



Town Council Agenda Report

Date: February 25, 2020 Item No. 7

To: Honorable Mayor and Town Council

Subject: SECOND READING OF ORDINANCE 528, AMENDING SECTION 9.36.230 AND ADDING SECTION 9.29.210 OF THE APPLE VALLEY DEVELOPMENT CODE AS IT RELATES TO PERSONAL RECREATIONAL CANNABIS CULTIVATION AND PENALTIES FOR CANNABIS CULTIVATION VIOLATIONS.

From: Douglas Robertson, Town Manager

Submitted by: Carol Miller, Assistant Director of Community Development

Budgeted Item: Yes No N/A

RECOMMENDED ACTION

Adopt Ordinance No. 528

BACKGROUND

At its February 11, 2020 meeting, the Town Council introduced Ordinance No. 528 that modifies the Development Code by amending Section 9.36.230 and adding Section 9.29.210 of the Apple Valley Development Code as it relates to personal recreational cannabis cultivation and penalties for cannabis cultivation violations. Ordinance No. 528 has been scheduled for adoption at the February 25, 2020 Town Council meeting.

FISCAL IMPACT

None.

ATTACHMENTS

Ordinance No. 528

ORDINANCE NO. 528

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF APPLE VALLEY, CALIFORNIA, AMENDING SECTION 9.36.230 AND ADDING SECTION 9.29.210 OF THE APPLE VALLEY DEVELOPMENT CODE AS IT RELATES TO PERSONAL RECREATIONAL CANNABIS CULTIVATION AND PENALTIES FOR CANNABIS CULTIVATION VIOLATIONS.

WHEREAS, The General Plan of the Town of Apple Valley was adopted by the Town Council on August 11, 2009; and

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

WHEREAS, the amendments are necessary to align the Town’s Development Code with current State law; and

WHEREAS, the amendments are necessary to allow Town residents the ability to cultivate cannabis for personal recreational purposes with reasonable regulations that are meant to protect the health, safety, and welfare of the community; and

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

WHEREAS, the amendments are also necessary to provide Town Code Enforcement Officers with a more effective and efficient means of enforcing the Town’s Development Code; and

WHEREAS, the amendments are necessary to uphold the Town Council’s intent of the 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; and

WHEREAS, it is in the best interest of the Town to amend the provisions of Section 9.36.230 of Chapter 9.36 (entitled “Specific Use Regulations/Commercial and Office Districts”) of Title 9 of the Apple Valley Development Code.

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

Section 1. Section 9.36.230 of Chapter 9.36 of Title 9 of the Town of Apple Valley Development Code is hereby amended to read in its entirety as follows:

“9.36.230 - CANNABIS DISPENSARIES, CANNABIS MANUFACTURERS, AND THE CULTIVATION AND DELIVERY OF CANNABIS

- A. **Purpose.** The purpose of this Section is to regulate personal, medical, and commercial marijuana uses in the Town. Nothing in this Section shall preempt or make inapplicable any provision of State or Federal law. No provisions of this Section shall hinder or supersede any other applicable State or Federal statute.
- B. **Definitions.** For purposes of this Section, the following definitions shall apply:
1. "Commercial marijuana activity" includes the cultivation, possession, manufacture, distribution, processing, storing, laboratory testing, labeling, transportation, distribution, delivery or sale of marijuana and marijuana products.
 2. "Cultivation" means any activity involving the planting, growing, harvesting, drying, curing, grading, or trimming of marijuana.
 3. "Delivery" means the commercial transfer of marijuana or marijuana products to a customer. "Delivery" also includes the use by a retailer of any technology platform owned and controlled by the retailer, or independently licensed under California law, that enables customers to arrange for or facilitate the commercial transfer by a licensed retailer of marijuana or marijuana products.
 4. "Distribution" means the procurement, sale, and transport of marijuana and marijuana products between entities for commercial use purposes.
 5. "Licensee" means the holder of any State issued license related to marijuana activities, including but not limited to licenses issued under Division 10 of the Business & Professions Code.
 6. "Manufacture" means to compound, blend, extract, infuse, or otherwise make or prepare a marijuana product.
 7. "Marijuana" means all parts of the plant *Cannabis sativa* L. Linnaeus, *Cannabis indicia*, or *Cannabis ruderalis*, whether growing or not; the seeds thereof; the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds or resin. It does not include:
 - a. Industrial hemp, as defined in Section 11018.5 of the California Health & Safety Code; or
 - b. The weight of any other ingredient combined with marijuana to prepare topical or oral administrations, food, drink, or other product.
 8. "Marijuana accessories" means any equipment, products or materials of any kind which are used, intended for use, or designed for use in planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, smoking, vaporizing, or containing marijuana, or for ingesting, inhaling, or otherwise introducing marijuana or marijuana products into the human body.
 9. "Marijuana products" means marijuana that has undergone a process whereby the plant material has been transformed into a concentrate, including, but not limited to, concentrated cannabis, or an edible or topical product containing marijuana or concentrated cannabis and other

ingredients.

10. "Person" includes any individual, firm, co-partnership, joint venture, association, corporation, limited liability company, estate, trust, business trust, receiver, syndicate, or any other group or combination acting as a unit, and the plural as well as the singular.
11. "Sale" includes any transaction whereby, for any consideration, title to marijuana is transferred from one person to another, and includes the delivery of marijuana or marijuana products pursuant to an order placed for the purchase of the same and soliciting or receiving an order for the same, but does not include the return of marijuana or marijuana products by a licensee to the licensee from whom such marijuana or marijuana product was purchased.
12. Any term defined in this Section also means the very term as defined in the California Business & Professions Code or the California Health & Safety Code, unless otherwise specified.

C. Commercial Use

1. Medical marijuana shall be pursuant to Section 11362.77 of the California Health & Safety Code.
2. The establishment or operation of any medical marijuana collective, cooperative, dispensary, delivery service, operator, establishment, or provider shall be considered a prohibited use in all zoning districts of the Town and no use permit, variance, building permit, or any other entitlement or permit, whether administrative or discretionary, shall be approved or issued for the establishment of any collective, cooperative, dispensary, delivery service, operator, establishment, or provider in any zoning district, and no person shall otherwise establish such businesses or operations in any zoning district.
3. The establishment or operation of any business of commercial marijuana activity is prohibited. No use permit, variance, building permit, or any other entitlement or permit, whether administrative or discretionary, shall be approved or issued for the establishment or operation of any such business or operation. Such prohibited businesses or operations may include, but are not limited to:
 - a. The transportation, delivery, storage, distribution, or sale of marijuana, marijuana products, or marijuana accessories, except to the extent allowed under California Code of Regulations, Title 16, Division 42, Section 5416.
 - b. The cultivation of marijuana.
 - c. The manufacturing or testing of marijuana, marijuana products, or marijuana accessories; or
 - d. Any other business licensed by the State or other government entity under Division 10 of the California Business & Professions Code, as it may be amended from time to time.

- D. Penalty for Violation.** No person, whether as principal, agent, employee or otherwise, shall violate, cause the violation of, or otherwise fail to comply with any of the requirements of this Section. Every act prohibited or declared unlawful, and every failure to perform an act made mandatory by this Section shall be a misdemeanor or an infraction, at the discretion of the Town Attorney or the District Attorney. In addition to the penalties provided in this Section, any condition caused or permitted to exist in violation of any of the provisions of this Section is declared a public nuisance and may be abated as provided in Article III of Chapter 1.01 and Chapter 6.30 of the Apple Valley Municipal Code and/or under any other applicable provision of State law.”

Section 2. Section 9.29.210 of Chapter 9.29 of Title 9 of the Town of Apple Valley Development Code is hereby added to read in its entirety as follows:

“9.29.210 CANNABIS CULTIVATION FOR PERSONAL RECREATIONAL PURPOSES

- A. **Purpose.** The purpose of this Section is to regulate cannabis cultivation for personal recreational purposes within the Residential Zoning Districts. Nothing in this Section shall preempt or make inapplicable any provision of State or Federal law. No provisions of this Section shall hinder or supersede any other applicable State or Federal statute. Further, for purposes of this section, personal recreational use, possession, purchase, transport, or dissemination of marijuana shall be considered unlawful in all areas of the Town to the extent it is unlawful under California law.
- B. **Definitions.** For purposes of this Section, the following definitions shall apply:
1. "Person" includes any individual, firm, co-partnership, joint venture, association, corporation, limited liability company, estate, trust, business trust, receiver, syndicate, or any other group or combination acting as a unit, and the plural as well as the singular.
 2. "Private residence" means a house, an apartment unit, a mobile home, or other similar dwelling.
 3. Any term defined in this Section also means the very term as defined in the California Business & Professions Code or the California Health & Safety Code, unless otherwise specified.
- C. **Outdoor Cultivation.** A person may not plant, cultivate, harvest, dry, or process marijuana plants outdoors in any Residential Zoning District of the Town. No use permit, building permit, variance, or any other permit or entitlement, whether administrative or discretionary, shall be approved or issued for any such use or activity.
- D. **Indoor Cultivation**
1. A person may not plant, cultivate, harvest, dry, or process marijuana plants inside a private residence, or inside an accessory structure to a private residence located upon the grounds of a private residence, or inside any other enclosed structure within any zoning district of the Town. No use permit, building permit, variance, or any other permit or entitlement, whether administrative or discretionary, shall be approved or issued for any such use or activity, except when such cultivation occurs on property with a private residence and in accordance with the following regulations.
 2. A person may not plant, cultivate, harvest, dry, or process marijuana plants inside a private residence, or inside an accessory structure to a private residence located upon the grounds of a private residence, unless the person completes a Certificate of Compliance form administered by the Code Enforcement Division. A person may not plant, cultivate, harvest, dry, or process marijuana plants inside any enclosed structure within any zoning district of the Town which is not either a private residence or an accessory structure to a private residence located upon the grounds of a private residence. There shall be no more than six (6) plants of personal cannabis cultivation per residence, regardless of the number of people who reside at the residence.
 3. Marijuana cultivation is permitted only on a property with a private residence.
 4. Marijuana cultivation may not displace any required enclosed parking.
 5. Volatile solvents (solvents that are or produce a flammable gas or vapor that, when present in the air in sufficient quantities, will create explosive or ignitable mixtures), including but not limited to butane, propane, hexane and ethanol, are strictly prohibited and may not be

used for the cultivation or processing of marijuana.

6. Only chemicals or substances approved for agricultural use in the State of California may be used, applied, or stored for the cultivation of marijuana at any property where marijuana is cultivated.
 7. Cultivation, including the installation and operation of lights, heaters, fans, generators, or other mechanical equipment, must fully comply with all provisions of the Apple Valley Municipal Code and the State's building codes set forth in Title 24 of the California Code of Regulations, as adopted and amended by the Apple Valley Municipal Code.
 8. All alterations done to the interior of a home or accessory structure to accommodate or prepare for cultivation must fully comply with all provisions of the Apple Valley Municipal Code and the State's Building Codes set forth in Title 24 of the California Code of Regulations, as adopted and amended by the Apple Valley Municipal Code.
 9. All cultivation lighting systems and fixtures must be shielded to confine light and glare to the interior of the residence, fully enclosed and secure accessory structure, or greenhouse.
 10. All marijuana plants, including any structure or enclosure used for marijuana cultivation, must be locked and reasonably secured to prevent access by minors or theft.
 11. Marijuana cultivation must be concealed from public view at all stages of growth. Marijuana plants must not be visible with normal unaided vision from a public place or adjacent parcel.
 12. A portable fire extinguisher, that complies with the regulations and standards adopted by the California State Fire Marshal and other applicable law, shall be kept in the area of cultivation at all times in a location that is easily accessible.
 13. Accessory structures used for cultivation of marijuana shall not be located in the front yard of the property.
 14. A self-completed certificate of compliance must be completed, executed, and returned to the Code Enforcement Division before any cultivation or construction of any accessory structure used for growing marijuana. The marijuana cultivation must be for personal, non-commercial, recreational purposes only.
 15. The Code Enforcement Officer, Building Official, Planning Director, Sheriff Officer, Fire Inspector, or a designee, is authorized to enter upon and inspect private properties to ensure compliance with the provisions of this section. Reasonable advance notice of any such entry and inspection shall be provided and, before entry, consent shall be obtained in writing from the owner or other persons in lawful possession of the property. If consent cannot for any reason be obtained, a warrant shall be obtained from a court of law before any such entry and inspection.
- E. **Penalty for Violation.** No person, whether as principal, agent, employee or otherwise, shall violate, cause the violation of, or otherwise fail to comply with any of the requirements of this Section. Every act prohibited or declared unlawful, and every failure to perform an act made mandatory by this Section shall be a misdemeanor or an infraction, at the discretion of the Town Attorney or the District Attorney. In addition to the penalties provided in this Section, any condition caused or permitted to exist in violation of any of the provisions of this Section is declared a public nuisance and may be abated as provided in Article III of Chapter 1.01 and 6.30 of the Apple Valley Municipal Code and/or under any other applicable provision of State law.”

Section 3. Except as expressly amended hereby, all other provisions of Title 9 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 9.36 of the Town of Apple Valley Development 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.

Honorable Scott Nassif, Mayor

ATTEST:

Ms. La Vonda M-Pearson, Town Clerk

APPROVED AS TO FORM:

APPROVED AS TO CONTENT:

Mr. Thomas Rice, Town Attorney

Mr. Douglas B. Robertson, Town Manager