



# TOWN OF APPLE VALLEY

## TOWN COUNCIL STAFF REPORT

**To:** Honorable Mayor and Town Council **Date:** September 13, 2016

**From:** Carol Miller, Principal Planner **Item No:** 15  
Planning Department

**Subject:** A REQUEST TO CONSIDER AN AMENDMENT TO TITLE 9 DEVELOPMENT CODE TO ADD SECTION 9.36.230 PROHIBITING DISPENSARIES, CANNABIS MANUFACTURERS AND THE CULTIVATION AND DELIVERY OF CANNABIS AND TO REMOVE REDUNDANCIES IN THE MUNICIPAL CODE

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

### RECOMMENDED ACTION:

**Move to open the public hearing and take testimony. Close the public hearing. Then:**

1. **Determine** that, pursuant to Section 15061(b)(3) of the State Guidelines to Implement the California Environmental Quality Act (CEQA), the project is exempt from environmental review because 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.
2. **Find** the facts presented within the staff report support the required Findings for approval of an amendment to the Development Code and adopt the Findings.
3. **Find** that the proposed Town Council Ordinance is consistent with the Goals and Objectives of the adopted Town of Apple Valley General Plan and that it is necessary to preserve the health, safety and general welfare of the citizens of Apple Valley.
4. **Move** to waive the reading of Ordinance No. 487 in its entirety and read by title only.

5. **Introduce** Ordinance No. 487, revising Title 9 "Development Code" of the Town of Apple Valley Municipal Code by adding Section 9.36.230 Prohibiting Dispensaries, Cannabis Manufacturers and the Cultivation and Delivery of Cannabis in the Municipal Code.
6. Direct staff to file a Notice of Exemption.

**BACKGROUND:**

On January 12, 2016, the Town Council held a public hearing regarding medical marijuana uses. At that meeting, the Town Council adopted an interim urgency ordinance prohibiting medical marijuana dispensaries, manufacturers, cultivation and delivery. On February 23, 2016, the Town Council extended that interim urgency ordinance pending the completion of studies and the preparation of a permanent ordinance that would update the Town's Development Code to address these issues.

In the months since that extension was passed, staff has studied the potential effects of various medical marijuana uses in the Town, evaluated the potential risks and benefits of such uses and presented a Code Amendment to the Planning Commission. On August 3, 2016, the Planning Commission adopted Planning Commission Resolution No. 2016-006 recommending an amendment to the Development Code as it pertains to this issue.

**DISCUSSION:**

The amendment, as recommended, essentially codifies the moratorium provisions and also serves to clean up redundancies in the Code by removing other references to "medical marijuana dispensaries" so all regulations are housed in the same Code section.

The Ordinance, as recommended, regulates or bans, to the extent allowable, personal marijuana use and cultivation, medical marijuana uses and commercial marijuana uses.

**"9.36.230 CANNABIS DISPENSARIES, CANNABIS MANUFACTURERS AND THE CULTIVATION AND DELIVERY OF CANNABIS**

- A. **Purpose.** The purpose of this Section is to regulate personal, medical and commercial marijuana uses in the Town. Nothing in this Section shall preempt or make inapplicable any provision of state or federal law. No provisions of this Section shall hinder or supersede any other applicable State or Federal statute.
- B. **Definitions.**

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

  1. "Commercial marijuana activity" includes the cultivation, possession, manufacture, distribution, processing, storing, laboratory testing, labeling, transportation, distribution, delivery or sale of marijuana and marijuana products.

2. “Cultivation” means any activity involving the planting, growing, harvesting, drying, curing, grading, or trimming of marijuana.
3. “Delivery” means the commercial transfer of marijuana or marijuana products to a customer. "Delivery" also includes the use by a retailer of any technology platform owned and controlled by the retailer, or independently licensed under California law that enables customers to arrange for or facilitate the commercial transfer by a licensed retailer of marijuana or marijuana products.
4. “Distribution” means the procurement, sale and transport of marijuana and marijuana products between entities for commercial use purposes.
5. “Licensee” means the holder of any state issued license related to marijuana activities, including but not limited to licenses issued under Division 10 of the Business & Professions Code.
6. “Manufacture” means to compound, blend, extract, infuse, or otherwise make or prepare a marijuana product.
7. “Marijuana” means all parts of the plant *Cannabis sativa* L., whether growing or not; the seeds thereof; the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds or resin. It does not include:
  - a. Industrial hemp, as defined in Section 11018.5 of the California Health & Safety Code; or
  - b. The weight of any other ingredient combined with marijuana to prepare topical or oral administrations, food, drink, or other product.
8. “Marijuana accessories” means any equipment, products or materials of any kind which are used, intended for use, or designed for use in planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, smoking, vaporizing, or containing marijuana, or for ingesting, inhaling, or otherwise introducing marijuana or marijuana products into the human body.
9. “Marijuana products” means marijuana that has undergone a process whereby the plant material has been transformed into a concentrate, including, but not limited to, concentrated cannabis, or an edible or topical product containing marijuana or concentrated cannabis and other ingredients.
10. “Person” includes any individual, firm, co-partnership, joint venture, association, corporation, limited liability company, estate, trust, business trust, receiver, syndicate, or any other group or combination acting as a unit and the plural as well as the singular.
11. “Private residence” means a house, an apartment unit, a mobile home, or other similar dwelling.
12. "Sale" includes any transaction whereby, for any consideration, title to marijuana is transferred from one person to another and includes the delivery of

marijuana or marijuana products pursuant to an order placed for the purchase of the same and soliciting or receiving an order for the same, but does not include the return of marijuana or marijuana products by a licensee to the licensee from whom such marijuana or marijuana product was purchased.

13. Any term defined in this Section also means the very term as defined in the California Business & Professions Code or the California Health & Safety Code, unless otherwise specified.

**C. *Personal Use.***

1. For purposes of this subsection, personal recreational use, possession, purchase, transport, or dissemination of marijuana shall be considered unlawful in all areas of the Town to the extent it is unlawful under California law.
2. Outdoor Cultivation. A person may not plant, cultivate, harvest, dry, or process marijuana plants outdoors in any zoning district of the Town. No use permit, building permit, variance, or any other permit or entitlement, whether administrative or discretionary, shall be approved or issued for any such use or activity.
3. Indoor Cultivation.
  - a. A person may not plant, cultivate, harvest, dry, or process marijuana plants inside a private residence, or inside an accessory structure to a private residence located upon the grounds of a private residence, or inside any other enclosed structure within any zoning district of the Town. No use permit, building permit, variance, or any other permit or entitlement, whether administrative or discretionary, shall be approved or issued for any such use or activity.
  - b. To the extent a complete prohibition on indoor cultivation is not permitted under California law, a person may not plant, cultivate, harvest, dry, or process marijuana plants inside a private residence, or inside an accessory structure to a private residence located upon the grounds of a private residence, unless the person is issued an indoor cultivation permit by the Planning Division. A person may not plant, cultivate, harvest, dry, or process marijuana plants inside any enclosed structure within any zoning district of the Town which is not either a private residence or an accessory structure to a private residence located upon the grounds of a private residence.
  - c. The Planning Division will issue application and processing guidelines for the indoor cultivation permit. No indoor cultivation permit shall be issued prior to the release of these guidelines and no permit shall be granted which has not complied fully with the application and processing requirements.

**D. Medical Use.**

1. Cultivation of medical marijuana pursuant to Section 11362.77 of the California Health & Safety Code is subject to the cultivation requirements laid out in Subsection (C) of this Section.
2. The establishment or operation of any medical marijuana collective, cooperative, dispensary, delivery service, operator, establishment, or provider shall be considered a prohibited use in all zoning districts of the Town. No use permit, variance, building permit, or any other entitlement or permit, whether administrative or discretionary, shall be approved or issued for the establishment of any collective, cooperative, dispensary, delivery service, operator, establishment, or provider in any zoning district and no person shall otherwise establish such businesses or operations in any zoning district.

**E. Commercial Use.**

1. The establishment or operation of any business of commercial marijuana activity is prohibited. 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 any such business or operation. Such prohibited businesses or operations may include, but are not limited to:
  - a. The transportation, delivery, storage, distribution, or sale of marijuana, marijuana products, or marijuana accessories;
  - b. The cultivation of marijuana;
  - c. The manufacturing or testing of marijuana, marijuana products, or marijuana accessories; or
  - d. Any other business licensed by the state or other government entity under Division 10 of the California Business & Professions Code, as it may be amended from time to time.

**F. 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 Section. Every act prohibited or declared unlawful and every failure to perform an act made mandatory by this Section 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 Section, any condition caused or permitted to exist in violation of any of the provisions of this Section 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 any other applicable provision of state law.”

**“9.05.070 SIMILAR USES**

**D. Unlawful Uses.** Uses which are unlawful under Federal or State law shall not be treated as permitted uses and shall not be determined to be similar uses under this Section.”

## **FINDINGS:**

Prior to the approval of any amendment to the Development Code, the Council, based upon the advice of the Planning Commission, must make specific "Findings" as listed within the Code. Code Section 9.06.060 "Required Findings" of Chapter 9.06 Amendments to Zoning Provisions" specifies that two (2) Findings must be made in a positive manner to approve an Amendment. These Findings, along with a comment to address each, are presented below:

- A. The proposed amendment is consistent with the General Plan; and

Comment: The proposed amendments are consistent with the General Plan, as they implement General Plan objectives and policies that promote the establishment and operation of land uses that maintain or enhance quality of life; that are compatible with surrounding uses; and that protect and maintain public health, safety and welfare. The General Plan focuses on the preservation of the Town's rural character and the protection of the long term health of the community. The goals, policies and programs within the General Plan aim to encourage quality of life and to ensure the Town's character and quality of life are available to all residents. The General Plan also focuses on the preservation of the Town's natural resources, including water resources, open spaces and natural vistas and air quality, with the aim of avoiding any environmental hazards. The General Plan further aims to ensure the long-term and adequate public safety of the entire community.

The proposed amendments prohibit land uses that are contrary to such objectives and policies. Cities that have permitted marijuana dispensaries and delivery services have experienced an overabundance and overconcentration of such uses, burglaries and takeover robberies, robberies of customers, an increase in crime in the vicinity of the dispensaries, illegal re-selling of marijuana obtained from dispensaries, street dealers attempting to sell marijuana to dispensary customers, dispensary customers using marijuana and then driving under the influence of marijuana, the selling of illegal drugs other than marijuana in dispensaries and the selling of marijuana and marijuana products to minors. An overconcentration of marijuana uses threatens the long term health of the community and the Town's quality of life. Marijuana cultivation specifically also poses risks to the Town's natural resources, due to increased demand for water by marijuana cultivators, decreased available open spaces and potential air quality effects produced by either indoor or outdoor cultivation and the practical effects of these uses, including pesticides, increased need for temperature control indoors and increased use of electricity for indoor cultivation areas. These uses are inconsistent

with the General Plan and thus the proposed amendments further the General Plan objectives and policies.

- B. The proposed amendment will not be detrimental to the public health, safety or welfare of the Town or its residents.

Comment: The proposed amendments will not adversely impact the public health, safety and welfare, since they prohibit land uses to protect the public health, safety and welfare from potentially negative impacts of marijuana cultivation, manufacturing, testing, delivery and dispensaries to the extent allowed under California law. Several California cities have reported negative impacts of such land uses, 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.

**NOTICING:**

Development Code Amendment No. 2016-002 was advertised as a public hearing in Apple Valley News newspaper on September 1, 2016.

**ENVIRONMENTAL REVIEW:**

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.

**FISCAL IMPACT:**

Not Applicable

**ATTACHMENTS:**

1. Ordinance No. 487
2. Planning Commission draft minutes for August 3, 2016
3. Planning Commission Staff Report, including Planning Commission Resolution No. 2016-006

**ORDINANCE NO. 487**

**AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF APPLE VALLEY, CALIFORNIA, AMENDING THE APPLE VALLEY MUNICIPAL CODE TO ADD SECTION 9.36.230 PROHIBITING CANNABIS DISPENSARIES, CANNABIS MANUFACTURERS AND THE CULTIVATION AND DELIVERY OF CANNABIS AND TO REMOVE REDUNDANCIES IN THE APPLE VALLEY MUNICIPAL CODE**

**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" ("MMRSA") into law; and

**WHEREAS**, MMRSA became effective January 1, 2016 and contains provisions which allow for local governments to regulate licenses and certain activities thereunder, including allowing for a complete ban on dispensaries, cultivation and delivery services; 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, which is 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, 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**, 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 marijuana dispensaries, marijuana manufacturers, cultivation and delivery of marijuana in the Town pending the completion of studies and the preparation of an update to the Apple Valley Municipal Code; and

**WHEREAS**, on February 23, 2016, the Town Council adopted an extension of Urgency Ordinance No. 480 pursuant to Government Code Section 65858 extending the moratorium by an additional ten (10) months and fifteen (15) days; and

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

**WHEREAS**, based on that study, the potential establishment of marijuana dispensaries, cultivation, marijuana manufacturers and delivery of marijuana 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; and

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

**WHEREAS**, on June 28, 2016, the Secretary of State certified Proposition 64, the Control, Regulate and Tax Adult Use of Marijuana Act (“AUMA”), for the November 8, 2016 ballot; and

**WHEREAS**, the AUMA would become law if a majority of the electorate votes “Yes” on the proposition; and

**WHEREAS**, the AUMA would regulate, among other items, the use of marijuana for personal and commercial purposes, including the recreational use of marijuana by adults over 21 years of age; and

**WHEREAS**, to regulate personal use of marijuana the AUMA would add Section 11362.1 to the Health and Safety Code, which makes it “lawful under state and local law” for persons 21 years of age or older to “possess, process, transport, purchase, obtain or give away to persons 21 years of age or older without any compensation whatsoever” up to 28.5 grams of marijuana in the form of concentrated cannabis or not more than eight (8) grams of marijuana in the form of concentrated cannabis contained in marijuana products; and

**WHEREAS**, the AUMA would make it lawful for those individuals to “possess, plant, cultivate, harvest, dry or process not more than six (6) living marijuana plants and possess the marijuana produced by the plants; and

**WHEREAS**, the AUMA would make it lawful for those individuals to smoke or ingest marijuana or marijuana products; and

**WHEREAS**, should the AUMA pass, many of its provisions would take effect on November 9, 2016; and

**WHEREAS**, to regulate commercial use of marijuana, the AUMA would add Division 10 (Marijuana) to the Business & Professions Code, which grants state agencies “the exclusive authority to create, issue, renew, discipline, suspend, or revoke” licenses for businesses including the transportation, storage, distribution, sale, cultivation, manufacturing and testing of marijuana; and

**WHEREAS**, the AUMA provides that the above state agencies shall promulgate rules and regulations and shall begin issuing licenses under Division 10 by January 1, 2018; and

**WHEREAS**, the AUMA states that a local jurisdiction shall not prevent transportation of marijuana or marijuana products on public roads by a licensee transporting marijuana or marijuana products in compliance with Division 10; and

**WHEREAS**, the AUMA would authorize cities to “reasonably regulate” without completely prohibiting cultivation of marijuana inside a private residence or inside an “accessory structure to a private residence located upon the grounds of a private residence that is fully enclosed and secure”; and

**WHEREAS**, the AUMA would authorize cities to completely prohibit outdoor cultivation on the grounds of a private residence, up to and until a “determination by the California Attorney General that nonmedical use of marijuana is lawful in the State of California under federal law”; and

**WHEREAS**, the AUMA would authorize cities to completely prohibit the establishment or operation of any marijuana business licensed under Division 10 within its jurisdiction, including marijuana dispensaries, marijuana retailers and marijuana delivery services; and

**WHEREAS**, absent appropriate local regulation authorized by the AUMA, state regulations will control; and

**WHEREAS**, the Town has taken into account the potential effects of AUMA in formulating regulations surrounding marijuana issues.

**NOW, THEREFORE, THE TOWN COUNCIL OF THE TOWN OF APPLE VALLEY, CALIFORNIA, DOES 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. Apple Valley Municipal Code Amendment #1.** Title 9 of the Apple Valley Municipal Code is hereby amended to add Section 9.36.230, to read in full as follows:

**“9.36.230 CANNABIS DISPENSARIES, CANNABIS MANUFACTURERS AND THE CULTIVATION AND DELIVERY OF CANNABIS**

**A. Purpose.** The purpose of this Section is to regulate personal, medical and commercial marijuana uses in the Town. Nothing in this Section shall preempt or make inapplicable any provision of state or federal law. No provisions of this Section shall hinder or supersede any other applicable State or Federal statute.

**B. Definitions.**

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

1. “Commercial marijuana activity” includes the cultivation, possession, manufacture, distribution, processing, storing, laboratory testing, labeling, transportation, distribution, delivery or sale of marijuana and marijuana products.
2. “Cultivation” means any activity involving the planting, growing, harvesting, drying, curing, grading, or trimming of marijuana.
3. “Delivery” means the commercial transfer of marijuana or marijuana products to a customer. "Delivery" also includes the use by a retailer of any technology platform owned and controlled by the retailer, or independently licensed under California law, that enables customers to arrange for or facilitate the commercial transfer by a licensed retailer of marijuana or marijuana products.
4. “Distribution” means the procurement, sale and transport of marijuana and marijuana products between entities for commercial use purposes.
5. “Licensee” means the holder of any state issued license related to marijuana activities, including but not limited to licenses issued under Division 10 of the Business & Professions Code.
6. “Manufacture” means to compound, blend, extract, infuse, or otherwise make or prepare a marijuana product.
7. “Marijuana” means all parts of the plant *Cannabis sativa* L., whether growing or not; the seeds thereof; the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds or resin. It does not include:
  - a. Industrial hemp, as defined in Section 11018.5 of the California Health & Safety Code; or
  - b. The weight of any other ingredient combined with marijuana to prepare topical or oral administrations, food, drink, or other product.
8. “Marijuana accessories” means any equipment, products or materials of any kind which are used, intended for use, or designed for use in planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, smoking, vaporizing, or containing marijuana, or for ingesting, inhaling, or otherwise introducing marijuana or marijuana products into the human body.
9. “Marijuana products” means marijuana that has undergone a process whereby the plant material has been transformed into a concentrate, including, but not limited to, concentrated cannabis, or an edible or topical product containing marijuana or concentrated cannabis and other ingredients.

10. "Person" includes any individual, firm, co-partnership, joint venture, association, corporation, limited liability company, estate, trust, business trust, receiver, syndicate, or any other group or combination acting as a unit and the plural as well as the singular.
11. "Private residence" means a house, an apartment unit, a mobile home, or other similar dwelling.
12. "Sale" includes any transaction whereby, for any consideration, title to marijuana is transferred from one person to another and includes the delivery of marijuana or marijuana products pursuant to an order placed for the purchase of the same and soliciting or receiving an order for the same, but does not include the return of marijuana or marijuana products by a licensee to the licensee from whom such marijuana or marijuana product was purchased.
13. Any term defined in this Section also means the very term as defined in the California Business & Professions Code or the California Health & Safety Code, unless otherwise specified.

**C. *Personal Use.***

1. For purposes of this subsection, personal recreational use, possession, purchase, transport, or dissemination of marijuana shall be considered unlawful in all areas of the Town to the extent it is unlawful under California law.
2. Outdoor Cultivation. A person may not plant, cultivate, harvest, dry, or process marijuana plants outdoors in any zoning district of the Town. No use permit, building permit, variance, or any other permit or entitlement, whether administrative or discretionary, shall be approved or issued for any such use or activity.
3. Indoor Cultivation.
  - a. A person may not plant, cultivate, harvest, dry, or process marijuana plants inside a private residence, or inside an accessory structure to a private residence located upon the grounds of a private residence, or inside any other enclosed structure within any zoning district of the Town. No use permit, building permit, variance, or any other permit or entitlement, whether administrative or discretionary, shall be approved or issued for any such use or activity.
  - b. To the extent a complete prohibition on indoor cultivation is not permitted under California law, a person may not plant, cultivate, harvest, dry, or process marijuana plants inside a private residence, or inside an accessory structure to a private residence located upon the grounds of a private residence, unless the person is issued an indoor cultivation permit by the Planning Division. A person may not plant,

cultivate, harvest, dry, or process marijuana plants inside any enclosed structure within any zoning district of the Town which is not either a private residence or an accessory structure to a private residence located upon the grounds of a private residence.

- c. The Planning Division will issue application and processing guidelines for the indoor cultivation permit. No indoor cultivation permit shall be issued prior to the release of these guidelines and no permit shall be granted which has not complied fully with the application and processing requirements.

**D. *Medical Use.***

1. Cultivation of medical marijuana pursuant to Section 11362.77 of the California Health & Safety Code is subject to the cultivation requirements laid out in Subsection (C) of this Section.
2. The establishment or operation of any medical marijuana collective, cooperative, dispensary, delivery service, operator, establishment, or provider shall be considered a prohibited use in all zoning districts of the Town. No use permit, variance, building permit, or any other entitlement or permit, whether administrative or discretionary, shall be approved or issued for the establishment of any collective, cooperative, dispensary, delivery service, operator, establishment, or provider in any zoning district and no person shall otherwise establish such businesses or operations in any zoning district.

**E. *Commercial Use.***

1. The establishment or operation of any business of commercial marijuana activity is prohibited. 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 any such business or operation. Such prohibited businesses or operations may include, but are not limited to:
  - a. The transportation, delivery, storage, distribution, or sale of marijuana, marijuana products, or marijuana accessories;
  - b. The cultivation of marijuana;
  - c. The manufacturing or testing of marijuana, marijuana products, or marijuana accessories; or
  - d. Any other business licensed by the state or other government entity under Division 10 of the California Business & Professions Code, as it may be amended from time to time.

- F. *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 Section. Every act prohibited or declared unlawful and every

failure to perform an act made mandatory by this Section 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 Section, any condition caused or permitted to exist in violation of any of the provisions of this Section 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 any other applicable provision of state law.”

**SECTION 3. Apple Valley Municipal Code Amendment #2.** The title and subdivision (D) of Section 9.05.070(D) of the Apple Valley Municipal Code are hereby amended to read as follows:

**“9.05.070 SIMILAR USES**

*D. Unlawful Uses.* Uses which are unlawful under Federal or State law shall not be treated as permitted uses and shall not be determined to be similar uses under this Section.”

**SECTION 4. Apple Valley Municipal Code Amendment #3.** Chapter 9.08 of the Apple Valley Municipal Code is hereby amended to remove the definition of “Medical Marijuana Dispensary” to ensure consistency throughout the Apple Valley Municipal Code.

**SECTION 5. 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 6. 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 7. Severability.** If any section, subsection, subdivision, sentence, clause, phrase, or portion of this 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 Code. The Town Council

hereby declares that it would have adopted this 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 8. Publication.** The Town Clerk shall certify as to the adoption of these amendments and shall cause it to be published within fifteen (15) days of the adoption and shall post a certified copy of this Ordinance, including the vote for and against the same, in the Office of the Town Clerk, in accordance with California Government Code Section 36933.

**PASSED, APPROVED and ADOPTED** this \_\_\_\_\_ day of September, 2016.

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

ATTEST:

\_\_\_\_\_  
La Vonda M-Pearson, Town Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
Best Best & Krieger LLP  
Town Attorney

**MINUTES  
DRAFT EXCERPT  
TOWN OF APPLE VALLEY  
PLANNING COMMISSION  
Regular Meeting**

***Wednesday, August 3, 2016***

**CALL TO ORDER**

Chairman Qualls called to order the Regular Meeting of the Planning Commission of the Town of Apple Valley for August 3, 2016 at 6:00 p.m.

**ROLL CALL**

**Planning Commission**

Roll call was taken with the following members present: Commissioner Bruce Kallen, Commissioner Jason Lamoreaux, Commissioner B.R. "Bob" Tinsley, Vice-Chairman Mark Shoup and Chairman Doug Qualls. Absent: None

**STAFF PRESENT**

Carol Miller, Principal Planner, Pam Cupp, Associate Planner, Thomas Rice, Town Attorney, Jordan Ferguson, Town Attorney and Yvonne Rivera, Planning Commission Secretary.

**PUBLIC HEARING ITEMS**

4. **Development Code Amendment No. 2016-002.** This is a request to amend the Town Municipal Code to add Section 9.36.230 Prohibiting Cannabis Dispensaries, Cannabis Manufacturers and the Cultivation and Delivery of Cannabis and to remove Redundancies in the Apple Valley Municipal Code.  
**Applicant:** Town of Apple Valley  
**Location:** Town-wide

Chairman Qualls opened the public hearing at 6:24 p.m.

Jordan Ferguson, Town Attorney, presented the staff report as filed with the Planning Division. He also commented on the restrictions as outlined in the Ordinance.

Commissioner Kallen would like staff to prepare a comparison with other jurisdictions throughout California, to show what they are doing.

Vice-Chairman Shoup read into the record, a summary of Section 7 of the Initiative as it relates to allowing cities and counties to impose a tax up to 10%.

Discussion ensued regarding setting up an ordinance that would authorize commercial distribution of marijuana with a tax.

Mr. Ferguson clarified that while the Town is allowed to put a measure on the ballot, the deadline is August 12, 2016; therefore, it should be considered for a future ballot where Council Members are elected.

Chairman Qualls requested to know if the proposed ordinance is the most restrictive approach the Town can take. He also asked a series of questions regarding Proposition 64 and the Adult Use of Marijuana Act (AUMA) that is on the November ballot.

Lengthy discussion ensued regarding the regulation of the indoor cultivating permit that would be required should Proposition 64 pass in November.

Mr. Thomas Rice, Town Attorney, informed the Planning Commission that a future item to discuss the requirement of an indoor cultivating permit would come back to the Planning Commission, should Proposition 64 pass in November.

### **PUBLIC COMMENT**

John Laraway, Apple Valley, expressed concern regarding the Town requiring a permit in an effort to regulate marijuana. He believes that if the state does not require a permit, neither should the Town.

Chairman Qualls closed the public hearing at 6:53 p.m.

### **PLANNING COMMISSION COMMENTS:**

Vice-Chairman Shoup stated he is in support of Proposition 64; however, he expressed concern regarding the proposed regulations. He would like staff to come back to the Planning Commission with an ordinance to allow for the use of marijuana and allow the citizens some freedom.

Chairman Qualls spoke in support of the ordinance; however, he explained the reasons why he believed the Town has a responsibility in attempting to permit from a safety aspect.

Lengthy discussion ensued regarding the need to regulate the use of marijuana within Town limits.

Ms. Carol Miller, Principal Planner, clarified that a Home Occupancy Permit does not allow for retail sales out of your home.

**MOTION**

Motion by Commissioner Lamoreaux, seconded by Commissioner Tinsley that the Planning Commission move to:

1. Approve Planning Commission Resolution No. 2016-006, forwarding a recommendation that the Town Council amend Title 9 "Development Code" of the Town of Apple Valley Municipal Code as outlined within the staff report.

**ROLL CALL VOTE**

Ayes:	Commissioner Kallen Commissioner Lamoreaux Commissioner Tinsley Chairman Qualls
Noes:	Vice-Chairman Shoup
Abstain:	None
Absent:	None

The motion carried by a 4-1-0-0 vote.



## TOWN OF APPLE VALLEY PLANNING COMMISSION

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### Staff Report

<b>AGENDA DATE:</b>	August 3, 2016
<b>CASE NUMBER:</b>	Development Code Amendment No. 2016-002
<b>APPLICANT:</b>	Town of Apple Valley
<b>PROPOSAL:</b>	To Amend the Town Municipal Code to add Section 9.36.230 Prohibiting Cannabis Dispensaries, Cannabis Manufacturers and the Cultivation and Delivery of Cannabis and to Remove Redundancies in the Apple Valley Municipal Code
<b>LOCATION:</b>	Town-wide
<b>ENVIRONMENTAL DETERMINATION:</b>	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.
<b>PRESENTER:</b>	Jordan Ferguson, Town Attorney Office
<b>RECOMMENDATION:</b>	Adopt Planning Commission Resolution No. 2016-006 recommending that the Town Council Amend the Town Municipal Code to add Section 9.36.230 Prohibiting Cannabis Dispensaries, Cannabis Manufacturers and the Cultivation and Delivery of Cannabis and to Remove Redundancies in the Apple Valley Municipal Code

## **BACKGROUND:**

On January 12, 2016, the Town Council held a public hearing regarding medical marijuana uses. At that meeting, the Town Council adopted an interim urgency ordinance prohibiting medical marijuana dispensaries, manufacturers, cultivation and delivery. On February 23, 2016, the Town Council extended that interim urgency ordinance pending the completion of studies and the preparation of a permanent ordinance that would update the Town's Development Code to address these issues.

In the months since that extension was passed, staff has studied the potential effects of various medical marijuana uses in the Town, evaluated the potential risks and benefits of such uses and is now proposing amendments to the Apple Valley Municipal Code. These amendments will codify the moratorium provisions and also serve to clean up redundancies in the Code by removing other references to "medical marijuana dispensaries" so all regulations are housed in the same Code section.

Staff recommends that the Planning Commission adopt Planning Commission Resolution No. 2016-006 and recommend amendments to the Apple Valley Municipal Code to address these issues.

## **DISCUSSION:**

In the fall of 2015, the California legislature adopted legislation identified as the Medical Marijuana Regulation and Safety Act (AB 243, AB 266 and SB 643) (MMRSA) to comprehensively regulate medical marijuana. MMRSA recognizes and preserves local control to regulate or ban medical cannabis cultivation, transportation and distribution. 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 per *Maral v. City of Live Oak* (2013) 221 Cal.App.4th 975.

On June 28, 2016, the Secretary of State certified Proposition 64, the Control, Regulate and Tax Adult Use of Marijuana Act ("AUMA") for the November 8, 2016 ballot.

If AUMA passes, some of its provisions will take effect on November 9, 2016. AUMA would immediately legalize possession, transport, purchase, use and transfer of recreational marijuana for individuals 21 years of age or older. Under AUMA, adults could possess up to 28.5 grams of marijuana, up to 8 grams of marijuana in the form of concentrated cannabis, which may be present in marijuana products such as edibles and up to six (6) living marijuana plants and any marijuana produced by those plants. It would also legalize the cultivation of marijuana, marijuana delivery services and recreational marijuana retail services.

However, AUMA allows for local control of marijuana uses. It will allow local governments to:

- Ban all marijuana-related businesses outright, including marijuana dispensaries, delivery services and any recreational marijuana retail services;
- Ban outdoor cultivation of marijuana, unless the California Attorney General determines marijuana is no longer illegal under federal law (If marijuana is federally legalized, outdoor cultivation could be regulated, but not prohibited); and

- Reasonably regulate indoor cultivation in private residences, but not ban it outright. AUMA would allow individuals to grow up to six (6) marijuana plants in their home and to possess all of the marijuana those plants provide.

If AUMA passes, it would allow for the development of many new marijuana-related businesses, including recreational dispensaries, recreational retail services and recreational delivery. However, AUMA also gives local governments the authority to regulate these uses. While AUMA indicates a local government cannot prevent transportation of marijuana or marijuana products on public roads, AUMA authorizes cities to “reasonably regulate” indoor cultivation of marijuana in private residences, ban outdoor cultivation of marijuana entirely unless it is federally legalized and prohibit any marijuana-related business entirely.

If AUMA becomes law, recreational use of marijuana will be legalized, as will recreational possession of marijuana and some level of indoor cultivation. 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 Planning Commission pass a resolution recommending the Town Council adopt an ordinance banning or regulating these uses.

Staff recommends the Ordinance regulate or ban to the extent allowable (1) personal marijuana use and cultivation, (2) medical marijuana uses and (3) commercial marijuana uses.

1) Regulation of Personal Marijuana Uses

As indicated above, passage of AUMA would legalize recreational use of marijuana. However, the Ordinance staff recommends includes a provision banning personal recreational use of marijuana to the extent such use is illegal under California law. If AUMA fails, the proposed ordinance would continue to ban all personal recreational use of marijuana in the Town.

The Town is also allowed to ban outdoor cultivation of marijuana entirely. Alternatively, some cities are allowing outdoor cultivation with regulations such as:

- Outdoor, residential cultivation so long as plants are enclosed;
- Property owner must approve of cultivation on the property; and
- Limiting the number of plants.

If AUMA passes, the Town cannot ban indoor cultivation of marijuana in private residences outright, but it may “reasonably regulate” such cultivation. The Ordinance staff recommends bans all indoor cultivation entirely to the extent allowed by California law and bans indoor cultivation in all structures that are not private residences entirely. It also allows for indoor

cultivation in private residences only after the individual has obtained an Indoor Cultivation Permit, which will allow the Town to place building code, fire code and public safety restrictions on cultivation occurring in private residences. Alternatively, the Town could decline to regulate indoor cultivation entirely, or propose other regulations, such as:

- Indoor cultivation for personal use only;
- Indoor cultivation for commercial use with a business license; and
- Indoor cultivation with an alternative set of public welfare regulations imposed, but no permit required.

### 2) Regulation of Medical Marijuana Uses

The Medical Marijuana Regulation and Safety Act (“MMRSA”) is left largely intact by AUMA and so the potential for medical marijuana uses, including qualified patient or primary caregiver cultivation, still exists. The recommended ordinance would impose the same regulations on medical marijuana cultivation as on recreational cultivation and would ban all collectives, cooperatives, dispensaries, delivery services, operators, establishments and providers. Alternatively, the Town could:

- Create looser regulations for those who have a verified medical need to cultivate marijuana indoors or outdoors;
- Allow dispensaries but limit the number allowed in the jurisdiction;
- Allow dispensaries but impose separation requirements from parks, schools, churches and other dispensaries;
- Limit dispensaries to a specified zoning designation; and/or
- Impose security requirements including limiting the hours of operation of any dispensaries and prohibiting loitering.

### 3) Regulation of Commercial Marijuana Uses

If AUMA becomes law, it will likely lead to the creation of a variety of new commercial marijuana ventures, including recreational retail services. The Ordinance staff recommends bans all commercial marijuana activity, including commercial delivery, commercial cultivation, commercial manufacturing, commercial testing and any commercial dispensaries or recreational retailers. Alternatively, the Town could allow some or all of these uses, with whatever regulations the Town sees fit. Some other options include:

- Allowing commercial cultivation with a local tax imposed on growth;
- Allowing some retailers with zoning limitations on location or number; and
- Allowing delivery to originate or terminate in the Town.

Town staff, in addition to the Town Police Department and the Town Attorney’s office, have studied the potential effects of various marijuana uses in the Town. Each particular marijuana use has been evaluated to determine the potential risks and benefits of allowing, regulating, or banning the use. Due to the various risks posed to the health, safety and welfare of the citizens of the Town, staff is recommending enacting the restrictions present in the current moratorium, in addition to making alterations to prepare for the potential passage of AUMA and amending the Apple Valley Municipal Code to regulate personal, medical and commercial marijuana activities. Staff recommends that the Planning Commission hold a public hearing and adopt the attached Planning Commission Resolution No. 2016-006 recommending that the Town Council Amend the Town Municipal Code to add Section 9.36.230 dealing with marijuana uses in the Town.

## **ENVIRONMENTAL REVIEW**

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.

## **NOTICING**

Development Code Amendment No. 2016-002 was advertised as a public hearing in the Apple Valley News newspaper on June 22, 2016.

## **RECOMMENDATION:**

Following receipt of public input and discussion by the Commission, it is recommended that the Commission move to approve Planning Commission Resolution No. 2016-006, forwarding a recommendation that the Town Council amend Title 9 "Development Code" of the Town of Apple Valley Municipal Code as outlined within the staff report.

## **ATTACHMENT:**

1. Planning Commission Resolution No. 2016-006
2. Draft Town Council Ordinance

**PLANNING COMMISSION RESOLUTION NO. 2016-006**

**A RESOLUTION OF THE TOWN OF APPLE VALLEY PLANNING COMMISSION RECOMMENDING TO THE TOWN COUNCIL ADOPTION OF AN ORDINANCE AMENDING THE TOWN MUNICIPAL CODE TO ADD SECTION 9.36.230 PROHIBITING CANNABIS DISPENSARIES, CANNABIS MANUFACTURERS AND THE CULTIVATION AND DELIVERY OF CANNABIS AND TO REMOVE REDUNDANCIES IN THE APPLE VALLEY MUNICIPAL CODE**

**WHEREAS**, Title 9 “Development Code” of the Municipal Code of the Town of Apple Valley was adopted by the Town Council on April 27, 2010; and

**WHEREAS**, Title 9 (Development Code) of the Municipal Code of the Town of Apple Valley has been previously modified by the Town Council on the recommendation of the Planning Commission; and

**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” (“CUA”); 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 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, California Governor Edmund G. Brown, Jr. 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, including allowing for a complete ban on dispensaries, cultivation and delivery services; and

**WHEREAS**, several California cities have reported negative impacts of marijuana cultivation, processing and distribution uses, 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**, the Town's Municipal Code ("Code") does not address the cultivation, processing, delivery and distribution of medical cannabis; and

**WHEREAS**, the Town adopted an interim urgency ordinance addressing these issues on January 12, 2016 and extended that ordinance on February 23, 2016 to allow Town staff, the Town Police Department and the Town Attorney's office to study the potential effects of various medical marijuana uses in the Town; and

**WHEREAS**, that study has discovered the various risks posed to the health, safety and welfare of the citizens of the Town by these uses and has determined that those risks outweigh any benefits of allowing these uses in the Town; 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**, on June 28, 2016, the Secretary of State certified Proposition 64, the Control, Regulate and Tax Adult Use of Marijuana Act (“AUMA”), for the November 8, 2016 ballot; and

**WHEREAS**, the AUMA would become law if a majority of the electorate votes “Yes” on the proposition; and

**WHEREAS**, the AUMA would regulate, among other items, the use of marijuana for personal and commercial purposes, including the recreational use of marijuana by adults over 21 years of age; and

**WHEREAS**, to regulate personal use of marijuana the AUMA would add Section 11362.1 to the Health and Safety Code, which makes it “lawful under state and local law” for persons 21 years of age or older to “possess, process, transport, purchase, obtain, or give away to persons 21 years of age or older without any compensation whatsoever” up to 28.5 grams of marijuana in the form of concentrated cannabis or not more than eight (8) grams of marijuana in the form of concentrated cannabis contained in marijuana products; and

**WHEREAS**, the AUMA would make it lawful for those individuals to “possess, plant, cultivate, harvest, dry, or process not more than six (6) living marijuana plants and possess the marijuana produced by the plants; and

**WHEREAS**, the AUMA would make it lawful for those individuals to smoke or ingest marijuana or marijuana products; and

**WHEREAS**, should the AUMA pass, many of its provisions would take effect on November 9, 2016; and

**WHEREAS**, to regulate commercial use of marijuana, the AUMA would add Division 10 (Marijuana) to the Business & Professions Code, which grants state agencies “the exclusive authority to create, issue, renew, discipline, suspend, or revoke” licenses for businesses including the transportation, storage, distribution, sale, cultivation, manufacturing and testing of marijuana; and

**WHEREAS**, the AUMA provides that the above state agencies shall promulgate rules and regulations and shall begin issuing licenses under Division 10 by January 1, 2018; and

**WHEREAS**, the AUMA states that a local jurisdiction shall not prevent transportation of marijuana or marijuana products on public roads by a licensee transporting marijuana or marijuana products in compliance with Division 10; and

**WHEREAS**, the AUMA would authorize cities to “reasonably regulate” without completely prohibiting cultivation of marijuana inside a private residence or inside an “accessory structure to a private residence located upon the grounds of a private residence that is fully enclosed and secure”; and

**WHEREAS**, the AUMA would authorize cities to completely prohibit outdoor cultivation on the grounds of a private residence, up to and until a “determination by the California

Attorney General that nonmedical use of marijuana is lawful in the State of California under federal law”; and

**WHEREAS**, the AUMA would authorize cities to completely prohibit the establishment or operation of any marijuana business licensed under Division 10 within its jurisdiction, including marijuana dispensaries, marijuana retailers and marijuana delivery services; and

**WHEREAS**, absent appropriate local regulation authorized by the AUMA, state regulations will control; and

**WHEREAS**, the Town has taken into account the potential effects of AUMA in formulating regulations surrounding marijuana uses.

**NOW, THEREFORE**, the Planning Commission of the Town of Apple Valley does resolve as follows:

**SECTION 1. Incorporation of Recitals.** The above recitals are true and correct and are incorporated herein by this reference.

**SECTION 2. Apple Valley Municipal Code Amendment.** The Planning Commission hereby recommends that the Town Council adopt the attached Ordinance revising Title 9 of the Apple Valley Municipal Code to add Section 9.36.230 prohibiting cannabis dispensaries, cannabis manufacturers, cultivation and delivery of cannabis in the Town and to make other changes to the Apple Valley Municipal Code to eliminate redundancies.

**SECTION 3. CEQA.** The Town Council finds, under Title 14 of the California Code of Regulations, Section 15061(b)(3), that this Development Code Amendment 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 4. Consistency.** The changes as proposed are consistent with the Goals and Policies of the Town of Apple Valley and the adopted General Plan.

**MOVED, PASSED AND ADOPTED** at a regular meeting of the Planning Commission on the 3rd day of August, 2016, by the following vote:

\_\_\_\_\_  
Chairman Doug Qualls

ATTEST:

I, Yvonne Rivera, Secretary to the Planning Commission of the Town of Apple Valley, California, do hereby certify that the foregoing resolution was duly and regularly adopted by the Planning Commission at a regular meeting thereof, held on the 3rd day of August, 2016 by the following vote, to-wit:

AYES:

NOES:

ABSENT:

ABSTAIN:

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Ms. Yvonne Rivera,  
Planning Commission Secretary

ORDINANCE NO. \_\_\_\_\_

**AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF APPLE VALLEY, AMENDING THE APPLE VALLEY MUNICIPAL CODE TO ADD SECTION 9.36.230 PROHIBITING CANNABIS DISPENSARIES, CANNABIS MANUFACTURERS AND THE CULTIVATION AND DELIVERY OF CANNABIS AND TO REMOVE REDUNDANCIES IN THE APPLE VALLEY MUNICIPAL CODE**

**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" ("MMRSA") into law; and

**WHEREAS**, MMRSA became effective January 1, 2016 and contains provisions which allow for local governments to regulate licenses and certain activities thereunder, including allowing for a complete ban on dispensaries, cultivation and delivery services; 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, which is 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, 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**, 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 marijuana dispensaries, marijuana manufacturers, cultivation and delivery of marijuana in the Town pending the completion of studies and the preparation of an update to the Apple Valley Municipal Code; and

**WHEREAS**, on February 23, 2016, the Town Council adopted an extension of Urgency Ordinance No. 480 pursuant to Government Code Section 65858 extending the moratorium by an additional ten(10) months and fifteen(15) days; and

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

**WHEREAS**, based on that study , the potential establishment of marijuana dispensaries, cultivation, marijuana manufacturers and delivery of marijuana 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; and

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

**WHEREAS**, on June 28, 2016, the Secretary of State certified Proposition 64, the Control, Regulate and Tax Adult Use of Marijuana Act (“AUMA”), for the November 8, 2016 ballot; and

**WHEREAS**, the AUMA would become law if a majority of the electorate votes “Yes” on the proposition; and

**WHEREAS**, the AUMA would regulate, among other items, the use of marijuana for personal and commercial purposes, including the recreational use of marijuana by adults over 21 years of age; and

**WHEREAS**, to regulate personal use of marijuana the AUMA would add Section 11362.1 to the Health and Safety Code, which makes it “lawful under state and local law” for persons 21 years of age or older to “possess, process, transport, purchase, obtain, or give away to persons 21 years of age or older without any compensation whatsoever” up to 28.5 grams of marijuana in the form of concentrated cannabis or not more than eight (8) grams of marijuana in the form of concentrated cannabis contained in marijuana products; and

**WHEREAS**, the AUMA would make it lawful for those individuals to “possess, plant, cultivate, harvest, dry, or process not more than six (6) living marijuana plants and possess the marijuana produced by the plants; and

**WHEREAS**, the AUMA would make it lawful for those individuals to smoke or ingest marijuana or marijuana products; and

**WHEREAS**, should the AUMA pass, many of its provisions would take effect on November 9, 2016; and

**WHEREAS**, to regulate commercial use of marijuana, the AUMA would add Division 10 (Marijuana) to the Business & Professions Code, which grants state agencies “the exclusive authority to create, issue, renew, discipline, suspend, or revoke” licenses for businesses including the transportation, storage, distribution, sale, cultivation, manufacturing and testing of marijuana; and

**WHEREAS**, the AUMA provides that the above state agencies shall promulgate rules and regulations and shall begin issuing licenses under Division 10 by January 1, 2018; and

**WHEREAS**, the AUMA states that a local jurisdiction shall not prevent transportation of marijuana or marijuana products on public roads by a licensee transporting marijuana or marijuana products in compliance with Division 10; and

**WHEREAS**, the AUMA would authorize cities to “reasonably regulate” without completely prohibiting cultivation of marijuana inside a private residence or inside an “accessory structure to a private residence located upon the grounds of a private residence that is fully enclosed and secure”; and

**WHEREAS**, the AUMA would authorize cities to completely prohibit outdoor cultivation on the grounds of a private residence, up to and until a “determination by the California Attorney General that nonmedical use of marijuana is lawful in the State of California under federal law”; and

**WHEREAS**, the AUMA would authorize cities to completely prohibit the establishment or operation of any marijuana business licensed under Division 10 within its jurisdiction, including marijuana dispensaries, marijuana retailers and marijuana delivery services; and

**WHEREAS**, absent appropriate local regulation authorized by the AUMA, state regulations will control; and

**WHEREAS**, the Town has taken into account the potential effects of AUMA in formulating regulations surrounding marijuana issues.

**NOW, THEREFORE, THE TOWN COUNCIL OF THE TOWN OF APPLE VALLEY, CALIFORNIA, DOES 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. Apple Valley Municipal Code Amendment #1.** Title 9 of the Apple Valley Municipal Code is hereby amended to add Section 9.36.230, to read in full as follows:

**“9.36.230 - CANNABIS DISPENSARIES, CANNABIS MANUFACTURERS AND THE CULTIVATION AND DELIVERY OF CANNABIS**

A. Purpose.

The purpose of this Section is to regulate personal, medical and commercial marijuana uses in the Town. Nothing in this Section shall preempt or make inapplicable any provision of state or federal law. No provisions of this Section shall hinder or supersede any other applicable State or Federal statute.

B. Definitions.

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

1. “Commercial marijuana activity” includes the cultivation, possession, manufacture, distribution, processing, storing, laboratory testing, labeling, transportation, distribution, delivery or sale of marijuana and marijuana products.
2. “Cultivation” means any activity involving the planting, growing, harvesting, drying, curing, grading, or trimming of marijuana.
3. “Delivery” means the commercial transfer of marijuana or marijuana products to a customer. "Delivery" also includes the use by a retailer of any technology platform owned and controlled by the retailer, or independently licensed under California law, that enables customers to arrange for or facilitate the commercial transfer by a licensed retailer of marijuana or marijuana products.
4. “Distribution” means the procurement, sale and transport of marijuana and marijuana products between entities for commercial use purposes.

5. "Licensee" means the holder of any state issued license related to marijuana activities, including but not limited to licenses issued under Division 10 of the Business & Professions Code.
6. "Manufacture" means to compound, blend, extract, infuse, or otherwise make or prepare a marijuana product.
7. "Marijuana" means all parts of the plant *Cannabis sativa* L., whether growing or not; the seeds thereof; the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds or resin. It does not include:
  - (a) Industrial hemp, as defined in Section 11018.5 of the California Health & Safety Code; or
  - (b) The weight of any other ingredient combined with marijuana to prepare topical or oral administrations, food, drink, or other product.
8. "Marijuana accessories" means any equipment, products or materials of any kind which are used, intended for use, or designed for use in planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, smoking, vaporizing, or containing marijuana, or for ingesting, inhaling, or otherwise introducing marijuana or marijuana products into the human body.
9. "Marijuana products" means marijuana that has undergone a process whereby the plant material has been transformed into a concentrate, including, but not limited to, concentrated cannabis, or an edible or topical product containing marijuana or concentrated cannabis and other ingredients.
10. "Person" includes any individual, firm, co-partnership, joint venture, association, corporation, limited liability company, estate, trust, business trust, receiver, syndicate, or any other group or combination acting as a unit and the plural as well as the singular.
11. "Private residence" means a house, an apartment unit, a mobile home, or other similar dwelling.
12. "Sale" includes any transaction whereby, for any consideration, title to marijuana is transferred from one person to another and includes the delivery of marijuana or marijuana products pursuant to an order placed for the purchase of the same and soliciting or receiving an order for the same, but does not include the return of marijuana or marijuana products by a licensee to the licensee from whom such marijuana or marijuana product was purchased.
13. Any term defined in this Section also means the very term as defined in the California Business & Professions Code or the California Health & Safety Code, unless otherwise specified.

C. Personal Use.

1. For purposes of this subsection, personal recreational use, possession, purchase, transport, or dissemination of marijuana shall be considered unlawful in all areas of the Town to the extent it is unlawful under California law.
2. Outdoor Cultivation. A person may not plant, cultivate, harvest, dry, or process marijuana plants outdoors in any zoning district of the Town. No use permit, building permit, variance, or any other permit or entitlement, whether administrative or discretionary, shall be approved or issued for any such use or activity.
3. Indoor Cultivation.
  - (a) A person may not plant, cultivate, harvest, dry, or process marijuana plants inside a private residence, or inside an accessory structure to a private residence located upon the grounds of a private residence, or inside any other enclosed structure within any zoning district of the Town. No use permit, building permit, variance, or any other permit or entitlement, whether administrative or discretionary, shall be approved or issued for any such use or activity.
  - (b) To the extent a complete prohibition on indoor cultivation is not permitted under California law, a person may not plant, cultivate, harvest, dry, or process marijuana plants inside a private residence, or inside an accessory structure to a private residence located upon the grounds of a private residence, unless the person is issued an indoor cultivation permit by the Planning Division. A person may not plant, cultivate, harvest, dry, or process marijuana plants inside any enclosed structure within any zoning district of the Town which is not either a private residence or an accessory structure to a private residence located upon the grounds of a private residence.
  - (c) The Planning Division will issue application and processing guidelines for the indoor cultivation permit. No indoor cultivation permit shall be issued prior to the release of these guidelines and no permit shall be granted which has not complied fully with the application and processing requirements.

D. Medical Use.

1. Cultivation of medical marijuana pursuant to Section 11362.77 of the California Health & Safety Code is subject to the cultivation requirements laid out in subsection (C) of this Section.
2. The establishment or operation of any medical marijuana collective, cooperative, dispensary, delivery service, operator, establishment, or provider shall be considered a prohibited use in all zoning districts of the Town. No use permit, variance, building permit, or any other entitlement or permit, whether administrative or discretionary, shall be approved or issued for the establishment of any collective, cooperative, dispensary, delivery service, operator, establishment, or provider in any zoning district and no person shall otherwise establish such businesses or operations in any zoning district.

E. Commercial Use.

1. The establishment or operation of any business of commercial marijuana activity is prohibited. 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 any such business or operation. Such prohibited businesses or operations may include, but are not limited to:

(a) The transportation, delivery, storage, distribution, or sale of marijuana, marijuana products, or marijuana accessories;

(b) The cultivation of marijuana;

(c) The manufacturing or testing of marijuana, marijuana products, or marijuana accessories; or

(d) Any other business licensed by the state or other government entity under Division 10 of the California Business & Professions Code, as it may be amended from time to time.

F. 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 Section. Every act prohibited or declared unlawful and every failure to perform an act made mandatory by this Section 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 Section, any condition caused or permitted to exist in violation of any of the provisions of this Section 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 any other applicable provision of state law.”

**SECTION 3. Apple Valley Municipal Code Amendment #2.** The title and subdivision (D) of Section 9.05.070(D) of the Apple Valley Municipal Code are hereby amended to read as follows:

**“9.05.070 – SIMILAR USES**

D. Unlawful Uses

Uses which are unlawful under Federal or State law shall not be treated as permitted uses and shall not be determined to be similar uses under this Section.”

**SECTION 4. Apple Valley Municipal Code Amendment #3.** Chapter 9.08 of the Apple Valley Municipal Code is hereby amended to remove the definition of “Medical Marijuana Dispensary” to ensure consistency throughout the Apple Valley Municipal Code.

**SECTION 5. 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 6. 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 7. Severability.** If any section, subsection, subdivision, sentence, clause, phrase, or portion of this 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 Code. The Town Council hereby declares that it would have adopted this 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 8. Publication.** The Town Clerk shall certify as to the adoption of these amendments and shall cause it to be published within fifteen (15) days of the adoption and shall post a certified copy of this Ordinance, including the vote for and against the same, in the Office of the Town Clerk, in accordance with California Government Code Section 36933.

**PASSED, APPROVED and ADOPTED** this \_\_\_\_ day of September, 2016.

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

ATTEST:

\_\_\_\_\_  
La Vonda M-Pearson, Town Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
Best Best & Krieger LLP  
Town Attorney