



TOWN OF APPLE VALLEY TOWN COUNCIL STAFF REPORT

To: Honorable Mayor and Town Council **Date:** May 28, 2013
From: John Brown, Town Attorney **Item No:** 9
Subject: ADOPTION OF URGENCY ORDINANCE REGARDING REGULATION OF MEDICAL MARIJUANA DISPENSARIES TO CLARIFY COMPLIANCE WITH FEDERAL AND STATE LAW AND CALIFORNIA CASE LAW

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

RECOMMENDED ACTION

That the Town Council:

1. Read title and, by motion, adopt by four-fifths vote, introduce and pass Urgency Ordinance No. 447, to clarify the scope of the Town’s Development Code regarding the regulation of medical marijuana dispensaries in compliance with federal and state law and California case law, entitled:

“AN URGENCY ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF APPLE VALLEY AMENDING ITS DEVELOPMENT CODE TO CLARIFY THE SCOPE OF THE TOWN’S REGULATION OF MEDICAL MARIJUANA DISPENSARIES IN COMPLIANCE WITH FEDERAL AND STATE LAW AND CALIFORNIA CASE LAW”
2. Direct Staff to review the Town’s existing Municipal and Development Code regulations of medical marijuana dispensaries for further compliance with, and enforcement of, federal and state law and California case law.

SUMMARY

On May 6, 2013, in *City of Riverside v. Inland Empire Patients Health and Wellness Center, Inc., et al.*, the Supreme Court of California held that local governments can ban medical marijuana dispensaries. Specifically, the Court held that nothing in the State of California’s marijuana laws “expressly or impliedly limits the inherent authority of a local jurisdiction, by its own ordinances, to regulate the use of its land, including the authority to provide that facilities for the distribution of medical marijuana will not be permitted to operate within its borders.” In response, marijuana advocates have stated that they plan to narrowly interpret the Court’s holding to merely prohibit the dispensing of marijuana from a stationary storefront. In kind, these advocates plan on advising marijuana dispensaries to create offices to handle or process the paperwork for joining a medical marijuana dispensary or medical marijuana cooperative, to

receive “donations” for the product, or to give vouchers to new members. From there, the operator would then dispense the marijuana from a mobile or off-site delivery source independent of the office.

The Town’s Development Code requires all land, buildings, and structures in the Town shall be used in accordance with the Town's Development Code, including obtaining any requisite permits prior to the initiation of such use. For a specific use to be valid under the Town’s Development Code, the use must either be expressly permitted or be deemed a “similar use” to an expressly permitted use. Although the existing Town Code bans these offices or facilities that handle or process the paperwork for joining a medical marijuana dispensary or medical marijuana cooperative, to receive “donations” for the product, or to give vouchers to new members and mobile facilities or off-site delivery sources of marijuana, the Code does reference these establishments by name. By way of this Urgency Ordinance, the Town intends to clarify that its ban of MMDs include these office or facilities as well mobile facilities or off-site delivery services that dispense marijuana, to address the recent *City of Riverside* decision, and to address the anticipated response of marijuana advocates to use offices to collect paperwork and money and give vouchers or other indicia of membership to individuals and then use mobile or off-site methods to deliver marijuana.

BACKGROUND

In 1996, the voters of the State of California ("State") approved Proposition 215, codified as Health and Safety Code sections 11362.5 *et seq.* and entitled "The Compassionate Use Act of 1996" (the "Compassionate Use Act"), which provides seriously ill Californians "the right to obtain and use marijuana for medical purposes" once a physician has deemed the use beneficial to the patient's health.

As part of the Compassionate Use Act, Health and Safety Code section 11362.768 regulates several forms through which marijuana can be dispersed. Specifically the section applies to “a medical marijuana cooperative, collective, dispensary, operator, establishment, or provider that is authorized by law to possess, cultivate, or distribute medical marijuana and that has a storefront or mobile retail outlet which ordinarily requires a local business license.” By its own terms, nothing in Health and Safety Code section 11362.768 shall prohibit a city, county, or city and county from adopting ordinances or policies that further restrict the location or establishment of a medical marijuana cooperative, collective, dispensary, operator, establishment, or provider. Accordingly, whether a medical marijuana distributor operates via a storefront or via a mobile retail delivery outlet does not change the nature of whether the entity is operating as a cooperative, collective, dispensary, operator, establishment, or provider.

In 2003, the State legislature enacted SB 420 to clarify the scope of the Compassionate Use Act and to allow cities to adopt and enforce rules and regulations consistent with the provisions of SB 420.

Meanwhile, the Federal Controlled Substance Act (the "Controlled Substance Act"), codified as 21 U.S.C. Section 801 *et seq.*, makes it unlawful for any person to manufacture, distribute or dispense or process with intent to manufacture, distribute or dispense marijuana.

Section 9.05.020 of the Town's Development Code requires all land, buildings, and structures in the Town shall be used in accordance with the Town's Development Code, including obtaining any requisite permits prior to the initiation of such use. Section 9.05.020 further provides that the uses of buildings and land in the Town shall comply with the provisions of the Development Code subject to all applicable provisions of all Town ordinances, including the Town's Municipal Code. For a specific use to be valid under the Town's Development Code, the use must either be expressly permitted or be deemed a "similar use" to an expressly permitted use. Section 9.05.070 (D) of the Town's Development Code states that uses such as "medical marijuana dispensaries" (MMD) which are unlawful under federal or state law cannot be treated as permitted or similar uses under the Town's Development Code. Effectively, this is a ban on all MMDs in the Town, including offices or facilities that handle or process paperwork for joining medical marijuana dispensaries or medical marijuana collectives, receive donations or financial contributions for the marijuana, or give vouchers or other indicia of membership to individuals as well as mobile facilities or off-site delivery sources that dispense marijuana.

Chapter 9.08 of the Town's Development Code provides a detailed definition of MMDs under the Code. Specifically, subject to certain enumerated exceptions, Chapter 9.08 defines a MMD to be 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 MMD includes a medical marijuana cooperative, which is defined to be two or more persons collectively or cooperatively cultivating, using, transporting, possessing, administering, delivering or making available medical marijuana, with or without compensation. All terms used in this definition of MMD, including "medical marijuana," "qualified patient," "identification card," and "primary caregiver," are as defined in California Health and Safety Code section 11362.5 *et seq.*

DISCUSSION

In the few days since the Supreme Court of California's decision in *City of Riverside v. Inland Empire Patients Health and Wellness Center, Inc.*, marijuana advocates have pledged to narrowly interpret the Court's holding by: (1) dispensing marijuana from mobile or off-site delivery sources and not from a stationary storefront and (2) by operating offices that handle or process the paperwork for joining a medical marijuana dispensary or medical marijuana collective, receive donations or financial contributions for the marijuana, or give vouchers or other indicia of membership to individuals. These operators have also stated that they intend to apply for business licenses for the dispersal of marijuana under this alternative method and for offices to operate in accordance with these standards.

In response to these stated intentions, staff recommends that the Town's Urgency Ordinance No. 447 clarify the Town's prohibition of medical marijuana dispensaries to expressly state that mobile or off-site delivery sources and offices existing for handling or processing the paperwork for joining a medical marijuana dispensary or medical marijuana collective, receiving donations or financial contributions for the marijuana, or giving vouchers or other indicia of membership to individuals are in fact covered within the existing prohibition of MMDs in Chapter 9.08 of the Town's Development Code.

Staff has prepared the attached Urgency Ordinance, which would clarify that offices and facilities existing to handle and process paperwork for joining a medical marijuana dispensary or medical marijuana cooperative as defined herein, accept financial compensation or donation for the marijuana, or give a voucher or other indicia of membership to individuals are within its definition of medical marijuana dispensaries and therefore banned by the Town. The clarification of the broad scope of the definition of MMDs in the Town's Code also includes mobile and off-site delivery facilities that dispense marijuana as well as medical marijuana cooperatives and medical marijuana collectives as defined in the Town's Code.

ADVANTAGES:

By introducing the Urgency Ordinance clarifying that the Town's existing definition of MMDs and bans of MMDs includes: (1) offices that handle or process paperwork for joining a medical marijuana dispensary or medical marijuana cooperative as defined herein, receive financial compensation or donations, or give vouchers or other indicia of membership to individuals, (2) mobile and off-site delivery facilities, and (3) medical marijuana cooperatives and collectives as part of the Town's existing ban of MMDs, the Town will address the recent stated intention of marijuana advocates to narrowly interpret the Court's holding in *City of Riverside* to only prohibit storefront dispensing of marijuana. In addition, adopting the attached Urgency Ordinance will clarify the extent of the Town's existing ability to regulate medical marijuana dispensaries, including the regulation and ban of mobile and off-site delivery facilities as well as offices and facilities that handle or process paperwork for joining a medical marijuana dispensary or medical marijuana cooperative, receive financial compensation or donations, or give vouchers or other indicia of membership to individuals.

DISADVANTAGES:

There are no identifiable disadvantages to adopting the attached Urgency Ordinance.

CEQA

The Town is the lead agency concerning the Urgency Ordinance pursuant to the California Environmental Quality Act (codified as Public Resources Code Sections 21000 *et seq.*) ("CEQA") and the State CEQA Guidelines. Town staff has determined that the Urgency Ordinance is exempt from CEQA, pursuant to CEQA Guidelines Section 15061(b)(3), 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 Urgency Ordinance, may have a significant effect on the environment, the activity is not subject to CEQA.

FISCAL IMPACT

No financial impact is projected.

There will be some expenditure of staff time to review the Town's existing Municipal and Development Code regulations of medical marijuana dispensaries for compliance with, and enforcement of, federal and state law and California case law.

ATTACHMENTS

Ordinance No. 447 (Urgency Ordinance)

ORDINANCE NO. 447

AN URGENCY ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF APPLE VALLEY AMENDING ITS DEVELOPMENT CODE TO CLARIFY THE SCOPE OF THE TOWN'S REGULATION OF MEDICAL MARIJUANA DISPENSARIES IN COMPLIANCE WITH FEDERAL AND STATE LAW AND CALIFORNIA CASE LAW

WHEREAS, in 1996, the voters of the State of California ("State") approved Proposition 215, codified as Health and Safety Code sections 11362.5 *et seq.* and entitled "The Compassionate Use Act of 1996" (the "Compassionate Use Act"), which provides seriously ill Californians "the right to obtain and use marijuana for medical purposes" once a physician has deemed the use beneficial to the patient's health; and

WHEREAS, as part of the Compassionate Use Act, Health and Safety Code section 11362.768 regulates several forms through which marijuana can be dispersed. Specifically the section applies to "a medical marijuana cooperative, collective, dispensary, operator, establishment, or provider that is authorized by law to possess, cultivate, or distribute medical marijuana and that has a storefront or mobile retail outlet which ordinarily requires a local business license;" and

WHEREAS, In 2003, the State legislature enacted SB 420 to clarify the scope of the Compassionate Use Act and to allow cities to adopt and enforce rules and regulations consistent with the provisions of SB 420; and

WHEREAS, the Federal Controlled Substance Act (the "Controlled Substance Act"), codified as 21 U.S.C. Section 801 *et seq.*, makes it unlawful for any person to manufacture, distribute or dispense or process with intent to manufacture, distribute or dispense marijuana; and

WHEREAS, Section 9.05.020 of the Town of Apple Valley's ("Town") Development Code requires all land, buildings, and structures in the Town shall be used in accordance with the Town's Development Code, including obtaining any requisite permits prior to the initiation of such use and Section 9.05.020 further provides that the uses of buildings and land in the Town shall comply with the provisions of the Development Code subject to all applicable provisions of all Town ordinances, including the Town's Municipal Code; and

WHEREAS, for a specific use to be valid under the Town's Development Code, the use must either be expressly permitted or be deemed a "similar use" to an expressly permitted use; and

WHEREAS, Section 9.05.070 (D) of the Town's Development Code states that uses such as medical marijuana dispensaries ("MMD") which are unlawful under federal or state law cannot be treated as permitted or similar uses under the Town's Development Code, effectively banning all MMDs in the Town; and

WHEREAS, Chapter 9.08 of the Town's Development Code provides a detailed definition of MMDs where, subject to certain enumerated exceptions, a MMD is defined to be 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 and the term MMD includes a medical marijuana cooperative, which is defined in the Town's Development Code to be two or more persons collectively or cooperatively cultivating, using, transporting, possessing, administering, delivering or making available medical marijuana, with or without compensation; and

WHEREAS, on May 6, 2013, in *City of Riverside v. Inland Empire Patients Health and Wellness Center, Inc.*, et al., the Supreme Court of California held that local governments can ban medical marijuana dispensaries by stating that nothing in the State of California's marijuana laws "expressly or impliedly limits the inherent authority of a local jurisdiction, by its own ordinances, to regulate the use of its land, including the authority to provide that facilities for the distribution of medical marijuana will not be permitted to operate within its borders;" and

WHEREAS, in response to the holding in *City of Riverside v. Inland Empire Patients Health and Wellness Center, Inc.*, marijuana advocates have stated that they plan to narrowly interpret the Court's holding to merely prohibit the dispensing of marijuana from a stationary storefront; and

WHEREAS, these marijuana advocates plan on advising marijuana dispensaries to create facilities or offices to handle or process the paperwork for joining a medical marijuana dispensary or medical marijuana cooperative as defined herein, to receive financial compensation or donations for the marijuana, or to give vouchers or other indicia of membership to new members only to later dispense the marijuana from a mobile or off-site delivery source independent of the office; and

WHEREAS, the Town's current prohibition of MMDs in Chapter 9.08 of the Town's Development Code includes and encompasses, but does not expressly reference by name, facilities or offices that handle or process the paperwork for joining a medical marijuana dispensary or medical marijuana cooperative as defined herein, receive any financial compensation or donation for the marijuana, or give vouchers or other indicia of membership to new members of these MMDs or expressly reference by name mobile or off-site delivery of marijuana independent from these facilities or offices; and

WHEREAS, the proposed Urgency Ordinance is exempt from the California Environmental Quality Act (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; and

WHEREAS, the Town Council finds that this Urgency Ordinance, and the regulations set forth herein, are necessary for the immediate preservation of the public

peace, health and safety in order to clarify that the Town's existing ban of MMDs includes and encompasses facilities or offices that handle or process the paperwork for joining a medical marijuana dispensary or medical marijuana cooperative as defined herein, or give vouchers or other indicia of membership to individuals, regardless of whether marijuana is ultimately dispensed from the location or a mobile or off-site delivery source independent of the facility or location, as well as the dispensing or delivery of marijuana from mobile or off-site delivery sources independent from these offices or facilities; and

WHEREAS, such an urgency measure requires a four-fifths vote of the Town's legislative body; and

NOW, THEREFORE, the Town Council of the Town of Apple Valley does ordain as follows:

SECTION 1. The above recitals are true and correct and are incorporated herein by this reference.

***SECTION 2.** Findings. The adoption of this Urgency Ordinance is necessary for the immediate protection of the public peace, health and safety. In accordance with California Government Code Section 36937 and in order to protect the public peace, health and safety, the Town Council of the Town of Apple Valley further finds that prior to the effective date of this ordinance, the Town will not have specifically set forth in writing a definition of medical marijuana dispensaries that closes potential loopholes in the Town's Development Code concerning the creation of facilities or offices to handle or process the paperwork for joining a medical marijuana dispensary or medical marijuana cooperative as defined herein, to receive financial compensation or donations for the marijuana, or to give vouchers or other indicia of membership to individuals as well as the dispensing or delivery of marijuana from mobile or off-site delivery sources independent from these offices or facilities. The Town Council of the Town of Apple Valley further finds that these facilities and offices that handle or process the paperwork for joining a medical marijuana dispensary or medical marijuana cooperative as defined herein, to receive financial compensation or donations for marijuana, or give vouchers or other indicia of membership to individuals, regardless of whether marijuana is ultimately dispensed from the location or a mobile or off-site delivery source independent of the facility or location, were banned by the Town prior to the adoption of this Urgency Ordinance and the purpose of this Urgency Ordinance is to expressly clarify that the Town's ban of medical marijuana dispensaries includes banning these facilities and offices as well as these mobile or off-site delivery sources.

SECTION 3. Subsections (A) and (C) of the definition of "Medical Marijuana Dispensary" in Chapter 9.08 of the Apple Valley Development Code are hereby amended to read as follows:

CHAPTER 9.08 DEFINITIONS

...

MEDICAL MARIJUANA DISPENSARY

- A. A medical marijuana dispensary is any facility or location, including a mobile facility or delivery service whether such mobile facility or delivery service is independent from or affiliated with any fixed facility or location in the Town, where medical marijuana is made available to, distributed by, sold 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” shall include all facilities or locations, including storefronts and offices, associated with any medical marijuana dispensary, as defined herein, that handle or process the paperwork for joining a medical marijuana dispensary or medical marijuana cooperative as defined herein, to receive financial compensation or donations for the marijuana, or give vouchers or other indicia of membership to individuals, regardless of whether marijuana is ultimately dispensed from the location or a mobile or off-site delivery source independent of the facility or location. The term “medical marijuana dispensary” shall also include a medical marijuana cooperative, and any other medical marijuana collective, operator, establishment, or provider.

...

- C. A medical marijuana cooperative is two or more persons collectively or cooperatively cultivating, using, transporting, processing, administering, delivering or making available medical marijuana, with or without compensation. The term “medical marijuana cooperative” shall include a medical marijuana collective.

...

SECTION 4. CEQA. The Town Council finds, under Title 14 of the California Code of Regulations, Section 15061(b)(3), that this Urgency Ordinance 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 5. Custodian of Records. The documents and materials that constitute the record of proceedings on which these findings and this Urgency Ordinance are based are located at the Town Clerk's office located at 14955 Dale Evans Parkway, Apple Valley, CA 92307. The custodian for these records is the Town Clerk.

SECTION 6. Severability. If any provision of this Urgency Ordinance or the application thereof to any entity, person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of this Urgency Ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this Urgency Ordinance are severable. The Town Council hereby declares that it would have adopted this Ordinance irrespective of the invalidity of any particular portion thereof.

SECTION 7. Effective Date. This Urgency Ordinance shall become effective immediately upon its adoption.

SECTION 8. Publication. The Town Clerk shall certify to the adoption of this Urgency Ordinance and cause it, or a summary of it, to be published once within 15 days of adoption in a newspaper of general circulation printed and published within the Town of Apple Valley, and shall post a certified copy of this Urgency Ordinance, including the vote for and against the same, in the Office of the Town Clerk in accordance with Government Code § 36933.

MOVED, PASSED, and ADOPTED at a regular meeting of the Town Council on the 28th day of May, 2013.

Curt Emick, Mayor

ATTEST:

La Vonda Pearson, Town Clerk