



## Town Council Agenda Report

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**Date:** February 11, 2020 **Item No. 16**

**To:** Honorable Mayor and Town Council

**Subject:** INTRODUCE ORDINANCE NO. 529 – AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF APPLE VALLEY, CALIFORNIA, AMENDING CHAPTER 1.01 OF THE APPLE VALLEY MUNICIPAL CODE AS IT RELATES TO THE FINES ASSOCIATED WITH ILLEGAL CANNABIS CULTIVATION.

**From:** Douglas B. Robertson  
Town Manager

**Submitted by:** Guy Eisenbrey, CCEO  
Code Enforcement Manager

**Budgeted Item:**  Yes  No  N/A

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### RECOMMENDED ACTION

- A. **Find** that the proposed adoption of Ordinance No. 529 is not subject to and is exempt from CEQA based upon a finding that, under section 15061(b)(3) of the CEQA Guidelines, it can be seen with certainty that there is no possibility that the proposed amendment may have a significant effect on the environment.
- B. **Move** to waive the reading of Ordinance No. 529 in its entirety and read by title only.
- C. **Move** to introduce Ordinance No. 529 amending Chapter 1.01 as it relates to the fines associated with illegal cannabis cultivation.
- D. **Direct** staff to file a Notice of Exemption.

### BACKGROUND

On November 9, 2016, Proposition 64 was approved, which among other regulations, allows indoor cultivation in private residences for up to six marijuana plants. Since the Town's Code adoption in 2016 to align with State law, there have been significant changes to the State law since the adoption of Development Code Section 9.36.230 and the number of illegal cannabis cultivation operations and problems associated with them has grown exponentially. A typical illegal cannabis cultivation operation consists of an entire single-family residence converted completely to accommodate a grow. These grows will often have more than 1,000 plants at various stages of growth and the hazards

associate with them. The hazards commonly found at the operations include, but are not limited to, mold, dampness of habitable areas, structural damage, penetrations in drywall and exterior weather protective surfaces, hazardous electrical such as electrical wiring without conduit running throughout the home and in damp, often wet, areas, overloaded electric meters, electric service risers that have been compromised or damaged due to pirated connections to facilitate the theft of electricity, storage of fertilizers and other noxious chemicals that frequently leak, window and door deletions that inhibit sufficient means of egress. These activities and hazards pose a significant threat to the health, safety, and welfare of the Town's residents.

The current fine structure as defined in the Town of Apple Valley Municipal Code section 1.01.200 provides for an inadequate deterrent to those persons responsible for illegal cannabis cultivation operations. A vast majority of the offenders, or property owners, pay fines issued to them as the cost of doing business. The persons located onsite, or "babysitters", are often without valid forms of identification and fail to either pay or show up to court for their scheduled arraignment date. They are "ghosts" and are often gone without a trace shortly after contact with law enforcement. Non-compliance, unpermitted repair work, and quick property sales is the newest and most recent trend. After receiving a notice from Code Enforcement and an average \$600 fine, property owners will quickly have "handy men" remove all remnants of the grow, patch holes in walls, and cover up any indication of the hidden hazards without the benefit of a permit from Building and Safety. Shortly after completion of the unpermitted work, they often attempt to sell the property in "As-is" condition to unsuspecting buyers. The current fine structure does very little to deter this malicious activity and does not incentivize property owners to do what is right for the sake of the Town's residents.

This amendment serves to supplement Ordinance No. "528" which seeks approval of Development Code Amendment No. 2019-016. While the Development Code Amendment is meant to further regulate indoor personal cultivation, this amendment to the Town of Apple Valley Municipal Code section 1.01.200 is necessary for the following reasons: to define more appropriate and punitive penalties specifically associated with personal cultivation of cannabis in excess of that which is allowed by State and local law and to provide Town Code Enforcement Officers a more effective and efficient means of enforcing regulations related to indoor cultivation in private residence.

None of the proposed changes to the Municipal Code add or delete any violations but serve to better position the Town to effectively enforce the provisions of the Code. Nor are the amendments intended to alter the Town Council's overarching intent of the Code itself.

{A ~~strikethrough~~ in the Municipal Code text shows proposed deletions and underlined text shows proposed additions to the code sections}

#### **"1.01.200 – Violations.**

- (a) No person shall violate any of the provisions or fail to comply with any of the requirements of this Code. Any person violating any of the provisions or failing to comply with any of the requirements of this Code, unless otherwise specified in particular Titles, Chapters, or Sections of this Code, shall be guilty of a misdemeanor, except as authorized in Subsection (b), and upon conviction

thereof, the penalty shall be a fine of not more than \$1,000.00, or imprisonment in the County jail for a period of not more than six months or by both fine and imprisonment. Each such offense shall be a separate offense for each and every day during any portion of which any violation of any provision of this Code, or any provision of any code adopted by reference by this Code, or of any other Town ordinance, is committed, continued, or permitted by such person, and may be punished accordingly.

- (b) Notwithstanding the provisions of Subsection (a), either the Town Attorney, his or her designee, or any officer issuing a citation hereunder, may issue the citation as an infraction. Further, in the discretion of the Town Attorney, his or her designee, or any officer, any complaint or citation issued as a misdemeanor may be reduced to an infraction.
- (c) In addition to the penalties described in Subsections (a) and (b) of this Section, any person found guilty of a violation of a Title, Chapter or Section of this Code shall be ordered to comply with the requirements of such Title, Chapter or Section of this Code.
- (d) In addition to the penalties provided in Subsections (a) and (b) of this Section, any condition caused or permitted to exist in violation of any of the provisions of this Code shall be deemed a public nuisance and may be, by this Town, summarily abated as such.
- (e) Any person violating any of the provisions or failing to comply with any of the requirements of this Code, unless otherwise specified in particular Titles, Chapters, or Sections of this Code, including parking violations, may be issued an administrative citation by any employee authorized to issue such citations under Section 1.08.050 of this Code. The fines schedule for such administrative citation shall be as follows:
  - (1) A fine not exceeding \$100.00 for a first violation;
  - (2) A fine not exceeding \$200.00 for a second violation of the same Code section within one year of the date of the first citation; and
  - (3) A fine not exceeding \$500.00 for each additional violation of the same Code section within one year of the date of the previous citation.
  - (4) Exception: The administrative citation penalty for each and every marijuana plant cultivated in violation of Apple Valley Development Code Chapters 9.29 and 9.36 shall be \$100 per plant, and increasing to \$1,000 per plant per day the plant remains unabated past the abatement deadline set forth in the administrative citation.
- (f) Each administrative citation shall contain the following information:
  - (1) Name of the responsible person for the violation of this Code.
  - (2) Date on which an inspection established the Code violation.
  - (3) The Code section(s) violated.
  - (4) Address where the Code violation occurred.
  - (5) Amount of the fine for the violation and procedure to pay the fine and avoid a late payment penalty.
  - (6) Description of the procedure for requesting an administrative hearing to contest a citation.
  - (7) A notice that the Code violation is a nuisance and that collection of enforcement and/or nuisance abatement costs can be enforced as an assessment of lien against the property where a property related Code violation occurs and that

- unpaid assessments can result in the property being sold after three years by the County Assessor.
- (8) An order prohibiting the continuation or repeated occurrence of the Code violation or public nuisance described in the administrative citation.
  - (9) Name of the Enforcement Officer issuing the citation.
  - (g) Service of the citation shall conform to the provisions set forth in Section 1.01.300 of this code.
  - (h) Satisfaction of the administrative citation. Upon receipt of a citation, the responsible person must do the following:
    1. Pay the fine to the Town within 30 days from the date of the citation. All fines assessed shall be payable to the Town of Apple Valley Finance Department. Payment of a fine shall not excuse or discharge a failure to correct continuing violations nor shall it bar further enforcement action by the Town.
    2. The failure of any person to pay a fine assessed by administrative citation within the time specified on the citation shall result in the assessment of an additional late fee. The amount of the late fee shall be fifty percent of the total amount of the administrative fine owed.
  - (i) Any vehicle violating the California Vehicle Code may be issued an administrative citation by any employee authorized to issue such citations under Section 1.08.050 of this Municipal Code. The fine for such violation is set by the California Vehicle Code or affirmed by resolution of the Town Council as the same may be amended from time to time.”

**FISCAL IMPACT**

None

**ORDINANCE NO. 529**

**AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF APPLE VALLEY, CALIFORNIA, AMENDING CHAPTER 1.01 OF THE APPLE VALLEY MUNICIPAL CODE AS IT RELATES TO THE FINES ASSOCIATED WITH ILLEGAL CANNABIS CULTIVATION.**

**WHEREAS**, the amendments are necessary to define more appropriate and punitive penalties specifically associated with personal cultivation of cannabis in excess of that which is allowed by State and local law;

**WHEREAS**, the amendments are necessary to allow Town Code Enforcement Officers to more effectively and efficiently enforce the Town's Municipal Code; and

**WHEREAS**, the amendments are necessary to uphold the Town Council's intent of the Code;

**WHEREAS**, it is in the best interest of the Town to amend the provisions of Chapter 1.01 (entitled "Code Adopted") of Title 1 of the Apple Valley Municipal Code; and

**WHEREAS**, it is the objective of the Town of Apple Valley, through code enforcement efforts, to preserve and enhance properties located within the Town limits.

**NOW, THEREFORE, THE TOWN COUNCIL OF THE TOWN OF APPLE VALLEY DOES ORDAIN AS FOLLOWS:**

**Section 1.** Section 1.01.200 of Chapter 1.01 of Title 1 of the Town of Apple Valley Municipal Code is hereby amended to read in its entirety as follows:

**"1.01.200 – Violations.**

- (a) No person shall violate any of the provisions or fail to comply with any of the requirements of this Code. Any person violating any of the provisions or failing to comply with any of the requirements of this Code, unless otherwise specified in particular Titles, Chapters, or Sections of this Code, shall be guilty of a misdemeanor, except as authorized in Subsection (b), and upon conviction thereof, the penalty shall be a fine of not more than \$1,000.00, or imprisonment in the County jail for a period of not more than six months or by both fine and imprisonment. Each such offense shall be a separate offense for each and every day during any portion of which any violation of any provision of this Code, or any provision of any code adopted by reference by this Code, or of any other Town ordinance, is committed, continued, or permitted by such person, and may be punished accordingly.
- (b) Notwithstanding the provisions of Subsection (a), either the Town Attorney, his or her designee, or any officer issuing a citation hereunder, may issue the citation as an infraction. Further, in the discretion of the Town Attorney, his or her designee, or any officer, any complaint or citation issued as a misdemeanor may be reduced to an infraction.

- (c) In addition to the penalties described in Subsections (a) and (b) of this Section, any person found guilty of a violation of a Title, Chapter or Section of this Code shall be ordered to comply with the requirements of such Title, Chapter or Section of this Code.
- (d) In addition to the penalties provided in Subsections (a) and (b) of this Section, any condition caused or permitted to exist in violation of any of the provisions of this Code shall be deemed a public nuisance and may be, by this Town, summarily abated as such.
- (e) Any person violating any of the provisions or failing to comply with any of the requirements of this Code, unless otherwise specified in particular Titles, Chapters, or Sections of this Code, including parking violations, may be issued an administrative citation by any employee authorized to issue such citations under Section 1.08.050 of this Code. The fines schedule for such administrative citation shall be as follows:
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- (f) Each administrative citation shall contain the following information:
  - (1) Name of the responsible person for the violation of this Code.
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  - (4) Address where the Code violation occurred.
  - (5) Amount of the fine for the violation and procedure to pay the fine and avoid a late payment penalty.
  - (6) Description of the procedure for requesting an administrative hearing to contest a citation.
  - (7) A notice that the Code violation is a nuisance and that collection of enforcement and/or nuisance abatement costs can be enforced as an assessment of lien against the property where a property related Code violation occurs and that unpaid assessments can result in the property being sold after three years by the County Assessor.
  - (8) An order prohibiting the continuation or repeated occurrence of the Code violation or public nuisance described in the administrative citation.
  - (9) Name of the Enforcement Officer issuing the citation.
- (g) Service of the citation shall conform to the provisions set forth in Section 1.01.300 of this code.
- (h) Satisfaction of the administrative citation. Upon receipt of a citation, the responsible person must do the following:
  - 3. Pay the fine to the Town within 30 days from the date of the citation. All fines assessed shall be payable to the Town of Apple Valley Finance Department.

Payment of a fine shall not excuse or discharge a failure to correct continuing violations nor shall it bar further enforcement action by the Town.

4. The failure of any person to pay a fine assessed by administrative citation within the time specified on the citation shall result in the assessment of an additional late fee. The amount of the late fee shall be fifty percent of the total amount of the administrative fine owed.
  - (i) Any vehicle violating the California Vehicle Code may be issued an administrative citation by any employee authorized to issue such citations under Section 1.08.050 of this Municipal Code. The fine for such violation is set by the California Vehicle Code or affirmed by resolution of the Town Council as the same may be amended from time to time.

**Section 3.** Except as expressly amended hereby, all other provisions of Title 1 of the Town of Apple Valley Development Code shall remain in full force and effect.

**Section 4.** Invalidation. The amendment by this Ordinance of Chapter 1.01 of the Town of Apple Valley Municipal Code as previously in effect shall not be construed to invalidate any entitlement exercised or proceeding taken pursuant to either of said Chapters while the same was in effect.

**Section 5.** Severability. If any provision of this Ordinance or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications, and to this end the provisions of this Ordinance are declared to be severable.

**Section 6.** Effective Date. This Ordinance shall become effective thirty days from and after its adoption.

**Section 7.** 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.

**APPROVED** and **ADOPTED** by the Town Council and signed by the Mayor and attested by the Town Clerk this 25th day of February, 2020.

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Honorable Scott Nassif, Mayor

**ATTEST:**

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Ms. La Vonda M-Pearson, Town Clerk

**APPROVED AS TO FORM:**

**APPROVED AS TO CONTENT:**

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Mr. Thomas Rice, Town Attorney

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Mr. Douglas B. Robertson, Town Manager