

**TOWN OF
APPLE VALLEY, CALIFORNIA**

AGENDA MATTER

Subject Item:

ADOPT ORDINANCE No. 372, TO AMEND TITLE 9 “DEVELOPMENT CODE” OF THE TOWN OF APPLE VALLEY MUNICIPAL CODE, BY AMENDING SECTION 9.05.070 OF CHAPTER 9.05 AS IT RELATES TO SIMILAR USES BY CONFIRMING THAT UNLAWFUL USES SUCH AS MEDICAL MARIJUANA DISPENSARIES SHALL NOT BE TREATED AS PERMITTED USES AND SHALL NOT BE DETERMINED TO BE PERMITTED SIMILAR USES AND AMENDING CHAPTER 9.08 TO ADD A NEW DEFINITION OF MEDICAL MARIJUANA DISPENSARY.

Summary Statement:

At its December 11, 2007 meeting, the Town Council reviewed and introduced Ordinance No. 372 as it relates to amending Title 9 “Development Code” of the Town of Apple Valley Municipal Code, by amending Section 9.05.070 of Chapter 9.05 as it relates to similar uses by confirming that unlawful uses such as Medical Marijuana Dispensaries, shall not be treated as permitted uses, and shall not be determined to be permitted similar uses and amending Chapter 9.08 to add a new definition of Medical Marijuana Dispensary. As part of the requirements to adopt a new Ordinance, Ordinance No. 372 has been scheduled for adoption at the January 8, 2008 Town Council meeting.

Recommended Action:

Adopt Ordinance No. 372.

Proposed by: _____ **Planning Division** _____

Item Number _____

Town Manager Approval: _____

Budget Item **Yes** **No**

Town Council Meeting: January 8, 2008

ORDINANCE NO. 372

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF APPLE VALLEY, CALIFORNIA, AMENDING TITLE 9 “DEVELOPMENT CODE” OF THE TOWN OF APPLE VALLEY MUNICIPAL CODE, BY AMENDING SECTION 9.05.070 OF CHAPTER 9.05 AS IT RELATES TO SIMILAR USES BY CONFIRMING THAT UNLAWFUL USES SUCH AS MEDICAL MARIJUANA DISPENSARIES SHALL NOT BE TREATED AS PERMITTED USES AND SHALL NOT BE DETERMINED TO BE PERMITTED SIMILAR USES AND AMENDING CHAPTER 9.08 TO ADD A NEW DEFINITION OF MEDICAL MARIJUANA DISPENSARY.

The Town Council of the Town of Apple Valley, State of California, does ordain as follows:

Section 1. Recitals.

(i) Title 9 (Development Code) of the Municipal Code of the Town of Apple Valley was adopted by the Town Council on October 24, 2000; and

(ii) 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

(iii) Uses such as medical marijuana dispensaries are prohibited by Federal law, and studies and reports evidence the adverse secondary effects of such uses, including a report by the California Police Chief’s Association, and a 2006 White Paper issued by the Riverside County District Attorney ; and at least forty California cities have adopted ordinances banning medical marijuana dispensaries, and an additional one hundred cities have moratoria in place relating to said uses; and

(iv) On November 30, 2007, Development Code Amendment No. 2007-020 was duly noticed in the Apple Valley News, a newspaper of general circulation within the Town of Apple Valley; and

(v) 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; and

(vi) On November 7, 2007 the Planning Commission of the Town of Apple Valley conducted a duly noticed and advertised the public hearing on Development Code Amendment No. 2007-020, receiving testimony from the public and adopted Planning Commission Resolution No. 2007-024; and

(vii) Development Code Amendment No. 2007-020 is consistent with Title 9 (Development Code) of the Municipal Code of the Town of Apple Valley and shall promote the health, safety and general welfare of the citizens of the Town of Apple Valley.

Section 2. Findings.

(i) The Town Council finds that the changes proposed by Development Code Amendment No. 2007-020 are consistent with the Goals and Policies of the Town of Apple Valley adopted General Plan, and will promote the health, safety and general welfare of the citizens of the Town of Apple Valley.

(ii) The Town Council further finds that, based upon the State Guidelines to Implement the California Environmental Quality Act (CEQA), the project is exempt from further environmental review. Section 15061(b)(3), 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.

Section 3. Section 9.05.070 of Chapter 9.05 of Title 9 of the Town of Apple Valley Development Code is hereby amended by adding thereto a new paragraph D to read as follows:

“D. ***Unlawful uses.*** Uses such as medical marijuana dispensaries 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. Chapter 9.08 of Title 9 of the Town of Apple Valley Development Code is hereby amended by adding thereto the definition of “Medical Marijuana Dispensary” to read as follows:

“MEDICAL MARIJUANA DISPENSARY

- a. A medical marijuana dispensary is a facility or location where medical marijuana is made available to, distributed by, or supplied to one or more of the following: (1) more than a single qualified patient, (2) more than a single person with an identification card, or (3) more than a single primary caregiver. The term “Medical marijuana dispensary” includes a medical marijuana cooperative.
- b. Unless otherwise regulated by ordinance or applicable law, a “medical marijuana dispensary” shall not be construed to include the following uses: (1) a clinic licensed pursuant to Chapter 1 of Division 2 of the California Health & Safety Code, (2) a health care facility licensed pursuant to Chapter 2 of Division 2 of the California Health & Safety Code, (3) a residential care facility for persons with chronic life-threatening illnesses licensed pursuant to Chapter 3.01 of Division 2 of the California Health & Safety Code, (4) a residential care facility for the elderly licensed pursuant to Chapter 3.2 of Division 2 of the California Health & Safety Code, (5) a residential hospice or home health agency licensed pursuant to Chapter 8 of Division 2 of the California Health & Safety Code, to the extent that such use strictly complies with applicable law, including but not limited to California Health & Safety Code Section 11362.5, *et seq.*
- c. A medical marijuana cooperative is two or more persons collectively or cooperatively cultivating, using, transporting, possessing, administering, delivering or making available medical marijuana, with or without compensation.
- d. All terms used in this definition of medical marijuana dispensary, including but not limited to “medical marijuana,” “qualified patient,” “identification card,” and “primary caregiver,” shall be as defined in California Health & Safety Code Section 11362.5, *et seq.*”

Section 5. Invalidation The amendment by this Ordinance of Title 9 “Development Code” of the Town of Apple Valley Municipal Code as previously in effect, or of any other prior enactment, shall not be construed to invalidate any entitlement exercised or proceeding taken pursuant to such Title or other enactment while the same was in effect.

Section 6. Notice of Adoption. The Town Clerk of the Town of Apple Valley shall certify to the adoption of this ordinance and cause publication to occur in a

newspaper of general circulation and published and circulated in the Town in a manner permitted under Section 36933 of the Government Code of the State of California.

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

Section 8. Severability. If any provision of this Ordinance, or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications and, to this end, the provisions of this Ordinance are declared to be severable.

Adopted by the Town Council and signed by the Mayor and attested by the Town Clerk this 8th day of January, 2008.

Honorable Timothy Jasper, Mayor

ATTEST:

La Vonda M-Pearson, Town Clerk

Approved as to form:

Approved as to content:

Neal Singer, Town Attorney

James L. Cox, Interim Town Manager