



TOWN OF APPLE VALLEY

TOWN COUNCIL STAFF REPORT

To: Honorable Mayor and Town Council **Date:** September 27, 2016

From: Carol Miller, Principal Planner **Item No:** 2
Planning Department

Subject: ADOPT ORDINANCE NO. 487 – AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF APPLE VALLEY, CALIFORNIA, TO AMEND 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:

Adopt Ordinance No. 487

SUMMARY:

At its September 13, 2016 meeting, the Town Council reviewed and introduced Ordinance No. 487 which amends the 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.

As a part of the requirements to adopt any new Ordinance, Ordinance No. 487 has been scheduled for adoption at the September 27, 2016 Town Council meeting.

FISCAL IMPACT:

Not Applicable

ATTACHMENTS:

Ordinance No. 487

ORDINANCE NO. 487

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 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 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 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.

APPROVED and **ADOPTED** by the Town Council and signed by the Mayor and attested to by the Town Clerk this 27th day of September, 2016.

Barb Stanton, Mayor

ATTEST:

La Vonda M-Pearson, Town Clerk

APPROVED AS TO FORM:

APPROVED AS TO CONTENT:

John Brown, Town Attorney

Frank Robinson, Town Manager