



TOWN OF APPLE VALLEY

TOWN COUNCIL STAFF REPORT

To: Honorable Mayor and Town Council **Date:** February 23, 2016

From: John Brown, Town Attorney **Item No:** 5
Lori Lamson, Assistant Town Manager

Subject: EXTEND INTERIM URGENCY ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF APPLE VALLEY, CALIFORNIA, ENACTED PURSUANT TO CALIFORNIA GOVERNMENT CODE SECTION 65858, MAKING FINDINGS AND EXTENDING 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

RECOMMENDED ACTION:

Staff recommends that the Town Council take the following actions:

- A. Receive a report on efforts to study the issue of medical marijuana in the Town currently and expected usage in the Town in the future; and
- B. Adopt, by 4/5 vote:

An Interim Urgency Ordinance of the Town Council of the Town of Apple Valley, California, enacted pursuant to California Government Code section 65858 extending for a period of ten (10) months and fifteen (15) days the 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:

On January 12, 2016, the Town Council adopted an Interim Urgency Ordinance prohibiting medical marijuana dispensaries, manufacturers, cultivation and delivery. Pursuant to California Government Code section 65858(d), the Town must provide a written report describing measures taken to alleviate the condition, which led to the adoption of the ordinance. This report shall serve in that capacity.

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.

Town staff, in addition to the Town Police Department and the Town Attorney's office, are continuing to study the potential effects of various medical marijuana uses in the Town. Each particular medical marijuana use is being evaluated to determine the potential risks and benefits to the Town of allowing, regulating or banning the use. It is anticipated that the Apple Valley Planning Commission will consider proposed amendments to the Apple Valley Municipal Code in the near future. Those proposed amendments will then be presented to the Town Council for enactment.

While the amendments are being prepared and adopted, Town staff believes it is critical that the moratorium be extended in accordance with Government Code section 65858. The ordinance is currently set to expire on February 26, 2016. Although Council may extend the ordinance for up to an additional twenty-two (22) months and fifteen (15) days, staff recommends extending the ordinance for ten (10) months and fifteen (15) days.

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.

ATTACHMENTS:

Urgency Ordinance No. 483

ORDINANCE NO. 483

AN INTERIM URGENCY ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF APPLE VALLEY, CALIFORNIA ENACTED PURSUANT TO CALIFORNIA GOVERNMENT CODE SECTION 65858 EXTENDING FOR A PERIOD OF TEN (10) MONTHS AND FIFTEEN (15) DAYS THE 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 became 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 provides 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, on January 12, 2016, the Town Council adopted Urgency Ordinance No. 480 pursuant to Government Code section 65858 establishing a forty-five (45) day moratorium on cannabis dispensaries, cannabis manufacturers, cultivation and delivery of cannabis in the Town pending the completion of studies and the preparation of an update to the Town's municipal and zoning codes; and

WHEREAS, Town staff, the Police Department and the Town Attorney's office are continuing to conduct research into the possible and likely impacts of further regulating or banning medical cannabis dispensaries, manufacturers, cultivation and delivery in the Town in order to mitigate such impacts; and

WHEREAS, Town staff is continuing to gather factual data regarding the adverse impacts experienced by other cities that permit medical cannabis dispensaries, manufacturers, cultivation and delivery; and

WHEREAS, as a result, the Town Council desires to extend the moratorium for a period of ten (10) months and fifteen (15) days to allow staff and the Town Council the opportunity to continue to research and select the best course of action for the Town's citizens and the community at large; and

WHEREAS, the Town Council has determined that the circumstances and conditions that led to the adoption of Urgency Ordinance No. 480, which are set in the

recitals of Urgency Ordinance No. 480, have not been alleviated as of the date of this Ordinance and continue to create the concerns described in Urgency Ordinance No. 480; and

WHEREAS, the Town has subsequently complied with the notice and public hearing required by Government Code section 65858(a) of the California Government Code for the extension of Urgency Ordinance No. 480; 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 became effective January 1, 2016 and contains provisions, which allow for local governments to regulate licenses and certain activities thereunder.

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 ten (10) months and fifteen (15) days following the date of its adoption unless earlier repealed.

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 relabels 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 a 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 section 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 ten (10) months and fifteen (15) 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 section 65858. Government Code section 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 23rd day of February , 2016.

Barb Stanton, Mayor

ATTEST:

La Vonda M-Pearson, Town Clerk