



# TOWN OF APPLE VALLEY

## TOWN COUNCIL STAFF REPORT

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To: Honorable Mayor and Town Council Date: January 12, 2016

From: John Brown, Town Attorney Item No: 10  
Lori Lamson, Assistant Town Manager

Subject: **ADOPT ORDINANCE NO. 480 - AN INTERIM URGENCY ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF APPLE VALLEY, ENACTED PURSUANT TO CALIFORNIA GOVERNMENT CODE SECTION 65858 ESTABLISHING A TEMPORARY MORATORIUM ON CANNABIS DISPENSARIES, CANNABIS MANUFACTURERS, AND THE CULTIVATION AND DELIVERY OF CANNABIS PENDING THE COMPLETION OF STUDIES AND THE PREPARATION OF AN UPDATE TO THE TOWN'S MUNICIPAL AND ZONING CODES**

T.M. Approval: \_\_\_\_\_ Budgeted Item:  Yes  No  N/A

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### RECOMMENDED ACTION:

Staff recommends that the Town Council take the following actions:

- A. Receive a report on new state legislation specifically authorizing local regulation of medical cannabis uses.
- B. Adopt:

An Interim Urgency Ordinance of the Town Council of Apple Valley, California, Enacted Pursuant to California Government Code Section 65858 Establishing a Temporary Moratorium on Cannabis Dispensaries, Cannabis Manufacturers, and the Cultivation and Delivery of Cannabis Pending the Completion of Studies and the Preparation of an Update to the Town's Municipal and Zoning Codes.

## **BACKGROUND:**

The California legislature recently adopted legislation identified as the Medical Marijuana Regulation and Safety Act (AB 243, AB 266 and SB 643)(MMRSA) to comprehensively regulate medical marijuana (medical cannabis). The MMRSA recognizes and preserves local control to regulate or ban medical cannabis cultivation, transportation and distribution. The MMRSA confirms and clarifies that, in addition to the complete land use control over retail dispensaries recognized in *City of Riverside v. Inland Empire Patients Health and Wellness Center, Inc.* (2013) 56 Cal. 4th 729, municipalities have the power to regulate or ban the cultivation and distribution of medical marijuana. *Maral v. City of Live Oak* (2013) 221 Cal.App.4th 975.

Although the MMRSA allows municipalities to regulate or ban cannabis cultivation, manufacturing, transportation and distribution of medical cannabis within their jurisdictions, it requires some local enabling legislation to accomplish some aspects of this. If a city chooses to regulate these activities comprehensively, it must adopt an overlay of local regulatory standards that are at least as strict as the state's default regulations. Specifically, the MMRSA provides that if a city has not banned or regulated cannabis cultivation by March 1, 2016, then cultivation in that city will be subject only to state law on this issue.<sup>1</sup>

## **DISCUSSION:**

The cultivation, transportation and distribution of marijuana can create problems relating to public health and safety, crime, water and air quality and energy consumption. Marijuana uses can create nuisance activity such as loitering and criminal activity in business and residential districts. Specifically mobile delivery can create issues relating to responsibility and resources to monitor and enforce state law, questions of patient qualification and risks relating to the high use of large sums of cash for mobile transactions. Cultivation can create air quality, energy and water quality damage and impair building maintenance and safety. For example, the increased moisture necessary to grow indoors can create excessive mold growth and structural damage. Additionally, the equipment utilized to grow indoors can pose a risk of fire and electrical hazards due to dangerous electrical alterations and use. Further, inadequate ventilation combined with the use of pesticides and fertilizers in an enclosed space can lead to chemical contamination within structures.

Staff recommends that the Town Council adopt a short-term urgency moratorium on all medical cannabis uses while the Town develops regulations or a ban of these uses. This is especially important in light of the looming March 1, 2016 deadline to adopt cultivation regulations or a ban.

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<sup>1</sup> It is possible that this deadline provision will be repealed and allow cultivation regulation any time.

## *1. Regulation of Medical Cannabis Cultivation*

At least one California city (Live Oak) has successfully defended its total ban on the cultivation of marijuana for any purpose within that city. Its legally upheld regulation provides that “[m]arijuana cultivation by any person, including primary caregivers and qualified patients, collectives, cooperatives, or dispensaries” are prohibited in all zones within the city. The MMRSA allows this approach.

Alternatively, some cities are allowing cultivation with regulations such as:

- Outdoor, residential cultivation so long as plants are enclosed, screened and five (5) feet from the property line;
- Indoor cultivation only with a permit;
- Property owner must approve of cultivation on the property; and
- Limiting number of plants.

Should the Town choose to leave cultivation unregulated, under the currently enacted version of the MMRSA, on March 1, 2016 only State law would control cultivation activities in Apple Valley.

## *2. Regulation of Cannabis Delivery*

Mobile delivery of products has consistently created issues for cities because of the inherent transitory nature of the activity. A quick search of weedmaps.com identifies several cannabis dispensaries that currently operate in Apple Valley. These mobile delivery services are often attempts to avoid the effects of dispensary bans. State law will regulate the delivery of medical marijuana unless delivery is explicitly prohibited by local ordinance. In light of the foregoing, the Town has the option to ban or regulate mobile delivery. Regulations could include:

- Hours of operation;
- Amount of money or marijuana that can be carried at one time; and
- Time spent at one location.

## **ENVIRONMENTAL:**

The Ordinance is not subject to environmental review under the California Environmental Quality Act (CEQA) pursuant to Sections 15060(c)(2) (the activities will not result in a direct or reasonably foreseeable indirect physical change in the environment), 15060(c)(3) (the activities are not “projects” as defined in Section 15378) of the CEQA Guidelines, California Code of Regulations, Title 14, Chapter 3, because they have no potential for resulting in physical change to the environment, directly or indirectly and 15061(b)(3) of the CEQA Guidelines, California Code of Regulations, Title 14, Chapter 3, because it can be seen with certainty that it will not have a significant effect or physical change to the environment.

**FISCAL IMPACT:**

No financial impact is anticipated for the adoption of the proposed Urgency Ordinance.

**ATTACHMENT:**

Urgency Ordinance No. 480

**ORDINANCE NO. 480**

**AN INTERIM URGENCY ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF APPLE VALLEY, ENACTED PURSUANT TO CALIFORNIA GOVERNMENT CODE SECTION 65858 ESTABLISHING A TEMPORARY MORATORIUM ON CANNABIS DISPENSARIES, CANNABIS MANUFACTURERS AND THE CULTIVATION AND DELIVERY OF CANNABIS PENDING THE COMPLETION OF STUDIES AND THE PREPARATION OF AN UPDATE TO THE TOWN'S MUNICIPAL AND ZONING CODES**

**WHEREAS**, in 1996, the voters of the State of California approved Proposition 215 (codified as Health & Safety Code Section 11362.5 et seq. and entitled "The Compassionate Use Act of 1996"); and

**WHEREAS**, the intent of Proposition 215 was to enable seriously ill Californians to legally possess, use and cultivate marijuana for medical use under state law; and

**WHEREAS**, in 2003, the California Legislature adopted SB 420, the Medical Marijuana Program ("MMP"), codified as Health and Safety Code Section 11362.7 et seq., which permits qualified patients and their primary caregivers to associate collectively or cooperatively to cultivate marijuana for medical purposes without being subject to criminal prosecution under the Penal Code; and

**WHEREAS**, neither the Compassionate Use Act ("CUA") nor the MMP require nor impose an affirmative duty or mandate upon local governments to allow, authorize, or sanction the establishment of facilities that cultivate or process medical marijuana within its jurisdiction; and

**WHEREAS**, in May 2013, the California Supreme Court issued its decision in *City of Riverside v. Inland Empire Patients Health and Wellness Center, Inc.* (2013) 56 Cal. 4th 729, holding that cities have the authority to regulate or ban outright medical marijuana land uses; and

**WHEREAS**, under the Federal Controlled Substances Act, codified in 21 U.S.C. Section 801 et seq., the use, possession and cultivation of marijuana are unlawful and subject to federal prosecution without regard to a claimed medical need; and

**WHEREAS**, on October 9, 2015, Governor Jerry Brown signed the "Medical Marijuana Regulation and Safety Act" ("Act") into law; and

**WHEREAS**, the Act becomes effective January 1, 2016 and contains provisions, which allow for local governments to regulate licenses and certain activities thereunder; and

**WHEREAS**, the Act contains a provision, which provide that the state can become the sole authority for regulation of certain marijuana cultivation activities in the

absence of “land use regulations or ordinances regulating or prohibiting the cultivation of marijuana...” (Health and Safety Code §11362.777(c)(4); and

**WHEREAS**, several California cities have reported negative impacts of marijuana cultivation, processing and distribution, including offensive odors, illegal sales and distribution of marijuana, trespassing, theft, violent robberies and robbery attempts, fire hazards and problems associated with mold, fungus and pests; and

**WHEREAS**, marijuana plants, as they begin to flower and for a period of two (2) months or more, produce a strong odor and detectable far beyond property boundaries if grown outdoors; and

**WHEREAS**, the strong smell of marijuana creates an attractive nuisance, alerting persons to the location of the valuable plants and creating a risk of burglary, robbery, or armed robbery; and

**WHEREAS**, the indoor cultivation of marijuana has potential adverse effects to the health and safety of the occupants; including structural damage to the building due to increased moisture and excessive mold growth, which can occur and can pose a risk of fire and electrocution; additionally, the use of pesticides and fertilizers can lead to chemical contamination within the structure; and

**WHEREAS**, the Attorney General’s August 2008 Guidelines for the Security and Non-Diversion of Marijuana Grown for Medical Use recognizes that the cultivation or other concentration of marijuana in any location or premises without adequate security increases the risk that nearby homes or businesses may be negatively impacted by nuisance activity such as loitering or crime; and

**WHEREAS**, based on the experiences of other cities, these negative effects on the public health, safety and welfare are likely to occur and continue to occur in the Town due to the establishment and operation of marijuana cultivation, processing and distribution uses; and

**WHEREAS**, except as provided above, the Town’s Municipal Code (“Code”) does not explicitly prohibit or regulate the cultivation, processing, delivery and distribution of medical cannabis; and

**WHEREAS**, based on the findings above, the potential establishment of cannabis dispensaries, cultivation, cannabis manufacturers and delivery of cannabis uses in the Town without regulation poses a current and immediate threat to the public health, safety and welfare in the Town due to the negative land use and other impacts of such uses as described above; and

**WHEREAS**, the issuance or approval of business licenses, subdivisions, use permits, variances, building permits, or any other applicable entitlement for cannabis dispensaries, cultivation, cannabis manufacturers and delivery of cannabis will result in the aforementioned threat to public health, safety, or welfare; and

**WHEREAS**, it is in the interest of the Town, its residents and its lawfully permitted businesses that Town staff undertake a study to consider zoning, zoning ordinance amendments and/or other measures to regulate the establishment and operation of cannabis dispensaries, cultivation, cannabis manufacturers and delivery of cannabis uses in the Town; and

**WHEREAS**, California Government Code Section 65858 expressly authorizes the Town Council to adopt by four-fifths (4/5) vote, without following the procedures otherwise required for the adoption of a zoning ordinance, an urgency ordinance which is necessary for the immediate protection of the public health, safety and welfare; and

**WHEREAS**, it is the present intention of the Town Council to keep this Urgency Ordinance in effect only until the adoption of an ordinance establishing regulations regarding commercial and industrial cultivation, processing and distribution of medical marijuana in the Town.

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

**SECTION 1. Incorporation of Recitals**

The Town Council hereby finds that all of the foregoing recitals and the staff report presented herewith are true and correct and are hereby incorporated and adopted as findings of the Town Council as if fully set forth herein.

**SECTION 2. Findings**

The Town Council hereby finds, determines and declares that this Urgency Ordinance adopted pursuant to California Government Code Section 65858 is necessary because:

A. The Act becomes effective January 1, 2016 and contains provisions, which allow for local governments to regulate licenses and certain activities there under.

B. The Act contains provisions under which the State can become the sole authority for regulation of certain marijuana cultivation activities in the absence of regulation under certain parts of the Act, unless local governments have land use regulations or ordinances regulating or prohibiting the cultivation of marijuana.

C. To allow time for the Town to consider, study and enact regulations or a ban for medical marijuana cultivation, processing and distribution uses, it is necessary to temporarily suspend the establishment of any uses or the approval of any and all use permits, variances, building permits, or any other entitlement or permit authorizing the establishment of marijuana cultivation uses, marijuana processing uses and marijuana dispensaries as defined herein, as such uses may be in conflict with the development standards and implementation regulations that the Town will ultimately impose after the

Town has considered and studied this issue, which shall be accomplished within a reasonable time.

D. A moratorium will provide the Town with time to study marijuana cultivation uses, marijuana processing uses and marijuana dispensaries and potential impacts such land uses may have on the public health, safety and welfare.

E. Without the imposition of a temporary moratorium on the establishment of marijuana cultivation, processing and dispensary uses as described herein, the Town anticipates that one (1) or more commercial cannabis cultivation centers may locate in the Town before a non-urgency ordinance would become effective.

F. There is a current and immediate threat to the public health, safety and welfare of the Town and its community, thereby necessitating the immediate enactment of this moratorium as an urgency ordinance in order to ensure that permits for such facilities are established only under adequate regulations. Imposition of a moratorium will allow the Town sufficient time to conclude the preparation of a comprehensive ordinance for the regulation of such activities.

### **SECTION 3. Urgent Need**

Based on the foregoing recitals and findings, all of which are deemed true and correct, this interim ordinance is urgently needed for the immediate preservation of the public health, safety and welfare. This Interim Ordinance shall take effect immediately upon adoption and shall be of no further force and effect forty-five (45) days following the date of its adoption unless extended in accordance with the provisions set forth in Government Code Section 65858.

### **SECTION 4. Definitions**

For purposes of this Ordinance, the following definitions shall apply:

A. "Cannabis" means all parts of the plant *Cannabis sativa* Linnaeus, *Cannabis indica*, or *Cannabis ruderalis*, whether growing or not; the seeds thereof; the resin, whether crude or purified, extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds, or resin. "Cannabis" also means the separated resin, whether crude or purified, obtained from marijuana. "Cannabis" also means marijuana as defined by Section 11018 of the Health and Safety Code as enacted by Chapter 1407 of the Statutes of 1972.

B. "Cannabis dispensary" means a facility where medical cannabis, cannabis products, or devices for the use of cannabis or cannabis products are offered, either individually or in any combination, for retail sale, including an establishment that delivers medical cannabis and cannabis products as part of a retail sale.

C. "Cannabis manufacturer" means a person that conducts the production, preparation, propagation, or compounding of manufactured medical cannabis, or cannabis products either directly or indirectly or by extraction methods, or independently by means of chemical synthesis or by a combination of extraction and chemical synthesis at a fixed location that packages or repackages medical cannabis or cannabis products or labels or re-labels its container.

D. "Cultivation" means any activity involving the planting, growing, harvesting, drying, curing, grading, or trimming of medical cannabis.

E. "Delivery" means the commercial transfer of cannabis or cannabis products and includes origination or termination within the Town as well as a delivery business.

### **SECTION 5. Prohibited Use**

For the period of this Ordinance or any extension thereof cannabis dispensaries, cultivation, cannabis manufacturers and delivery of cannabis, as defined herein, shall be considered prohibited uses in all zoning districts of the Town. During the effective period of this Ordinance, no such use shall be established or continued if previously established and no use permit, variance, building permit, or any other entitlement or permit, whether administrative or discretionary, shall be approved or issued for the establishment or operation of dispensaries, cannabis cultivation, cannabis manufacturers and delivery of cannabis as defined herein in any zoning district and no person shall otherwise establish such businesses or operations in any zoning district.

### **SECTION 6. Penalty for Violation**

No person, whether as principal, agent, employee or otherwise, shall violate, cause the violation of, or otherwise fail to comply with any of the requirements of this Urgency Ordinance. Every act prohibited or declared unlawful and every failure to perform an act made mandatory by this Urgency Ordinance, shall be a misdemeanor or an infraction, at the discretion of the Town Attorney or the District Attorney. In addition to the penalties provided in this Urgency Ordinance, any condition caused or permitted to exist in violation of any of the provisions of this Urgency Ordinance is declared a public nuisance and may be abated as provided in Article III of Chapter 1.01 of the Apple Valley Municipal Code and/or under state law.

### **SECTION 7. Authority**

This Interim Urgency Ordinance is enacted pursuant to the authority conferred upon the Town Council of the Town of Apple Valley by Government Code 65858 and therefore shall be in full force and effect immediately upon its adoption by a four-fifths (4/5) vote of the Town Council. This Interim Urgency Ordinance shall continue in effect for forty-five (45) days from the date of its adoption and shall thereafter be of no further force and effect unless, after notice pursuant to Government Code Section 65090 and a public hearing, the Town Council extends the Interim Urgency Ordinance for an

additional period of time pursuant to Government Code 65858. Government Code 65858 further provides that such an urgency measure may be extended following compliance with that section for up to an additional twenty-two (22) months and fifteen (15) days beyond the original forty-five(45) day period.

### **SECTION 8. Council Direction**

During the period of this Ordinance and any extension thereof, the Town Council hereby directs Town Staff to: (1) review and consider options for the regulation or prohibition of cannabis cultivation, cannabis manufacturing, cannabis dispensary and cannabis delivery uses in the Town, including but not limited to the development of appropriate rules and regulations governing the location and operation of such uses; and (2) to issue a written report describing the measures which the Town has taken to address the conditions which led to the adoption of this Ordinance with the Town Council ten (10) days prior to the expiration of this Interim Urgency Ordinance, or any extension thereof and such report shall be made available to the public.

### **SECTION 9. CEQA**

The Town Council finds that this Ordinance is not subject to the California Environmental Quality Act (“CEQA”) pursuant to CEQA Guidelines Sections 15060(c)(3) because this activity is not a project as defined by Section 15378 of the CEQA Guidelines, California Code of Regulations, Title 14, Chapter 3, 15060(c)(3) (the activities are not “projects” as defined in Section 15378) of the CEQA Guidelines, California Code of Regulations, Title 14, Chapter 3, because they have no potential for resulting in physical change to the environment, directly or indirectly and pursuant to CEQA Guidelines Section 15061(b)(3) of the CEQA Guidelines, California Code of Regulations, Title 14, Chapter 3, because it can be seen with certainty that it will not have a significant effect or physical change to the environment.

### **SECTION 10. Restatement of Existing Law**

Neither the adoption of this Ordinance nor the repeal of any other ordinance of this Town shall in any manner affect the prosecution for violations of ordinances, which violations were committed prior to the effective date hereof, nor be construed as a waiver of any license or penalty or the penal provisions applicable to any violation thereof. The provisions of this Ordinance, insofar as they are substantially the same as ordinance provisions previously adopted by the Town relating to the same subject matter or relating to the enumeration of permitted uses under the Town’s zoning code, shall be construed as restatements and continuations and not as new enactments.

### **SECTION 11. Severability**

If any section, subsection, subdivision, sentence, clause, phrase, or portion of this Urgency Ordinance for any reason is held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Urgency Ordinance. The Town Council hereby declares

that it would have adopted this Urgency Ordinance and each section, subsection, subdivision, sentence, clause, phrase, or portion thereof, irrespective of the fact that any one or more sections, subsections, subdivisions, sentences, clauses, phrases, or portions thereof be declared invalid or unconstitutional.

**SECTION 12. Publication**

The Town Clerk shall certify as to the adoption of this Urgency Ordinance and shall cause it to be published within fifteen (15) days of the adoption 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 California Government Code Section 36933.

**APPROVED** and **ADOPTED** by the Town Council and signed by the Mayor and attested by the Town Clerk this 12<sup>th</sup> day of January, 2016.

\_\_\_\_\_  
Barb Stanton, Mayor

**ATTEST:**

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La Vonda M-Pearson, Town Clerk