TOWN OF APPLE VALLEY
TOWN COUNCIL STAFF REPORT

To: **Honorable Mayor and Town Council** **Date: December 10, 2013**

From: **John Brown, Town Attorney**
Best, Best & Krieger **Item No:** **13**

Subject: **ADOPTION OF REGULATION OF MEDICAL MARIJUANA DISPENSARIES FORMALIZING THE ADOPTED URGENCY ORDINANCE TO CLARIFY COMPLIANCE WITH FEDERAL AND STATE LAW AND CALIFORNIA CASE LAW**

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

RECOMMENDED ACTION

1. **Determine** that, based upon the State Guidelines to Implement the California Environmental Quality Act (CEQA), the 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 Ordinance, may have a significant effect on the environment, the activity is not subject to CEQA; and
2. **Find** the facts presented within the staff report support the required Findings for approval of the proposed Ordinance and adopt the Findings for the amendment to Chapter 9.08 of the Development Code further clarifying the definition of "Medical Marijuana Dispensaries" to include mobile dispensaries; and
3. **Adopt** Town Council Ordinance No. 455, Amendment to; amend the definition of "Medical Marijuana Dispensaries" to include mobile dispensaries under Chapter 9.08 of the Development Code.
4. **Move** to waive the reading of Ordinance No. 455, in its entirety and read by title only.
5. **Introduce** Ordinance No. 455, approving Development Code Amendment No. 2013-03.
6. **Direct** staff to file a Notice of Exemption with the San Bernardino County Clerk of the Board of Supervisors.

SUMMARY

On May 28, 2013, the Town Council adopted Urgency Ordinance No. 447 to expressly clarify the Town's prohibition of medical marijuana dispensaries ("MMD's") within every zoning district of the Town, which would include mobile dispensaries. On July 9, 2013, the Town Council extended the Ordinance to be effective until May 27, 2014. On November 6, 2013, the Planning Commission adopted Planning Commission Resolution No. 2013-014 recommending that the Town Council adopt Development Code Amendment No. 2013-003 formalizing the Urgency Ordinance language into the Development Code.

BACKGROUND & DISCUSSION

State and Federal Law

In 1996, California voters approved Proposition 215, entitled "The Compassionate Use Act" (the "CUA"), 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. The CUA regulates several forms through which marijuana can be distributed, such as "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 CUA prohibits a city from adopting policies further restricting the location or establishment of such operations. Accordingly, a city may impose such restrictions on any medical marijuana distributor, whether it operates via a storefront or via a mobile retail delivery.

In 2003, the State legislature enacted SB 420 to clarify the CUA's scope and to allow cities to adopt and enforce rules and regulations consistent with its provisions. SB 420 is also known as the "Medical Marijuana Program Act" ("MMP") and provides additional statutory guidance for those involved with medical marijuana use. The CUA and MMP allow for the use and operation of collectives or cooperatives by qualified medical marijuana patients and primary caregivers, and provide narrow affirmative defenses for criminal prosecutions of persons for drug possession. Notwithstanding the CUA and MMP, the Federal Controlled Substance Act makes it unlawful to manufacture, process, distribute or dispense marijuana. In fact, the United States Supreme Court, in both 2001 and 2005, held that Federal law continues to apply in California despite the CUA and that no medical necessity exceptions exist.

After the initial passage of the CUA, some cities and counties across California began to experience a proliferation of storefront medical marijuana dispensaries claiming to be legal collectives or cooperatives. Aside from the fact that the use and distribution of marijuana in any form is illegal under federal law, the existence of storefront dispensaries is usually illegal under California law because it is nearly impossible to comply with the CUA and MMP while catering to a large membership. Moreover, storefront dispensaries also create significant crime, health, and safety concerns for the surrounding areas. After studying these concerns, some municipalities chose to adopt comprehensive bans on storefront medical marijuana dispensaries and collectives, based upon their knowledge of how these dispensaries operated at that time.

Concerns about recreational marijuana use in connection with medical marijuana distribution operations have been recognized by Federal and State courts. In the 2012 case of *People v. Leal*, the Court noted, that the legal protection of State law "has proven irresistible to those illegally trafficking marijuana . . . . that there is obviously widespread abuse of the CUA and the MMP identification card scheme by illicit sellers of marijuana. . . . .[and] that many citizens, judges undoubtedly among them, believe the CUA has become a charade enabling the use of marijuana much more commonly for recreational than for genuine medical uses."

On May 6, 2013, in the case of *City of Riverside v. Inland Empire Patients Health and Wellness Center,* the California Supreme Court held that local governments can ban medical marijuana dispensaries because California's marijuana laws do not expressly or impliedly limit a local jurisdiction's land use authority, including the authority to prohibit facilities for the distribution of medical marijuana. In this opinion, the court ruled that the California Constitution grants cities and counties broad power to determine the permitted uses of land within their borders, that the CUA and MMP do not restrict that power, and that a local ban on MMD's does not conflict with these laws because they do no more than exempt certain activities from State criminal and nuisance laws. Given the clarity offered by this decision upholding a municipality's ability to <u>ban</u> MMD's, several municipalities have chosen to ban MMD's or re-visit their existing bans of MMD's. Further, this decision has opened the door for discussion of a municipality's ability to regulate MMD's instead of banning them altogether.

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.*, 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 and to have mobile MMD operations that deliver marijuana within the municipality they are based in, as well as to other nearby municipalities.

<u>Mobile Marijuana Dispensaries</u>

Medical marijuana advocates have taken a narrow interpretation of the California Supreme Court's holding by arguing that the Court merely upheld local prohibitions on the dispensing of marijuana from *a stationary storefront*. Therefore, these advocates have advised MMD's to create "hybrid" operations - storefront offices only to process paperwork for joining a MMD, to receive payment/donations for the marijuana, and to give vouchers or membership documents to new members – or purely "mobile" dispensaries where marijuana would be distributed through use of mobile means, such as a vehicle, whether or not the dispensary was based in the Town or outside Town limits. Under the "hybrid" approach, operators later dispense the marijuana from a mobile or on or offsite standalone delivery source independent of the office. Further, even since the Town adopted Urgency Ordinance No. 447, MMD operators have

contemplated getting around bans of MMD's like the Town's by arguing that MMD deliveries in a municipality like the Town that has banned MMD's originate from MMD's based outside of that municipality's boundaries or that the delivery is intended for recipients outside of the municipality's limits. Further, Town action clarifying its ban of MMD's would need to address these novel approaches to MMD operation.

The exact number of mobile, "hybrid," or on or offsite standalone delivery services operating in California is unclear, since the State does not keep a registry of these distributors. In July 2013, at least five services within 10 miles of Apple Valley advertised direct delivery of marijuana within the Town on "Weedmaps.com," an Internet commercial listing service. An increase in mobile dispensaries has been found to coincide with successful enforcement actions involving storefront dispensaries. This is also an attractive business model given the lower overhead of operating out of a home using a personal vehicle. In other parts of the State, shuttered businesses turned to delivery services instead. There is reason to expect the same in the Town of Apple Valley in light of the Supreme Court's recent ruling.

Mobile MMD's have been strongly associated with criminal activity. Delivery drivers, for example, are targets of armed robbers and many reportedly carry weapons or have armed guards as protection. Examples in the media include the following:

a. In March 2013, a West Covina deliveryman was reportedly robbed after making a delivery. The deliveryman told police that he was approached by two subjects in ninja costumes who chased him with batons. He was scared and dropped a bag with some marijuana and money, which was taken by the suspects.

b. In February 2013, a Temecula deliveryman was reportedly robbed of cash outside of a Denny's restaurant, which led to a vehicular chase that continued until the robbers' vehicle eventually crashed on a freeway on ramp.

c. In January 2013, marijuana deliverymen in Imperial Beach were reportedly robbed after being stopped by assailants (one with a brandished semi-automatic handgun) after making a stop.

d. In January 2013, a deliveryman was reportedly robbed of three ounces of marijuana while making a delivery outside a Carl's Jr. Restaurant in Riverside, and he told police that the suspect may have had a gun.

e. In May 2012, a 23-year-old deliverywoman in La Mesa was reportedly shot in the face with a pellet gun. After running away, the assailants carjacked her vehicle.

f. In August 2011, a medical marijuana deliveryman was reportedly robbed of $20,000 worth of his marijuana (approximately nine pounds) and a cellular phone in Fullerton. The driver suffered a cut to the head during the crime.

g. In June 2011, a marijuana delivery from a Los Angeles mobile dispensary turned deadly in Orange County when four individuals reportedly ambushed the mobile dispensary driver and his armed security guard and tried to rob them. One of the suspects approached the delivery vehicle and confronted the driver and a struggle ensued. A second suspect armed with a handgun, approached the security guard, who fired at the suspect hitting him multiple times.

h. In April 2011, a customer reportedly made arrangements for a medical marijuana deliveryman to meet him in a Safeway parking lot in Salinas. The deliveryman had about $1,000 in cash and 1.5 pounds of marijuana. As the deliveryman began weighing the order, he looked up and saw a silver handgun in his face. The customer stole money and marijuana. The judge sentenced the customer to five years in state prison.

i. In May 2010, a college student who delivers medical marijuana door-to-door was reportedly robbed at gunpoint in Richmond. The assailants took $1,000 in cash and a pound of marijuana.

Despite the CUA and the MMP, the United States Attorneys in California have taken action to enforce the federal Controlled Substances Act against MMD's, and have issued letters stating that California cities and officials face possible criminal prosecution for enabling MMD's to violate Federal law. The failure to prohibit mobile marijuana dispensaries or medical marijuana dispensaries may encourage the proliferation of MMD's in the Town and expose the Town to costs related to regulation, enforcement, and the negative secondary effects of dispensaries including an increase in violent crime.

Town's Current Prohibition of MMD's

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 use 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" 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 MMD's in the Town.

Chapter 9.08 of the Town's Development Code provides a detailed definition of MMD's under the Code. The existing definition of MMD in the Town's Code includes the stationary storefront and "hybrid" methods of operation referenced above, but does not expressly prohibit the other novel approaches to MMD operation that have surfaced in the recent weeks (i.e. MMD's making deliveries into the Town from MMD's based outside of the Town's limits). These hybrid approaches, however, are likely included in the Town's current prohibition of MMD's, as evidenced in the Urgency Ordinance. The existing definition also does not expressly declare MMD's to be a public nuisance and does not go so far as to prohibit any attempt to locate, operate, own, lease, supply, allow to operate or aid, abet or assist MMD operation in the Town. These additional prohibitions have appeared in the bans imposed by other southern California municipalities in the recent weeks.

Enforcement under the Town's Code and under State Law and Costs

Sections 1.01.200(d) and 1.01.250 of the Town's Municipal Code deem any condition caused or permitted in violation of the Code, or any such threatened violation, to be a public nuisance subject to summary abatement by the Town or by a civil judicial action for abatement. Section 1.01.260 governs the procedures by which the Town could recover the costs it incurs for abating a public nuisance, whether such nuisance is premised on a violation of state law, the Town's Code, or otherwise. These procedures require the Town to give the violator notice to cease and desist the maintenance of a nuisance condition and, should the violator not correct the nuisance condition within a reasonably specified time, such noncomplying person is liable to the Town for any and all costs incurred by the Town for such abatement. Monies owed pursuant to these procedures can be recovered in a civil action as necessary to collect.

Should a MMD, as presently defined in this Ordinance or as such definition is amended, commence operation within the Town, such operation would likely be in violation of the Town's Code, deemed a public nuisance, and subject to abatement through civil litigation. Should the Town be successful in such abatement efforts, cost recovery is available. It is important to note that the Town's Ordinance does not prohibit the use, possession, or cultivation of medical marijuana by any individual. Instead, the Ordinance simply restricts the distribution of marijuana through dispensaries, as defined.

Further, California's Health & Safety Code also limits the handling of marijuana by prohibiting its unauthorized possession (Section 11357), possession for sale (11359), and transportation, importation, sale or gift (11360). The CUA and the MMP craft narrow affirmative defenses for particular individuals to these criminal charges. All possession or use of marijuana which falls outside of the CUA and MMP's narrow parameters remains illegal under California law. The only permissible production and distribution of marijuana under California law exists either in true cooperatives and collectives, which are anticipated by the MMP, or directly from caregivers to patients. True cooperatives and collectives do not generally operate as storefront businesses (although one could conceivably exist). The reality is that most MMD operators claim to be operating as permissible cooperatives or collectives (i.e. individuals that associate "collectively or cooperatively" in not-for-profit operations to cultivate medical marijuana to meet their collective medicinal needs), but do not follow these parameters in practice. Certain labeling laws for medicinal drugs under the Sherman Food, Drug, and Cosmetic Law (Health & Safety Code § 109875 *et. seq.*) may also apply to the sale of marijuana for "medicinal" purposes. Thus, in addition to violating the Town's Code, MMD operators may also violate state law. The Town Attorney can enforce these laws. However, it is much more difficult to enforce these laws versus a Townwide ban. Notwithstanding, the same cost recovery provisions apply should the Town Attorney be used to enforce these laws.

Risk of Merely Regulating, and Not Banning, MMD's

In *City of Riverside v. Inland Empire Patients Health and Wellness Center,* the California Supreme Court upheld the right of local governments to ban MMD's. The question of whether local governments can regulate MMD's was not directly before the court. However, in its holding, the Court opined "localities in California are left free to accommodate such [MMD]

conduct if they so choose, free of state interference." (*City of Riverside, supra*, 56 Cal. 4th at 762.) Thus, the Court clearly held that a local government may ban MMD's, but was less clear on the parameters, if any, for which a municipality can regulate MMD's. Further, the decision in *City of Riverside* does not specifically mention local regulation of the cultivation of marijuana. Where and how marijuana is grown may rightly be of great concern to local entities.

Local governments cannot "permit" or "authorize" any activity that violates federal or state law; in fact, federal and state law pre-empts any such attempt. Accordingly, should a municipality decide to regulate, and not ban, MMD's, at least one appellate court (whose opinion has since been de-published due to the City of Long Beach amending its MMD regulation) held in 2011 that a municipality's regulation sanctioning the issuance of "permits" for MMD's was not allowed because the scheme crossed the line by authorizing an illegal activity. (*See Pack v. Superior Court* (Cal. App. 2d Dist. 2011) 199 Cal. App. 4th 1070 [de-published]). In other words, a court could find that the Town is pre-empted by federal law from regulating MMD's because the Town cannot "permit" or "authorize" a medical marijuana business and marijuana related activities, which activities are prohibited by federal law (i.e. the Federal Controlled Substance Act). To get around this pre-emption issue, the State of California has merely de-criminalized certain State penalties, but has not, and cannot, permit or authorize any right in violation of federal law. Thus, the law is not clear on the ability of a local government to regulate MMD's. Not only will any such regulation need to be crafted in a way so as to avoid any Federal pre-emption issues, it would also require the Town to expend resources to ensure that MMD's are not operating in violation of the Town's regulations and to defend any legal challenges to any such Town regulation.

Notwithstanding this lack of clarity on whether a municipality can regulate MMD's or, if they can, the scope of such power, some local jurisdictions within California have passed MMD regulations. One example is the City of Los Angeles. Originally, Los Angeles attempted to regulate MMD's. However, in 2012 after years of defending numerous lawsuits over the legality of these regulations, the City of Los Angeles repealed its MMD regulations in light of the *Pack* decision (the City of Long Beach's MMD regulations were based on the then-existing MMD regulations by the City of Los Angeles) and instead banned MMD's altogether. In doing so, the City of Los Angeles cited to the several threats of litigation brought by marijuana advocates should the City of Los Angeles adopt registration provisions for MMD's and to the December 2011 opinion of the California Attorney General Kamala Harris that several laws concerning the regulation of medical marijuana were "unclear," particularly the rules for MMD operation. However, in May 2013, the City of Los Angeles voters approved Measure D, effectively ending the City's ban of MMD's. Measure D (1) allows the 135 dispensaries in existence when the City passed its initial "interim control ordinance" in September 2007 to stay open, if they follow the city's rules on proximity to schools, churches and neighborhood (600 feet) and (2) places a new tax of $60 per $1,000 of marijuana sold. Those MMD's that opened after 2007 will be ordered to close.

Time will tell whether Measure D will survive a legal challenge, including a legal challenge under the *Pack* reasoning as to whether the City of Los Angeles now effectively "permits" or "authorizes" activity that is illegal under federal law. Further, the prospect of taxing MMD

operations is potentially problematic, given that true marijuana collectives and cooperatives must operate as "non-profits." Dispensaries also typically operate as entirely cash-based enterprises because banks will not give them accounts out of fear of violating federal laws. Accordingly, auditing such operations may prove to be extremely difficult. In addition, the CUA and MMP do not create an exemption for the sale of marijuana, which is still illegal under federal and state law.

Lastly, there have been several studies documenting the public health and safety concerns associated with the operation of MMD's, in addition to those mentioned herein. Should the Town decide to regulate MMD's, it may be subject to legal challenges on the regulation giving the lack of clarity on the law and such regulation may encourage MMD operators to target the Town as a prime location for MMD operations.

CEQA

The Town is the lead agency concerning the 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 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 Ordinance, may have a significant effect on the environment, the activity is not subject to CEQA.

FISCAL IMPACT

No financial impact is projected.

FINDINGS

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

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

Comment: The General Plan provides the basic framework for land development within the Town of Apple Valley, with the Development Code setting the specific standards and criteria to fulfill the General Plan's Goals and Policies. The proposed Code Amendment shall further expand the definition of Medical Marijuana Dispensaries to include mobile dispensaries within the definitions of the Development Code. The changes proposed to the Development Code, are consistent with the General Plan and promote the health and safety of the community.

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

Comment: Amending the Code as proposed under Development Code Amendment No. 2013-003 will amend the Town's Development Code by modifying the definition of Medical Marijuana Dispensaries to include mobile dispensaries. The Amendment complies with the General Plan goals and policies and is consistent with applicable Federal and State Code provisions. Thus, the Amendment proposed shall result in a change to the Code that addresses the health, safety and general welfare of the citizens of the Town of Apple Valley.

ATTACHMENTS

Ordinance No. 455

ORDINANCE NO. 455

AN 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 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 Ordinance, and the regulations set forth herein, are necessary for the 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, the Town of Apple Valley Planning Commission adopted Planning Commission Resolution No. 2013-14 on November 6, 2013, recommending that the Town Council adopt Development Code Amendment No. 2013-003; 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 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 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, were banned by the Town prior to the adoption of this Ordinance and the purpose of this 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 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 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 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 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 7. Effective Date. This Ordinance shall become effective thirty (30) days after the date of its adoption.

SECTION 8. Notice of Adoption. The Town Clerk of the Town of Apple Valley shall certify to the adoption of this ordinance and cause publication to occur in a newspaper of general circulation and published and circulated in the Town in a manner permitted under Section 36933 of the Government Code of the State of California.

APPROVED and **ADOPTED** by the Town Council and signed by the Mayor and attested by the Town Clerk this 14th day of January, 2014.

_____
Mayor

ATTEST:

_____
La Vonda Pearson, Town Clerk

APPROVED AS TO FORM:

_____
John Brown, Town Attorney

APPROVED AS TO CONTENT:

_____
Frank Robinson, Town Manager

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 Ordinance No. 455, introduced by the Town Council of the Town of Apple Valley, California, at a regular meeting held December 10, 2013, and duly adopted by the Town Council of the Town of Apple Valley, California on January 14, 2014.

WITNESS my hand and official seal of the Town of Apple Valley this 14th day of January, 2014.

_____

La Vonda Pearson, Town Clerk

PLANNING COMMISSION RESOLUTION NO. 2013-014

A RESOLUTION OF THE TOWN OF APPLE VALLEY PLANNING COMMISSION RECOMMENDING THAT THE TOWN COUNCIL ADOPT DEVELOPMENT CODE AMENDMENT 2013-003 AMENDING THE DEFINITION OF MEDICAL MARIJUANA DESPENSARIES IN THE DEVELOPMENT CODE TO CLARIFY THE SCOPE OF THE TOWN'S REGULATION IN COMPLIANCE WITH FEDERAL AND STATE LAW AND CALIFORNIA CASE LAW

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

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

WHEREAS, in 1996, the voters of the State of California ("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 Council adopted an Urgency Ordinance on May 28, 2013 to include modifications to the definition of Medical Marijuana

Dispensaries and as such, the Planning Commission recommends the same language as adopted in the Urgency Ordinance.

WHEREAS, the proposed Development Code Amendment 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, on October 25, 2013, Development Code Amendment No. 2013-003 was duly noticed in the Apple Valley News, a newspaper of general circulation within the Town of Apple Valley; and

WHEREAS, the Development Code Amendment as set forth herein, is consistent with Title 9 "Development Code" of the Municipal Code of the Town of Apple Valley and is necessary for the 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, on November 6, 2013 the Planning Commission of the Town of Apple Valley conducted a duly noticed and advertised public hearing on Development Code Amendment No. 2013-003, receiving public testimony; and

NOW, THEREFORE, the Planning Commission 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 Development Code Amendment is necessary for the 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 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, were banned by the Town prior to the adoption of this Ordinance and the purpose of this 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.

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SECTION 4. CEQA. The Town Council finds, under Title 14 of the California Code of Regulations, Section 15061(b)(3), that this Development Code Amendment is exempt from the requirements of the California Environmental Quality Act ("CEQA") in that the activity is covered by the general rule that CEQA applies only to projects which have the potential for causing a significant effect on the environment. Where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment, the activity is not subject to CEQA. The Town Council, therefore, directs that a Notice of Exemption be filed with the County Clerk of the County of San Bernardino in accordance with CEQA Guidelines.

SECTION 5. Consistency. The changes as proposed under Development Code Amendment No. 2013-003 are consistent with the Goals and Policies of the Town of Apple Valley and the adopted General Plan.

MOVED, PASSED, AND ADOPTED at a regular meeting of the Planning Commission on the 6th day of November, 2013, by the following vote:

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Jason Lamoreaux, Chairman

ATTEST:

I, Debra Thomas, Secretary to the Planning Commission of the Town of Apple Valley, California, do hereby certify that the foregoing resolution was duly and regularly adopted by the Planning Commission at a regular meeting thereof, held on the 6th day of November, 2013 by the following vote, to-wit:

AYES:

NAYS:

ABSENT:

ABSTAIN:

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Ms. Debra Thomas, Planning Commission Secretary