



TOWN OF APPLE VALLEY TOWN COUNCIL STAFF REPORT

To: Honorable Mayor and Town Council

Date: January 14, 2014

From: John Brown, Town Attorney
Best, Best and Kreiger

Item No: 6

Subject: ADOPT ORDINANCE NO. 455 – AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF APPLE VALLEY, ADOPTION OF REGULATION OF MEDICAL MARIJUANA DISPENSARIES FORMALIZING THE ADOPTED URGENCY ORDINANCE TO CLARIFY COMPLIANCE WITH FEDERAL AND STATE LAW AND CALIFORNIA CASE LAW

Applicant: Town of Apple Valley

Location: Town-wide

T.M. Approval: _____

Budgeted Item: Yes No N/A

RECOMMENDED ACTION:

Adopt Ordinance No. 455.

SUMMARY:

At its December 10, 2013 meeting, the Town Council reviewed and introduced Ordinance No. 455, amending the definition of "Medical Marijuana Dispensaries" to include mobile dispensaries under Chapter 9.08 of the Development Code. (Development Code Amendment No. 2013-003). As part of the requirements to adopt any new Ordinance, Ordinance No. 455 has been scheduled for adoption at the January 14, 2014 Town Council meeting.

FISCAL IMPACT:

Not Applicable

ATTACHMENT:

Ordinance No. 455

ORDINANCE NO. 455

AN 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 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 Ordinance, and the regulations set forth herein, are necessary for the 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, the Town of Apple Valley Planning Commission adopted Planning Commission Resolution No. 2013-14 on November 6, 2013, recommending that the Town Council adopt Development Code Amendment No. 2013-003; 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 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 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, were banned by the Town prior to the adoption of this Ordinance and the purpose of this 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.

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- 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 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 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 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 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 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.

SECTION 7. Effective Date. This Ordinance shall become effective thirty (30) days after the date of its adoption.

SECTION 8. Notice of Adoption. The Town Clerk of the Town of Apple Valley shall certify to the adoption of this ordinance and cause publication to occur in a newspaper of general circulation and published and circulated in the Town in a manner permitted under Section 36933 of the Government Code of the State of California.

APPROVED and **ADOPTED** by the Town Council and signed by the Mayor and attested by the Town Clerk this 14th day of January, 2014.

Art Bishop, Mayor

ATTEST:

La Vonda Pearson, Town Clerk

APPROVED AS TO FORM:

APPROVED AS TO CONTENT:

John Brown, Town Attorney

Frank Robinson, Town Manager

CERTIFICATION

**STATE OF CALIFORNIA)
COUNTY OF SAN BERNARDINO) ss
TOWN OF APPLE VALLEY)**

I, La Vonda Pearson, Town Clerk, hereby certify that the attached is a true copy of Ordinance No. 455 introduced by the Town Council of the Town of Apple Valley, California, at a regular meeting held December 10, 2013, and duly adopted by the Town Council of the Town of Apple Valley, California on January 14, 2014.

WITNESS my hand and official seal of the Town of Apple Valley this 14th day of January, 2014.

La Vonda Pearson, Town Clerk