIJUANA DISPENSARIES IN COMPLIANCE WITH FEDERAL AND STATE LAW AND CALIFORNIA CASE LAW

WHEREAS, in 1996, the voters of the State of California ("State") approved Proposition 215, codified as Health and Safety Code sections 11362.5 *et seq.* and entitled "The Compassionate Use Act of 1996" (the "Compassionate Use Act"), which provides seriously ill Californians "the right to obtain and use marijuana for medical purposes" once a physician has deemed the use beneficial to the patient's health; and

WHEREAS, as part of the Compassionate Use Act, Health and Safety Code section 11362.768 regulates several forms through which marijuana can be dispersed. Specifically the section applies to "a medical marijuana cooperative, collective, dispensary, operator, establishment, or provider that is authorized by law to possess, cultivate, or distribute medical marijuana and that has a storefront or mobile retail outlet which ordinarily requires a local business license"; and

WHEREAS, In 2003, the State legislature enacted SB 420 to clarify the scope of the Compassionate Use Act and to allow cities to adopt and enforce rules and regulations consistent with the provisions of SB 420; and

WHEREAS, the Federal Controlled Substance Act (the "Controlled Substance Act"), codified as 21 U.S.C. Section 801 *et seq.*, makes it unlawful for any person to manufacture, distribute or dispense or process with intent to manufacture, distribute or dispense marijuana; and

WHEREAS, Section 9.05.020 of the Town of Apple Valley's ("Town") Development Code requires all land, buildings, and structures in the Town shall be used in accordance with the Town's Development Code, including obtaining any requisite permits prior to the initiation of such use and Section 9.05.020 further provides that the uses of buildings and land in the Town shall comply with the provisions of the Development Code subject to all applicable provisions of all Town ordinances, including the Town's Municipal Code; and

WHEREAS, for a specific use to be valid under the Town's Development Code, the use must either be expressly permitted or be deemed a "similar use" to an expressly permitted use; and

WHEREAS, Section 9.05.070 (D) of the Town's Development Code states that uses such as medical marijuana dispensaries ("MMD") which are unlawful under federal or state law cannot be treated as permitted or similar uses under the Town's Development Code, effectively banning all MMDs in the Town; and

WHEREAS, Chapter 9.08 of the Town's Development Code provides a detailed definition of MMDs where, subject to certain enumerated exceptions, a MMD is defined to be a facility or location where medical marijuana is made available to, distributed by, or supplied to one or more of the following: (1) more than a single qualified patient; (2) more than a single person with an identification card; or (3) more than a single primary caregiver and the term MMD includes a medical marijuana cooperative, which is defined in the Town's Development Code to be two or more persons collectively or cooperatively cultivating, using, transporting, possessing, administering, delivering or making available medical marijuana, with or without compensation; and

WHEREAS, on May 6, 2013, in *City of Riverside v. Inland Empire Patients Health and Wellness Center, Inc.*, et al., the Supreme Court of California held that local governments can ban medical marijuana dispensaries by stating that nothing in the State of California's marijuana laws "expressly or impliedly limits the inherent authority of a local jurisdiction, by its own ordinances, to regulate the use of its land, including the authority to provide that facilities for the distribution of medical marijuana will not be permitted to operate within its borders"; and

WHEREAS, in response to the holding in *City of Riverside v. Inland Empire Patients Health and Wellness Center, Inc.*, marijuana advocates have stated that they plan to narrowly interpret the Court's holding to merely prohibit the dispensing of marijuana from a stationary storefront; and

WHEREAS, these marijuana advocates plan on advising marijuana dispensaries to create facilities or offices to handle or process the paperwork for joining a medical marijuana dispensary or medical marijuana cooperative as defined herein, to receive financial compensation or donations for the marijuana, or to give vouchers or other indicia of membership to new members only to later dispense the marijuana from a mobile or off-site delivery source independent of the office; and

WHEREAS, the Town's current prohibition of MMDs in Chapter 9.08 of the Town's Development Code includes and encompasses, but does not expressly reference by name, facilities or offices that handle or process the paperwork for joining a medical marijuana dispensary or medical marijuana cooperative as defined herein, receive any financial compensation or donation for the marijuana, or give vouchers or other indicia of membership to new members of these MMDs or expressly reference by name mobile or off-site delivery of marijuana independent from these facilities or offices; and

WHEREAS, the proposed Urgency Ordinance is exempt from the California Environmental Quality Act (CEQA) under California Code of Regulations, title 14, section 15061(b)(3) because it does not have the potential for causing a significant effect on the environment; and

WHEREAS, the Town Council finds that this Urgency Ordinance, and the regulations set forth herein, are necessary for the immediate preservation of the public peace, health and safety in order to clarify that the Town's existing ban of MMDs includes and encompasses facilities or offices that handle or process the paperwork for joining a medical marijuana dispensary or medical marijuana cooperative as defined herein, or give vouchers or other indicia of membership to individuals, regardless of whether marijuana is ultimately dispensed from the location or a mobile or off-site delivery source independent of the facility or location, as well as the dispensing or delivery of marijuana from mobile or off-site delivery sources independent from these offices or facilities; and

WHEREAS, such an urgency measure requires a four-fifths vote of the Town's legislative body; and

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

SECTION 1. The above recitals are true and correct and are incorporated herein by this 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 that prior to the effective date of this ordinance, the Town will not have specifically set forth in writing a definition of medical marijuana dispensaries that closes potential loopholes in the Town's Development Code concerning the creation of facilities or offices to handle or process the paperwork for joining a medical marijuana dispensary or medical marijuana cooperative as defined herein, to receive financial compensation or donations for the marijuana, or to give vouchers or other indicia of membership to individuals as well as the dispensing or delivery of marijuana from mobile or off-site delivery sources independent from these offices or facilities. The Town Council of the Town of Apple Valley further finds that these facilities and offices that handle or process the paperwork for joining a medical marijuana dispensary or medical marijuana cooperative as defined herein, to receive financial compensation or donations for marijuana, or give vouchers or other indicia of membership to individuals, regardless of whether marijuana is ultimately dispensed from the location or a mobile or off-site delivery source independent of the facility or location, were banned by the Town prior to the adoption of this Urgency Ordinance and the purpose of this Urgency Ordinance is to expressly clarify that the Town's ban of medical marijuana dispensaries includes banning these facilities and offices as well as these mobile or off-site delivery sources.

SECTION 3. Subsections (A) and (C) of the definition of "Medical Marijuana Dispensary" in Chapter 9.08 of the Apple Valley Development Code are hereby amended to read as follows:

CHAPTER 9.08 DEFINITIONS

...

MEDICAL MARIJUANA DISPENSARY

- A. A medical marijuana dispensary is any facility or location, including a mobile facility or delivery service whether such mobile facility or delivery service is independent from or affiliated with any fixed facility or location in the Town, where medical marijuana is made available to, distributed by, sold or supplied to one or more of the following: (1) more than a single qualified patient, (2) more than a single person with an identification card, or (3) more than a single primary caregiver. The term "medical marijuana dispensary" shall include all facilities or locations, including storefronts and offices, associated with any medical marijuana dispensary, as defined herein, that handle or process the paperwork for joining a medical marijuana dispensary or medical marijuana cooperative as defined herein, to receive financial compensation or donations for the marijuana, or give vouchers or other indicia of membership to individuals, regardless of whether marijuana is ultimately dispensed from the location or a mobile or off-site delivery source independent of the facility or location. The term "medical marijuana dispensary" shall also include a medical marijuana cooperative, and any other medical marijuana collective, operator, establishment, or provider.

...

- C. A medical marijuana cooperative is two or more persons collectively or cooperatively cultivating, using, transporting, processing, administering, delivering or making available medical marijuana, with or without compensation. The term "medical marijuana cooperative" shall include a medical marijuana collective.

...

SECTION 4. CEQA. The Town Council finds, under Title 14 of the California Code of Regulations, Section 15061(b)(3), that this Urgency Ordinance is exempt from the requirements of the California Environmental Quality Act ("CEQA") in that the activity is covered by the general rule that CEQA applies only to projects which 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 not subject to CEQA. 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 5. Custodian of Records. The documents and materials that constitute the record of proceedings on which these findings and this Urgency Ordinance 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 6. Severability. If any provision of this Urgency Ordinance or the application thereof to any entity, 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 7. Effective Date. This Urgency Ordinance shall become effective immediately upon its adoption.

SECTION 8. 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.


APPROVED and ADOPTED by the Town Council and signed by the Mayor and attested by the Town Clerk this 28th day of May, 2013.


Curt Emick, Mayor


ATTEST:


La Vonda Pearson, Town Clerk

APPROVED AS TO FORM:


John Brown, Town Attorney

APPROVED AS TO CONTENT:


Frank Robinson, Town Manager

STATE OF CALIFORNIA
COUNTY OF SAN BERNARDINO
TOWN OF APPLE VALLEY

I, LA VONDA M-PEARSON, TOWN CLERK of the Town of Apple Valley, California, hereby certify that the foregoing Ordinance No. 447 was duly introduced and adopted at the Town Council regular meeting on May 28, 2013 by the following vote:

AYES: Council Members Cusack, Nassif, Stanton, Mayor Pro Tem Bishop, Mayor Emick.
NOES: None.
ABSENT: None.
ABSTAIN: None.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the official seal of the Town of Apple Valley, California, this 29th day of May, 2013.

LA VONDA M-PEARSON, CMC
TOWN CLERK

by:



Yvonne Rivera, Deputy

(SEAL)

City of Hesperia

STAFF REPORT



DATE: October 18, 2011

TO: Mayor and Council Members

FROM: Mike Podegracz, City Manager

BY: Scott Priester, Director of Development Services
Dave Reno, AICP, Principal Planner
Lisette Sánchez-Mendoza, Assitant Planner

SUBJECT: Consideration of Development Code Amendment DCA11-10103 regarding Medical Marijuana Dispensaries; Applicant: West Coast Patients Group; Area affected: Citywide

RECOMMENDED ACTION

The Planning Commission recommends that the City Council introduce and place on first reading Ordinance No.2011-18, approving DCA11-10103, allowing for Medical Marijuana Dispensaries.

BACKGROUND

In 1996, California voters approved Proposition 215 which added the “Compassionate Use Act of 1996” to the California Health and Safety Code. Proposition 215 enables persons in need of marijuana for medical purposes, the ability to obtain and use the drug without fear of criminal prosecution under limited, specific circumstances. In 2004, the California legislature enacted SB420 to clarify the scope of the Act and provide additional guidance to people who qualify under the 1996 Act. The amendment added Health and Safety Section 11362.83 which provides, *“nothing in this article shall prevent a city or other local governing body from adopting and enforcing laws consistent with this article.”* Under this provision local governments have discretion to adopt and enforce regulations, including prohibiting medical marijuana dispensaries. The courts have held that a complete local ban on dispensaries is a valid exercise of a city’s police power and is not preempted by the Compassionate Use Act or SB420. (*City of Claremont v. Kruse* (2009) 177 Cal. App. 4th 1153, 1172-1176.)

In 2005, the City of Hesperia adopted a Development Code Amendment which defined “medical marijuana dispensaries,” and prohibited them in the City. The City’s current ordinance does not differentiate between dispensaries, collectives, operators, establishments or providers, and defines medical marijuana dispensaries as *“any facility or location where medical marijuana is made available to and/or distributed to three or more persons within the following classifications: primary caregivers, qualified patients, or a person with an identification card”*.

In 2008, the Attorney General developed, “Guidelines for the security and non-diversion of marijuana grown for medical use” (Attachment 4), which defines cooperatives as “democratically controlled and are not organized to make a profit for themselves, as such, or for their members, as such, but primarily for the members as patrons” and collectives as *“as a business farm, etc., jointly owned and operated by the members of a group”*. Dispensaries on the other hand are not recognized under state law and it is the opinion of the Attorney General’s office that a *“properly organized and operated collective or cooperative that dispenses medical marijuana*

through a storefront may be lawful under California law, but that dispensaries that do not substantially comply with the.....Attorney General Guidelines, are likely operating outside the protections of Proposition 215 and the MMP, and that the individuals operating such entities may be subject to arrest and criminal prosecution under California law”.

ISSUES AND ANALYSIS

On January 5, 2011, the West Coast Patients Group (WCPG) filed a Development Code amendment to permit the operation of Medical Marijuana dispensaries in the City. The Planning Commission held three public hearings on this item. On April 14, 2011, the Commission reviewed the WCPG’s proposed ordinance and requested that staff draft an ordinance that would fit within the City’s Development Code. On July 14, 2011, the Commission reviewed this draft ordinance and identified five issues associated with the location and operation of dispensaries. The Commission also continued the public hearing, desiring to hold additional workshops to explore the legal, medical and financial issues associated with the potential operation of dispensaries in the City. On August 2, 2011, the City Council directed that the Commission forgo workshops and provide a recommendation on the proposed ordinance for Council’s consideration based solely on land use issues. The July 14, 2011 staff report is included as Attachment 1. It contains a more detailed discussion of the history and research conducted by staff on this code amendment. On September 8, 2011, the Planning Commission voted (3-2) to move the Development Code Amendment with a recommendation of approval with the amendments shown in **bold** (Attachment 2).

Ordinance

The ordinance amended by the Planning Commission (Attachment 3), which follows the requirements set forth in the Attorney General’s “2008 Guidelines for the Security and Non-Diversion of Marijuana Grown for Medical Use”, includes the following:

- Defines Dispensaries, Collectives and Cooperatives.
- Defines Sensitive uses.
- Requires of a Conditional Use Permit for all dispensaries, collectives and cooperatives.
- **Allows transfer of a CUP to new owner on same site without a new application.**
- Prohibits dispensaries, cooperatives and collectives within **600 feet of “sensitive uses”** including residents and residential zones, 600 feet from K-12 schools, and 1,000 feet from Main Street, Interstate 15 and Bear Valley Road.
- **Limits the location of Medical Marijuana Dispensaries to the I-1, I-2, and General Industrial zones.**
- Provides Medical Marijuana allowances for dispensaries, collectives and cooperatives-Eight (8) oz of dried marijuana per qualified patient or caregiver and no more than six mature or 12 immature plants per qualified patient.
- **Limits the list of sensitive uses to schools, parks, residences and residential zones.**
- **Allows doctors on site.**
- **Allows armed guards.**
- **Allows delivery services.**
- Prohibits cultivation on site.

Following these amendments, the Commission took up the question to recommend the ordinance to the City Council. A motion to deny the ordinance and retain the current ban on dispensaries failed (2-3). Conversely, a motion to recommend adoption of the ordinance, as

amended above, passed 3-2. A short discussion ensued regarding whether to limit the number of dispensaries in the City to 20, but no vote was taken.

Conclusion. Staff believes it has met the Commission's direction to prepare an operable ordinance. However any Development Code Amendment must address the public health, safety and welfare. In this case, maintaining the current prohibition of medical marijuana dispensaries collectives, or cooperatives will not subject the City to the negative secondary impacts that these dispensaries have had on other communities. The City's current ordinance does not infringe upon the provisions of state law and is consistent with the prohibition of marijuana under federal law. Based on the above, staff maintains its recommendation to deny the proposed Development Code Amendment.

FISCAL IMPACT

The City is currently expending code enforcement costs, as several medical marijuana dispensaries have been established illegally within the City. Establishing regulations to allow dispensaries may result in additional administrative and enforcement costs to regulate collectives within the City.

There have been a number of recent legal developments the Council may wish to consider. As discussed above, courts in the Fourth Appellate District have held that a complete local ban on dispensaries is a valid use of the City's police power. Another trial court recently held that the City of Riverside's ban on dispensaries is valid. That case is currently on appeal, and the Fourth District has issued a tentative written opinion affirming the trial court's decision. Oral arguments are scheduled for November 2, after which the court will issue a final opinion.

Some courts have also held that cities can instead allow and regulate dispensaries without conflicting with federal law, which some cities such as Oakland are doing. However, on October 4 a court in the Second Appellate District decided that a Long Beach ordinance regulating marijuana dispensaries is in fact preempted by federal law (*Pack v. City of Long Beach*). Although the regulations in the Long Beach case were not zoning regulations, it appears there is now a split of opinions among state appellate courts as to whether ordinances regulating marijuana dispensaries are preempted by federal law.

Finally, last week the federal government announced a major effort to crack down on the sale, cultivation, and distribution of marijuana in California. Federal efforts include a civil forfeiture lawsuit against an operation in Wildomar in Riverside County, as well as letters of violation to operators in Upland, Montclair and Chino, among others.

ALTERNATIVES

1. Provide alternative direction to staff.

ATTACHMENTS

1. July 14, 2011 Planning Commission Staff Report.
2. The Compassionate Use Act of 1996
3. California Codes, Health and Safety Code Section 11362.768 and 11362.83
4. 2008 Attorney General Guidelines for the Security and Non-Diversion of Marijuana Grown for Medical Use
5. West Coast Patients Group Proposed Ordinance
6. Draft minutes from the September 8, 2011 Planning Commission Meeting for this item

7. Ordinance No. 2011-18, Exhibit "A" (Recommending approval, as presented or amended).
8. Material prepared by Letitia E. Pepper, Esq., Crusaders for Patients Rights, under separate cover.

EXHIBIT “A”

Remaining text is shown underlined, eliminated text is shown with a ~~strikeout~~, additions are shown in black, and revisions made by the Planning Commission at the September 8, 2011 public hearing are shown in black.

Section 16.08.513 Medical Marijuana Dispensary, Collective and Cooperative

“Medical marijuana dispensary, collective and cooperative” means any facility or location, where medical marijuana is made available to and/or distributed to three or more persons within the following classifications: primary caregivers, qualified patients, or a person with an identification card, and as defined in the 2008 Attorney General Guidelines for the Security and Non-Diversion Marijuana grown for Medical Use in sections IV, A, 1-2.

Section 16.16.073 Medical Marijuana Dispensary, Collective and Cooperative

~~—A medical marijuana dispensary, as defined in Section 16.08.513, is prohibited within the city of Hesperia.~~

Purpose and Intent

A. It is the purpose and intent of this Chapter to regulate medical marijuana Collectives/Cooperatives in order to ensure the health, safety and welfare of the residents of the City of Hesperia. The regulations in this Chapter, in compliance with the Compassionate Use Act, the Medical Marijuana Program Act, the California Health and Safety Code (collectively referred to as “State Law”), and the 2008 Attorney General Guidelines for the Security and Non-Diversion Marijuana grown for Medical Use, do not interfere with a patient’s right to use medical marijuana as authorized under State Law, nor do they criminalize the possession or cultivation of medical marijuana by specifically defined classifications of persons, as authorized under State Law. Under State Law, only qualified patients, persons with identification cards, and primary caregivers may cultivate medical marijuana collectively. Medical marijuana Collectives shall comply with all provisions of the Hesperia Municipal Code (“Code”), State Law, and all other applicable local and state laws. Nothing in this article purports to permit activities that are otherwise illegal under state or local law.

B. Definitions

For the purpose of this chapter, the following words and phrases shall have the following meanings:

“Medical Marijuana Dispensary, Collectives and Cooperatives” means any facility or location, where medical marijuana is made available to and/or distributed to three or more persons within the following classifications: primary caregivers, qualified patients, or a person with an identification card, and as defined in the 2008 Attorney General Guidelines for the Security and Non-Diversion Marijuana grown for Medical Use in sections IV, A, 1-2.

“Drug Paraphernalia”. means all equipment, products, and materials of any kind which are intended for use or designed for uses in planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, containing, concealing, injecting, ingesting, inhaling, or otherwise introducing into the human body a controlled substance

“Edible Medical Marijuana” as used in this Chapter is defined to mean any article of food, drink, confectionery, condiment or chewing gum by human beings whether such article is simple, mixed or compound, which contains quantities of Medical Marijuana.

“Medical Marijuana” means Marijuana used for medical purposes in accordance with California Health and Safety Code Sections 11362.5, et seq.

“Physician” A licensed medical doctor including a doctor of osteopathic medicine as defined in the California Business and Professions Code.

“Primary Caregiver” As defined by the 2008 Attorney General guidelines for the security and non-diversion of marijuana grown for medical use.

“Qualified Patient” As defined in California Health and Safety Code Section 11362.5 et seq., and as it may be amended from time to time.

“Sensitive Uses” Means and includes residence, residential zones, any school, licensed day care center, Hesperia Recreation and Park District park facility.

C. Conditional Use Permit Required-No Medical Marijuana Dispensary, Collective and Cooperative, Management Member, or member shall carry on, maintain or conduct any Medical Marijuana Collective, and Cooperative related operations in the City without first obtaining a Medical Marijuana Collective, and Cooperative Conditional Use Permit and a business license to operate such facility.

D. Conditional Use Permit Application Process-Any Medical Marijuana Dispensary, Collective and Cooperative desiring a Permit required by this Chapter shall, prior to initiating operations, complete and file an application on a form supplied by the Planning Division, and shall submit with the completed application payment of a nonrefundable processing and notification fee, as established by the City Council by resolution.

1. Filing. The Medical Marijuana Dispensary, Collective or Cooperative shall provide the following information:

- i. The address of the Property or Properties where the proposed Medical Marijuana Dispensary, Collective and Cooperative will operate.
- ii. A site plan describing the property with fully dimensioned interior and exterior floor plans including electrical, mechanical, plumbing, and disabled access compliance pursuant to Title 24 of the State of California Code of Regulations and the federally mandated Americans with Disabilities Act.
- iii. If the Property is being rented or leased or is being purchased under contract, a copy of such lease or contract. Also required is written proof that the Property owner, or landlord if applicable, were given notice that the Property will be used as a Medical Marijuana

Collective, and Cooperative, and that the Property owner, and landlord if applicable, agree(s) to said operations.

iv. The name, address, telephone number, title and function(s) of each Management Member.

v. For each Management Member, a fully legible copy of one (1) valid government issued form of photo identification.

vi. Written confirmation as to whether the Medical Marijuana Dispensary or Collective/Cooperative previously operated in this or any other county, city or state under a similar license/permit, and whether the applicant ever had such a license/permit revoked or suspended and the reason(s) therefore.

vii. If incorporated, a certified copy of the Collective's Secretary of State Articles of Incorporation, Certificate(s) of Amendment, Statement(s) of Information and a copy of the Collective's By Laws.

viii. The name and address of the applicant's current Agent for Service of Process.

ix. A copy of the Medical Marijuana Dispensary, or Collective/Cooperative Operating Conditions, listed in section 16.16.073 (E) containing a statement dated and signed by each Management Member, under penalty of perjury, that they read, understand and shall ensure compliance with the aforementioned operating conditions.

x. A statement dated and signed by each Management Member, under penalty of perjury, the Management Member has personal knowledge of the information contained in the application, that the information contained therein is true and correct, and that the application has been completed under the supervision of the Management Members.

xi. The Property address where any and all collectively cultivated Medical Marijuana will be distributed to the Collective members and Management Members.

E. Medical Marijuana Permit approval and operating conditions-

1. The Medical Marijuana Dispensary or Collective/Cooperative shall not be within six hundred foot (600') radius of any sensitive uses including residents or residential zones, six hundred foot (600') radius from K-12 schools, one thousand foot (1000') radius from Main Street, Interstate 15, and Bear Valley Road, and within the I-1, I-2, and General Industrial zones. The distances specified in this subdivision shall be determined by the horizontal distance measured in a straight line from the property line of the school to the closest property line of the lot on which the Medical Marijuana Dispensary, Collective or Cooperative is located, without regard to intervening structures.

2. The Property provides a sufficient odor absorbing ventilation and exhaust system so that odor generated inside the Property is not detected outside the Property, anywhere on adjacent property or public rights-of-way, or within any other unit located within the same building as the Medical Marijuana Dispensary, Collective or Cooperative.

3. Medical Marijuana Dispensaries, Collectives and Cooperatives should provide adequate security to ensure that patients are safe and that the surrounding businesses are not negatively impacted by nuisance activity such as loitering or crime. Further, to maintain security, prevent fraud, and deter robberies, collectives and cooperatives should keep accurate records and follow accepted cash handling practices, including regular bank runs and cash drops, and maintain a general ledger of cash transaction. The recordings shall be maintained at the Property for a period of not less than thirty (30) days.

4. The Property has a centrally-monitored fire and burglar alarm system.

5. A sign is posted in a conspicuous location inside the Property advising:

- i. "The diversion of marijuana for non-medical purposes is a violation of State law.
 - ii. The use of marijuana may impair a person's ability to drive a motor vehicle or operate heavy machinery.
 - iii. Loitering at the location of a Medical Marijuana Dispensary, Collective or Cooperative for an illegal purpose is prohibited by California Penal Code Section 647(h).
 - iv. This Medical Marijuana Dispensary, Collective or Cooperative is permitted in accordance with the laws of the City of Hesperia.
 - v. The sale of marijuana and the diversion of marijuana for non-medical purposes are violations of State Law."
6. The Medical Marijuana Dispensary, Collective or Cooperative meets all applicable state and local laws to ensure that the operations of the Collective are consistent with the protection of the health, safety and welfare of the community, Qualified Patients and their Primary Caregivers, and will not adversely affect surrounding use.
7. No Medical Marijuana Dispensary, Collective or Cooperative shall operate for profit. Cash and in-kind contributions, reimbursements, and reasonable compensation provided by Management Members and members towards the Collective's actual expenses of the growth, cultivation, and provision of Medical Marijuana shall be allowed provide that they are in strict compliance with State Law.
8. Medical Marijuana Dispensary, Collective or Cooperative may possess no more than 8 ounces of dried marijuana per qualified patient of caregiver, and maintain no more than 6 mature or 12 immature marijuana plants per qualified patient, except if a qualified patient or primary caregiver has a doctor's recommendation that this quantity does not meet the qualified patient's needs.
9. A Medical Marijuana Dispensary, Collective or Cooperative may have a physician on the property to evaluate patients or provide a recommendation for medical marijuana.
10. A Medical Marijuana Dispensary, Collective or Cooperative shall acquire its supply of medical marijuana only from its members.
11. A Medical Marijuana Dispensary, Collective or Cooperative shall not purchase or otherwise supply itself with medical marijuana form non-members.
12. Medical Marijuana Dispensary, Collective or Cooperatives shall provide state-licensed and uniformed security guard patrol for the location during all hours of operation.
13. A Medical Marijuana Dispensary, Collective or Cooperative may provide delivery service to the members of the dispensary, collective or cooperative. All distribution of medical marijuana must be conducted within the closed building areas of the medical marijuana Collective, and Cooperative property.
14. Medical Marijuana- Packaging and Labeling- Medical Marijuana Dispensaries Collectives and Cooperatives shall ensure that medical marijuana, edible products containing medical marijuana, and concentrates are labeled, packaged, and sold in accordance with equivalent local and state regulations for similar products.

F. Medical Marijuana Conditional Use Permit –Transferable-A Medical Marijuana Dispensary, Collective or Cooperative Conditional Use Permit issued pursuant to this Chapter can be transferred to another owner subject to section 16.16.073 D (1) (iv, v, and vi). The holder of a Medical Marijuana Dispensary, Collective or Cooperative shall not allow others to

use or rent the permitted Property without first obtaining approval of a conditional use permit transfer.

G. Maintenance of Records-All Maintenance of Records shall be maintained in accordance with State law and the Attorney General Guidelines. The application shall include the following:

1. Applicant Name;
2. Applicant Address;
3. Physician Information and recommendation;
4. Expiration Date of Recommendation or Identification Card (if any).

H. Inspection Authority-City representatives may enter and inspect the Property of every Medical Marijuana Dispensary, Collective or Cooperative between the hours of ten o'clock (10:00) A.M. and eight o'clock (8:00) P.M., to ensure compliance and enforcement of the provisions of this Chapter, except that the inspection and copying of private medical records shall be made available to the Police Department only pursuant to a properly executed search warrant, subpoena, or court order. It is unlawful for any Property owner, landlord, lessee, Medical Marijuana Dispensary, Collective or Cooperative member or Management Member or any other person having any responsibility over the operation of the Medical Marijuana Dispensary, Collective or Cooperative to refuse to allow, impede, obstruct or interfere with an inspection.

I. Existing Medical Marijuana Operations-Any existing Medical Marijuana Dispensary, Collective or Cooperative, operator, establishment, or provider business that does not comply with the requirements of this Chapter must immediately cease operation until such time, if any, when it complies fully with the requirements of this Chapter. No Medical Marijuana Dispensary, Collective or Cooperative, operator, establishment, or provider that existed prior to the enactment of this Chapter shall be deemed to be a legally established use or a legal non-conforming use under the provisions of this Chapter or the Code.

J. Prohibited Activity

1. Dispensaries, Collectives and Cooperatives may cultivate on-site and transport marijuana in aggregate amounts tied to its membership numbers. This does not apply to the cultivation of marijuana by a qualified patient at that patient's home, so long as the patient is only growing for his or her own personal medical needs in a manner consistent with state law.

2. No manufacture of Concentrated Cannabis in violation of California Health and Safety Code Section 11379.6 is allowed.

3. No Medical Marijuana Dispensary, Collective or Cooperative shall be open to or provide Medical Marijuana to its members or Management Members between the hours of eight o'clock (8:00) P.M. and ten o'clock (10:00) A.M.

4. No person under the age of eighteen (18) shall be allowed at the Property, unless that minor is a Qualified Patient and is accompanied by his or her licensed Attending Physician, parent(s) or documented legal guardian.

5. No Medical Marijuana Dispensary, Collective or Cooperative, Management Member or member shall cause or permit the sale, dispensing, or consumption of alcoholic beverages on the Property or in the parking area of the Property.

6. No Medical Marijuana Dispensary, Collective or Cooperative shall hold or maintain a license from the State Department of Alcoholic Beverage Control to sell alcoholic beverages.

7. No dried Medical Marijuana shall be stored at the Property in structures that are not completely enclosed, in an unlocked vault or safe, in any other unsecured storage structure, or in a safe or vault that is not bolted to the floor of the Property.

8. Medical Marijuana may not be inhaled, smoked, eaten, ingested, or otherwise consumed on the Property, in the parking areas of the Property.

9. No person who is currently charged with or has been convicted within the previous ten (10) years of crimes of moral turpitude (such as theft, fraud, or assault), or who is currently on parole or probation for the sale or distribution of a controlled substance, shall be engaged directly or indirectly in the management of the Medical Marijuana Dispensary, Collective or Cooperative nor, further, shall manage or handle the receipts and expenses of the Medical Marijuana Dispensary, Collective or Cooperative.

K. Medical Marijuana Dispensary or Collectives/Cooperatives Should Acquire, Possess, and Distribute Only Lawfully Cultivated Marijuana-Medical Marijuana Dispensary, Collectives or Cooperatives should acquire marijuana only from their constituent members, because only marijuana grown by a qualified patient or his or her primary caregiver may lawfully be transported by, or, distributed to, other members of a medical marijuana Dispensary, Collective or Cooperative (Health and Safety Code 11362.765, 11362.775). The medical marijuana Dispensary, Collective or Cooperative may then allocate it to other members of the group. Nothing allows marijuana to be purchased from outside the medical marijuana Dispensaries, Collectives and Cooperatives for distribution to its members. Medical Marijuana Dispensary, Collectives and Cooperatives should document each member's contribution of labor, resources or money to the enterprise and track and record the source of their marijuana.

L. Distribution and Sales to Non-Member are Prohibited-State law allows primary caregivers to be reimbursed for certain services (including marijuana cultivation), but nothing allows individuals or groups to sell or distribute marijuana to non-members. A collective or cooperative may not distribute medical marijuana to any person who is not a member in good standing of the organization. A dispensing Medical Marijuana Dispensary, Collective or Cooperative may credit its members for marijuana they provide to the medical marijuana Collective, and Cooperative, which it may then allocate to other members (Health and Safety Code 11362.765 (C)). Members also may reimburse the dispensary, collective or cooperative for marijuana that has been allocated to them. Any monetary reimbursement that members provide to the medical marijuana Dispensary, Collective or Cooperative should only be an amount necessary to cover overhead costs and operating expenses.

M. Violation and Enforcement-Any violation of the terms and conditions of the Medical Marijuana Dispensary, Collective or Cooperative permit, of this Chapter, or of applicable local or state regulations and laws shall be grounds for permit suspension or revocation.