

TOWN OF APPLE VALLEY

TOWN COUNCIL STAFF REPORT

To: Honorable Mayor and Town Council **Date:** July 9, 2013

From: John Brown, Town Attorney **Item No:** 10

Subject: EXTENSION OF INTERIM URGENCY ORDINANCE NO. 447 FOR AN ADDITIONAL 10 MONTHS AND 15 DAYS TO CONTINUE FOR THIS PERIOD THE TEMPORARY AMENDMENTS TO THE TOWN'S DEVELOPMENT CODE CLARIFYING THE SCOPE OF THE TOWN'S REGULATION OF MEDICAL MARIJUANA DISPENSARIES IN 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 hold a public hearing and adopt, by four fifths vote, the attached ordinance extending the Town's interim forty-five (45) day urgency ordinance clarifying the scope of the Town's prohibition of medical marijuana dispensaries (MMD) to: (a) expressly prohibit facilities or offices that handle or process the paperwork for joining a medical marijuana dispensary or medical marijuana cooperative, receive any financial compensation or donation for the marijuana, or give vouchers or other indicia of membership to new members of these MMDs and (b) expressly prohibit mobile or off-site delivery of marijuana independent from these facilities or offices for an additional period of ten (10) months and fifteen (15) days, to May 27, 2014.

SUMMARY

Government Code section 65858 authorizes the Town to enact an "interim urgency ordinance" to prohibit any uses that may be in conflict with a contemplated general plan, specific plan, or zoning proposal that the Town's Council, Planning Commission or Planning Department is considering or studying or intends to study within a reasonable time. On May 28, 2013, the Town Council adopted Ordinance No. 447, an urgency ordinance clarifying the scope of the Town's prohibition of medical marijuana dispensaries to: (a) expressly prohibit facilities or offices that handle or process the paperwork for joining a medical marijuana dispensary or medical marijuana cooperative, receive any financial compensation or donation for the marijuana, or give vouchers or other indicia of membership to new members of these MMDs and (b) expressly prohibit

mobile or off-site delivery of marijuana independent from these facilities or offices for an initial duration of forty-five (45) days.

The Council directed 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. This review was not completed within the initial 45 days, so staff now recommends that the Town Council approve an extension of Ordinance No. 447 for an additional ten (10) months and fifteen (15) days to May 27, 2014, pursuant to Government Code section 65858, subdivision (a). Because of the complex and controversial issues involved in this matter, the Town Council and staff require additional time to continue evaluating how best to regulate these establishments and any novel approaches to their operation.

DISCUSSION

As previously noted in connection with the initial urgency ordinance, in the few weeks since the Supreme Court of California's decision in *City of Riverside v. Inland Empire Patients Health and Wellness Center, Inc.*, wherein the Supreme Court of California held that local governments can ban medical marijuana dispensaries, marijuana dispensary 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. In light of these events, several municipalities, including the City of Riverside, have recently banned all medical marijuana delivery services, including mobile medical marijuana dispensaries.

During the period of the initial urgency ordinance, Town staff has continued to study the issue of regulation of medical marijuana dispensaries and novel approaches to the operation of these dispensaries, including mobile or off-site delivery. Also, the Town Attorney's office has continued to monitor legal developments concerning the operation and regulation of dispensaries, mobile or otherwise, including pending enforcement actions that may help resolve any issues concerning the banning of medical marijuana delivery services. Staff believes that further study of dispensary regulation and operation is necessary in order to produce regulations that address the unique impacts of dispensaries, any novel approaches to their operation, and to comply with applicable law.

Government Code section 65858, subdivision (a) provides that the Town may extend the initial urgency ordinance for a period of ten (10) months and fifteen (15) days, after a noticed public hearing. Town staff has prepared the attached urgency ordinance

(Attachment "A") to extend the current initial urgency ordinance for these ten (10) months and fifteen (15) days, which would expire on May 27, 2013.

CEQA

Town staff has determined that the urgency ordinance and extension 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 urgency 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 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 continue review of the regulation of medical marijuana dispensaries and novel approaches to the operation of these dispensaries, including mobile or off-site delivery, to monitor legal developments concerning the operation and regulation of dispensaries, mobile or otherwise, including pending enforcement actions, and to continue review of 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

1. Staff Report re: Interim Urgency Ordinance No. 447 on May 28, 2013
2. Interim Urgency Ordinance No. 447 adopted May 28, 2013
3. Minutes of the Town Council re: Interim Urgency Ordinance No. 447 on May 28th, 2013
4. Ordinance Extending Interim Urgency Ordinance No. 447



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 not 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.

APPROVED and **ADOPTED** by the Town Council and signed by the Mayor and attested by the Town Clerk this 28th day of May, 2013.

Curt Emick, Mayor

ATTEST:

La Vonda Pearson, Town Clerk

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.

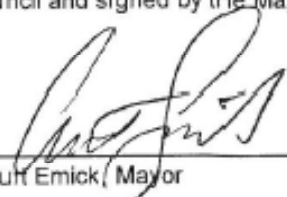
SECTION 5. Custodian of Records. The documents and materials that constitute the record of proceedings on which these findings and this Urgency Ordinance are based are located at the Town Clerk's office located at 14955 Dale Evans Parkway, Apple Valley, CA 92307. The custodian for these records is the 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.

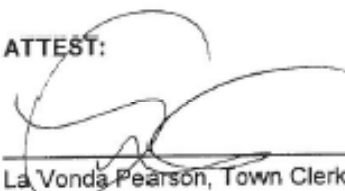
SECTION 7. Effective Date. This Urgency Ordinance shall become effective immediately upon its adoption.

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.


APPROVED and ADOPTED by the Town Council and signed by the Mayor and attested by the Town Clerk this 28th day of May, 2013.


Curt Emick, Mayor

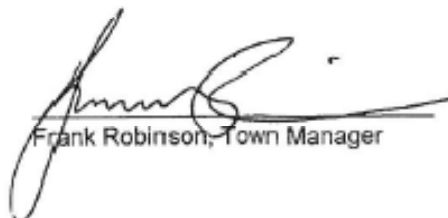
ATTEST:


La Vonda Pearson, Town Clerk

APPROVED AS TO FORM:


John Brown, Town Attorney

APPROVED AS TO CONTENT:


Frank Robinson, Town Manager

**STATE OF CALIFORNIA
COUNTY OF SAN BERNARDINO
TOWN OF APPLE VALLEY**

I, LA VONDA M-PEARSON, TOWN CLERK of the Town of Apple Valley, California, hereby certify that the foregoing Ordinance No. 447 was duly introduced and adopted at the Town Council regular meeting on May 28, 2013 by the following vote:

AYES: Council Members Cusack, Nassif, Stanton, Mayor Pro Tem Bishop, Mayor Emick.
NOES: None.
ABSENT: None.
ABSTAIN: None.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the official seal of the Town of Apple Valley, California, this 29th day of May, 2013.

LA VONDA M-PEARSON, CMC
TOWN CLERK

by:



Yvonne Rivera, Deputy

(SEAL)

**TOWN OF APPLE VALLEY
TOWN COUNCIL/SUCCESSOR AGENCY**

**REGULAR MEETING
MINUTES – May 28, 2013**

CALL TO ORDER:

Mayor Emick called to order the meeting of the Apple Valley Town Council/Successor Agency at 5:02 p.m.

Roll call was taken with the following members present:

Roll Call

Present: Council Members Cusack; Nassif; Stanton; Mayor Pro Tem Bishop; Mayor Emick. Absent: None.

PUBLIC COMMENTS

CLOSED SESSION

MOTION

Motion by Mayor Pro Tem Bishop, seconded by Council Member Stanton and unanimously carried, to adjourn to Closed Session at 5:03 p.m. to discuss the following:

1. Closed Session

- A. Negotiations with Real Property Negotiator – Property located at 15200 Rancherias Road, Apple Valley; Negotiating Parties: Golden Round Eye Management Company, Mr. Chet Hitt and Mr. Kan Loi; Negotiator(s): Town Manager or Finance Director or Designee. Negotiations involve both price and terms of payment.
- B. Conference with Legal Counsel – Anticipated Litigation – Significant Exposure to litigation pursuant to subdivision (b) of Section 54956.9 (one or more potential cases).

Upon returning from Closed Session at 6:47 p.m., Mayor Emick announced that there was no reportable action taken.

TOWN COUNCIL REGULAR SESSION

Mayor Emick called to order the regular session of the Apple Valley Town Council at 6:48 p.m.

OPENING CEREMONIES

INVOCATION:

The Invocation was given by Pastor Royce Beserra, Church for Whosoever

PLEDGE OF ALLEGIANCE:

The Pledge of Allegiance will be led by Council Member Cusack.

PRESENTATIONS:

Apple Valley Greener Way of Life – Joseph Moon, Special Projects Manager announced the winners with the assistance of Ms. Sharon Mitchell, Burrtec, for the Town of Apple Valley Greener Way of Life.

Competition Winners:

- Shayla Davis, Third Place
- Alysa Marquez, Second Place
- Haley Ortiz, Grand Prize Winner

School Winners:

- Mariana Academy - \$500.00 Winner
- Desert Knolls Elementary School - \$1000.00 Winner

Victor Valley Transportation Authority (VVTA) – Kevin Kane

Executive Director, Kevin Kane, provided the Council with a basic overview of the Comprehensive Operations Analysis for VVTA.

PUBLIC COMMENTS

Peter Allan, Acting Superintendent, Victor Valley College, briefed the Town Council on Victor Valley College and the benefit that its education system provides the community. He stated that the college has full accreditation.

Pat Hanson, Apple Valley, commented on the Veteran's Day Remembrance celebration.

Lawrence McCarthy, Apple Valley, expressed concern regarding the Request for Proposal that was issued for the food service for the Apple Valley Golf Course.

Tom Piper, Apple Valley, stated that the Town has seen an increase in government aid. He believes job skills are needed for Apple Valley residents and provided suggestions to accomplish this goal.

Della Lancraft, Apple Valley, expressed concern regarding the condition of Lyons Park. She believed some upkeep needs to be done.

Linda Lucas, Apple Valley, stated that she believed the Town of Apple Valley was doing a great job with its events and commended the Town on its success. She stated that she was participating in an event at Lyons Park when she fell and injured herself. She respectfully requested that something be done to improve the condition of the park.

APPLE VALLEY CHAMBER OF COMMERCE – BUSINESS RETENTION UPDATE

Janice Moore, CEO, Apple Valley Chamber of Commerce, commented on local conferences and shows that she attended and upcoming events that will be hosted by the Chamber of Commerce. She also presented a PowerPoint highlighting Small Business Start Up Guide; a new tool that is available to assist small businesses in Apple Valley.

COUNCILMEMBER COMMITTEE/COMMISSION PARTICIPATION

Mayor Pro Tem Bishop commented on committee meetings and events that he attended.

Council Member Stanton commented on committee meetings and events that she attended. She also commented on the Animal Services on-call phone service that is provided during periods when the shelter is closed. She recommended that this service be improved.

Council Member Nassif commented on committee meetings and events that he attended.

Mayor Emick commented on committee meetings and events that he attended.

TOWN COUNCIL ANNOUNCEMENTS

Suggested items for future agenda:

Mayor Pro Tem Bishop questioned the status of an update to be provided to the Town Council on synthetic drugs. Mr. Robinson stated that staff is working with the Sheriff's department on this issue and that staff will be providing the update in the near future.

Council Member Stanton commented on the request for a vicious dog ordinance and reminded the public that we are looking at something to help the community.

Council Member Nassif commented on the North Apple Valley Specific Plan and the water issue and infrastructure. He believed the Council should regroup in order to work out a solution. He requested that an update on this issue be provided and possibly request the Ad Hoc committee discuss this matter.

Time, Date & Place for Next Town Council Regular or Special Meeting:

- A. Special Meeting – Thursday, May 30, 2013 – Council Chambers
 - B. Regular Meeting – Tuesday, June 11, 2013 – Council Chambers
- Closed Session at 5:00 p.m.
Regular Session at 6:30 p.m.

TOWN COUNCIL CONSENT AGENDA

MOTION

Motion by Council Member Nassif, seconded by Council Member Cusack, to approve the Consent Calendar items numbered 2-6.

Vote: Motion carried 5-0-0-0

Yes: Councilmember's Cusack; Nassif; Stanton; Mayor Pro Tem Bishop; Mayor Emick.

Absent: None.

2. **Approval of Minutes of the Town Council**
 - A. **Regular Meeting – May 14, 2013**
Recommendation:
Approve the subject minutes as part of the consent agenda.
3. **Claimant – Susan Nethers**
Recommendation:
Reject the claim from Susan Nethers
4. **Adopt Resolution No. 2013-20, A Resolution in Support of H.R. 1676, The Johnson Valley National Off Highway Vehicle Recreation Area Establishment Act**
Recommendation:
Adopt Resolution No. 2013-20, A Resolution in Support of H.R. 1676, the Johnson Valley National Off Highway Vehicle Recreation Area Establishment Act.
5. **Review and Approval to Advertise the Apple Valley Road and Town Center Drive Improvements – Project 2013-03**
Recommendation:
 1. That the Town Council review and approve the project plans, specifications, and bid documents for the construction of the Apple Valley Road and Town Center Drive Improvements project.
 2. That the Town Council authorize staff to solicit bids for construction of said project.
6. **Award Contract for the Micro Surface 2011 Project, Project Number 2012-13 Spring 2013**
Recommendation:
 1. Award Contract to American Asphalt South for The Micro Surface 2012-13 Spring 2013 Project.
 2. The scope of the project is to be increased (add additional streets) to utilize the entire budgeted amount of the funds.

PUBLIC HEARINGS

7. **Park and Recreation Master Plan**

Mayor Emick opened the public hearing at 7:55 p.m.

Ralph Wright, Parks and Recreation Manager, presented the staff report as filed with the Town Clerk.

Cindy Mendoza, Consultant, presented the proposed Master Plan and highlighted the recommended changes that have been approved by the Parks and Recreation Commission.

The Town Council thanked staff and Ms. Mendoza for the excellent presentation and final draft master plan. It was requested that a copy of the presentation be provided to the Town Council.

There being no requests to speak, Mayor Emick closed the public hearing at 8:13 p.m.

MOTION

Motion by Council Member Nassif, seconded by Council Member Stanton, to adopt the completed Master Plan of Parks and Recreation Services.

Vote: Motion carried 5-0-0-0

Yes: Councilmember's Cusack; Nassif; Stanton; Mayor Pro Tem Bishop; Mayor Emick.

Absent: None.

8. **Public Hearing Repealing Resolution No. 2013-14, Specified User Fees at the Apple Valley Golf Course and Authorize the Golf Course Manager to Establish Market-Based Fees at the Apple Valley Golf Course**

Mayor Emick opened the public hearing at 8:14 p.m.

Dennis Cron, Assistant Town Manager, Municipal Operations and Contract Services, presented the staff report as filed with the Town Clerk.

Mayor Emick closed the public hearing at 8:19 p.m.

MOTION

Motion by Council Member Cusack, seconded by Mayor Pro Tem Bishop, to repeal Resolution No. 2013-14 and authorize the Golf Course Manager to establish market-based fees at the Apple Valley Golf Course.

Vote: Motion carried 5-0-0-0

Yes: Councilmember's Cusack; Nassif; Stanton; Mayor Pro Tem Bishop; Mayor Emick.

Absent: None.

9. **Adoption of Urgency Ordinance Regarding Regulation of Medical Marijuana Dispensaries to Clarify Compliance with Federal and State Law and California Case Law**

Mayor Emick opened the public hearing at 8:23 p.m.

John Brown, Town Attorney, presented the staff report as filed with the Town Clerk. He explained the reasons for the Town Attorney's office recommendation to adopt an Urgency Ordinance at this time. He clarified that the emergency ordinance is intended to address the anticipated response of marijuana advocates to use offices to collect paperwork and money and give vouchers to individuals and then use mobile or offsite methods to deliver marijuana. He also stated that the Urgency Ordinance is to prevent a re-initiation of store front concepts in another form. Mr. Brown noted that this is an Ordinance that is being considered by a number of cities and counties in California at the present time.

Council Member Stanton commented on the Compassionate Use Act of 1996. She noted that the act makes mention of how marijuana can offer relief to those with certain illnesses. She questioned what other modes may be created if dispensaries are shut down.

John Brown, Town Attorney, responded to the questions by Council Member Stanton. He stated that the ordinance is intended to piggy-back on the California Supreme Court's decision as it relates to City land use. He noted that the Urgency Ordinance can be appropriately modified in the future as the Town sees appropriate.

Leon Ruddock, Apple Valley, believes the Mayor should recuse himself from discussion of this item as a Pharmacist. He commented on the benefit of medical marijuana and those communities that have approved dispensaries in their communities.

Todd Anderson, Apple Valley, chose not to speak.

Elizabeth McClain, Apple Valley, chose not to speak.

Kerry Cannon, High Desert Moms for Marijuana, stated that she was a patient and believed the Town of Apple Valley should take a proactive approach in approving and regulating dispensaries in the Town of Apple Valley. She stated that she was opposed to the urgency ordinance as presented. She also commented that both Mayor Emick and Council Member Cusack had a conflict of interest with this item.

Noni (no last name given), expressed concern regarding HMO healthcare.

Spencer Sitnik, Medical Cannabis City Ordinance, commented on various individuals that he is working with regarding a proposed ordinance that he believes will benefit not only the patients but also provide tax revenue for communities. He respectfully requested the opportunity to present his PowerPoint to the Town Council.

Anthony Grajeda submitted a card to speak, but chose not to speak.

There being no additional requests to speak, Mayor Emick closed the public hearing at 8:45 p.m.

Mr. Brown commented on the concerns expressed by the public that Mayor Emick had a conflict of interest. He clarified that according to the Political Reform Act of 1974 adopted by the voters of State of California, it would be necessary for Mr. Emick to determine whether or not his income, source of income or any investment would be materially affected by the adoption of this Urgency Ordinance. Mr. Brown stated that it is his opinion that Mr. Emick does not have a disqualifying interest and can vote on this item.

Mr. Brown also noted that there is an existing provision in Town of Apple Valley's Municipal Code that was affectively following the California Supreme Court's decision that led to the closure of operating medical marijuana dispensaries in the Town of Apple Valley.

Mayor Emick announced that he does not have a conflict of interest in this item.

Mr. Brown commented on the concerns expressed by the public that Council Member Cusack had a conflict of interest.

Council Member Cusack stated that he did not believe he had a conflict of interest with this item; however, if the Attorney recommended, he would recuse himself from voting on this item.

Mr. Brown again commented that he did not believe that Mr. Cusack had a conflict of interest with this item on the bases that his income, source of income or investment would not be materially affected by the adoption of this item. He stated that he is of the same opinion that Mr. Cusack does not have a disqualifying interest and is free to vote on this item.

Council Member Stanton recommended that this item be brought before the Planning Commission for a workshop discussion.

MOTION

Motion by Council Member Stanton, seconded by Council Member Cusack, to table this item.

Council Member Nassif commented on an article regarding medical marijuana dispensaries and the various regulations that cities and towns individually are trying to enact in California. He believed that leadership at all levels needs to be taken

Council Member Stanton stated that she wanted to ensure that all patients in need are able to obtain their medication. She reminded the Council that all dispensaries in the Town of Apple Valley have closed and therefore requests that the Planning Commission discuss this item as quickly as possible.

Lori Lamson, Director of Community Development, provided additional clarification to this item which includes taking this item to the Planning Commission after the forty-five day time period. She explained that this item would be brought back to the Town Council in July and during that time it will be reviewed by the Planning Commission.

Council Member Stanton and Council Member Cusack withdrew their motion to table.

MOTION

Motion by Council Member Stanton, seconded by Council Member Cusack, to:

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; and direct staff to immediately recommend that this item be presented to the Planning Commission for immediate review and study.

Vote: Motion carried 5-0-0-0

Yes: Councilmember's Cusack; Nassif; Stanton; Mayor Pro Tem Bishop; Mayor Emick.

Absent: None.

LEGISLATIVE MATTERS

None

REPORTS, REQUESTS AND COMMUNICATIONS

BUSINESS OF THE COUNCIL

10. Defraying Code Enforcement Costs

Jim Andersen, Code Enforcement Manager, presented the staff report as filed with the Town Clerk.

MOTION

Motion by Council Member Nassif, seconded by Council Member Stanton, and unanimously carried, to direct staff to implement Apple Valley Municipal Code Section 1.01.260.

TOWN MANAGER'S COMMENTS & LEGISLATIVE UPDATE

Frank Robinson, Town Manager, reminded the Town Council that the budget workshop will be held on Thursday, May 30, 2013 at 5:00 p.m. He also thanked the Town Council and staff, specifically Mr. Orlando Acevedo and Steve Lansburger from the City of Hesperia, for their hard work during the ICSC Conference. He also acknowledged Doug Fenn and Jennifer Heim for their work during the ICSC Conference.

DEPARTMENTAL REPORTS AND BUSINESS:

STAFF REPORTS

CORRESPONDENCE

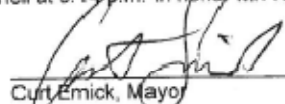
ADJOURNMENT

Mayor Emick spoke of the loss of Mr. Roland Thomas, the uncle of our Animal Services Manager, Ms. Gina Schwin-Whiteside. He stated that Mr. Thomas' services were held today and respectfully requested that the meeting be adjourned in his honor.

Motion by Council Member Nassif, seconded by Mayor Pro Tem Bishop, and unanimously carried to adjourn the meeting of the Apple Valley Town Council at 9:14 p.m. in honor of Mr. Roland Thomas.



La Vonda M. Pearson, Town Clerk



Curt Emick, Mayor

ORDINANCE NO. 449

AN INTERIM URGENCY ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF APPLE VALLEY EXTENDING INTERIM URGENCY ORDINANCE NO. 447 FOR AN ADDITIONAL 10 MONTHS AND 15 DAYS TO CONTINUE FOR THIS PERIOD THE TEMPORARY AMENDMENTS TO THE TOWN'S DEVELOPMENT CODE CLARIFYING THE SCOPE OF THE TOWN'S REGULATION OF MEDICAL MARIJUANA DISPENSARIES IN COMPLIANCE WITH FEDERAL AND STATE LAW AND CALIFORNIA CASE LAW

WHEREAS, on May 28, 2013, pursuant section 65858 of the California Government Code, the Town Council of the Town of Apple Valley ("Town Council") adopted Ordinance No. 447, an interim urgency ordinance, which clarified the scope of the Town's prohibition of medical marijuana dispensaries to expressly prohibit facilities or offices that handle or process the paperwork for joining a medical marijuana dispensary or medical marijuana cooperative, receive any financial compensation or donation for the marijuana, or give vouchers or other indicia of membership to new members of these medical marijuana dispensaries and to expressly prohibit mobile or off-site delivery of marijuana independent from these facilities or offices in all locations in the Town of Apple Valley; and

WHEREAS, Section 65858 of the California Government Code provides that Ordinance No. 447 shall expire and be of no further force and effect forty-five (45) days from its date of adoption; and

WHEREAS, Section 65858 of the California Government Code provides that prior to the expiration of Ordinance No. 447, the Town may extend Ordinance No. 447 for an additional ten (10) months and fifteen (15) days after giving notice pursuant to Section 65090 of the California Government Code and conducting a public hearing; and

WHEREAS, on May 28, 2013, the Town issued a written report describing the measures and actions taken by the Town to alleviate the circumstances and conditions which led to the adoption of Ordinance No. 447 since its adoption on May 28, 2013, as required by Government Code section 65858 ("Report");

WHEREAS, based on the Report, the Town has determined that the circumstances and conditions that led to the adoption of Ordinance No. 447, which are set forth in the recitals of Ordinance No. 447 and are fully incorporated herein by this reference, have not been alleviated as of the date of this Ordinance and continue to create the concerns described in Ordinance No. 447; and

WHEREAS, the Town now seeks to extend the interim urgency ordinance clarifying the scope of the Town's prohibition of medical marijuana dispensaries to

expressly prohibit facilities or offices that handle or process the paperwork for joining a medical marijuana dispensary or medical marijuana cooperative, receive any financial compensation or donation for the marijuana, or give vouchers or other indicia of membership to new members of these medical marijuana dispensaries and to expressly prohibit mobile or off-site delivery of marijuana independent from these facilities or offices in all locations in the Town of Apple Valley, as currently authorized under Ordinance No. 447, to continue studying possible amendments to the Town of Apple Valley's zoning regulations to help ensure that medical marijuana dispensaries, and any novel approaches to their operation, are regulated in a way that protects the community and complies with applicable law; and

WHEREAS, the purpose for extending Ordinance No. 447 is to avoid the potentially significant adverse impacts to the public's health, safety, and welfare described in Ordinance No. 447;

WHEREAS, the Town Council has determined there is a need to extend Ordinance No. 447 for an additional ten (10) months and fifteen (15) days as authorized under section 65858 of the California Government Code; and

WHEREAS, the notice and public hearing required by section 65858 of the California Government Code for the extension of Ordinance No. 447 has been provided in accordance with law.

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. Adoption of this urgency interim ordinance ("Ordinance") shall constitute an extension of Ordinance No. 447 pursuant to section 65858 of the California Government Code.

SECTION 3. During the time this Ordinance is in effect, no use permit, variance, building permit, business license or other applicable entitlement for use shall be approved or issued for the establishment of a "medical marijuana dispensary," as the definition of phrase is amended by Ordinance No. 447 in the Town of Apple Valley.

SECTION 4. The Town Council hereby finds and determines that adoption of this Ordinance and the extension of Ordinance No. 447 is necessary for the current and immediate protection of the public health, safety, and welfare of the Town and its residents for all the reasons set forth in the recitals above and the recitals of Ordinance No. 447, which are hereby expressly incorporated as though fully set forth herein, and the following additional reasons:

A. The Town continues to study the issues concerning clarifying the Town's existing prohibition of medical marijuana dispensaries in light of the recent

efforts of marijuana dispensary operators to avoid similar prohibitions through novel operation approaches such as maintaining facilities or offices that handle or process the paperwork for joining a medical marijuana dispensary or medical marijuana cooperative, receive any financial compensation or donation for the marijuana, or give vouchers or other indicia of membership to new members of these medical marijuana dispensaries while delivering the marijuana using mobile or off-site sources independent from these facilities or offices. Such novel approaches can have negative effects on the surrounding areas if not properly prohibited. These adverse impacts on the public health, safety, and welfare can be avoided through careful study and proper planning for the prohibition of medical marijuana dispensaries.

B. The Town Attorney's office continues to monitor legal developments concerning the operation and regulation of dispensaries, mobile or otherwise, including pending enforcement actions that may help resolve any issues concerning the banning of medical marijuana delivery services.

SECTION 5. The Town Council hereby directs the Planning Department and the Town Attorney Office to consider and study all possible means of prohibiting medical marijuana dispensaries and any novel approaches to their operation, including zoning-based regulations and other regulations.

SECTION 6. The Town Council hereby finds that this 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 urgency 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 proposed Urgency Ordinance, may have a significant effect on the environment, the activity is not subject to CEQA. Therefore, Town staff is hereby directed to file a Notice of Exemption with the County Clerk following the adoption of this Ordinance.

SECTION 7. Ten days prior to the expiration of this Ordinance, the Town Council shall issue a written report describing the measures which the Town has taken to alleviate the conditions which led to the adoption of this Ordinance.

SECTION 8. 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 of the Ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this 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 9. This Ordinance shall be adopted by a four-fifths vote of the Town Council. Upon adoption, the Mayor shall sign this Ordinance, and the Town Clerk shall certify to the adoption of this Ordinance and cause it, or a summary of it, to be

published once within fifteen (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 Ordinance, including the vote for and against the same, in the Office of the Town Clerk in accordance with Government Code § 36933. This Ordinance shall continue in effect for ten (10) months and fifteen (15) days to May 27, 2014 and shall thereafter be of no further force and effect, unless earlier repealed or extended by the Town Council as provided for in Government Code Section 65858.

SECTION 10. The documents and materials that constitute the record of proceedings on which these findings and this 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 11. This Ordinance shall become effective immediately upon its adoption.

APPROVED and **ADOPTED** by the Town Council and signed by the Mayor and attested by the Town Clerk this 9th day of July, 2013.

Curt Emick, Mayor

ATTEST:

La Vonda Pearson, Town Clerk

CERTIFICATION

STATE OF CALIFORNIA)
COUNTY OF SAN BERNARDINO) ss
TOWN OF APPLE VALLEY)

I, La Vonda Pearson, Town Clerk, hereby certify that the attached is a true copy of Urgency Ordinance No. 449 introduced by the Town Council of the Town of Apple Valley, California, at a regular meeting held July 9, 2013 and duly adopted by the Town Council of the Town of Apple Valley, California on the same date.

WITNESS my hand and official seal of the Town of Apple Valley this 9th day of July, 2013.

La Vonda Pearson, Town Clerk