

ORDINANCE NO 268

AN ORDINANCE OF THE TOWN OF YUCCA VALLEY AMENDING SECTIONS 9.07.040, 9.09.020, 9.10.020, 9.12.030, 9.13.051, 9.50.020, and 9.99.140, AND REPEALING SECTION 9.14.050, AND ADDING SECTION 9.53, TITLED MARIJUANA USES REGULATED: PERSONAL MARIJUANA CULTIVATION REGULATIONS, OF TITLE 9, YUCCA VALLEY DEVELOPMENT CODE, OF THE YUCCA VALLEY MUNICIPAL CODE, TO REGULATE ALL MARIJUANA USES WITHIN THE TOWN AND ESTABLISH REASONABLE REGULATIONS FOR THE INDOOR PERSONAL CULTIVATION OF MARIJUANA.

WHEREAS, the Control, Regulate and Tax Adult Use of Marijuana Act (“AUMA”) was approved by California voters at the November 8, 2016 general election as Proposition 64; and

WHEREAS, the AUMA provides that the State of California will begin issuing licenses for marijuana businesses in 19 different categories, which are found in Business & Professions Code Section 26050(a), and which categories include marijuana cultivation, dispensaries, manufacturing, testing, retailer, distributor, and microbusiness; and

WHEREAS, the AUMA’s Business & Professions Code Section 26200(a) provides that local jurisdictions may prohibit persons from operating within the local jurisdiction under any or all of the 19 different state license categories described above; and

WHEREAS, the AUMA’s Business & Professions Code Section 26055(e) provides that a state license may not be issued to an applicant whose operations would violate the provisions of any local ordinance or regulation; and

WHEREAS, the Town Council of the Town of Yucca Valley now desires to explicitly prohibit persons from operating within the Town under any and all of the 19 different state license categories described above; and

WHEREAS, the AUMA’s Health & Safety Code Section 11362.1(a)(3) makes it lawful for any person twenty-one (21) years of age or older to “Possess, plant, cultivate, harvest, dry, or process not more than six living marijuana plants and possess the marijuana produced by the plants”; and

WHEREAS, the AUMA’s Health & Safety Code Section 11362.2(b)(3), explicitly allows a city to “completely prohibit persons from engaging in [the personal cultivation of marijuana] outdoors upon the grounds of a private residence”; and

WHEREAS, the AUMA’s Health & Safety Code Section 11362.2(b) explicitly allows a city to “enact and enforce reasonable regulations to reasonably regulate” the personal cultivation of marijuana permitted under Health & Safety Code Section 11362.1(a)(3), so long as the city does not prohibit the cultivation of up to six plants “inside a private residence, or inside an

accessory structure to a private residence located upon the grounds of a private residence that is fully enclosed and secure”; and

WHEREAS, the AUMA’s Health & Safety Code Section 11362.2(a)(2) further restricts such personal marijuana cultivation so that “[t]he living plants and any marijuana produced by the plants in excess of 28.5 grams are kept within the person’s private residence, or upon the grounds of that private residence, are in a locked space, and are not visible by normal unaided vision from a public place”; and

WHEREAS, the AUMA’s Health & Safety Code Section 11362.2(a)(3) further restricts such personal marijuana cultivation such that “[n]ot more than six living plants may be planted, cultivated, harvested, dried, or processed within a single private residence, or upon the grounds of that private residence, at one time”; and

WHEREAS, several California cities have reported negative impacts of marijuana cultivation and related activities, including but not limited to offensive odors, criminal activity, (such as trespassing, theft, violent robberies and robbery attempts, and the illegal sale and distribution of marijuana), and public health and safety concerns (such as fire hazards and problems associated with mold, fungus, and pests); and

WHEREAS, marijuana plants, as they begin to flower and for a period of two months or more, produce a strong odor, offensive to many people, and detectable far beyond property boundaries if grown outdoors or if grown indoors without proper ventilation, odor control, and other regulations; and

WHEREAS, due to the value of marijuana plants and their strong smell (which alerts others to their locations), marijuana cultivation has been linked to break-ins, robbery, armed robbery, theft and attendant violence and injury, creating an increased risk to public safety; and

WHEREAS, unregulated marijuana cultivation can be harmful to the welfare of the surrounding community and its residents and constitute a public nuisance, in that marijuana cultivation has been shown to involve avoidance of environmental laws and regulations, and has resulted in the pollution of waters and navigable waterways in the State of California; and

WHEREAS, the indoor cultivation of marijuana has potential adverse effects to the structural integrity of the buildings in which marijuana is cultivated, and the use of high wattage grow lights and excessive use of electricity increases the risk of fire, which presents a clear and present danger to the buildings, its occupants, and neighboring buildings and residents; and

WHEREAS, unregulated indoor cultivation of marijuana can be harmful to the public health, safety and welfare, given electrical modifications risk fires, poor irrigation can cause mold, overloaded circuits can leave entire neighborhoods in the dark, plant chemicals can cause illness, improper carbon dioxide mixed with insufficient ventilation can cause injury or death, and structural changes put first responders in danger if they rush into the unknown; and

WHEREAS, the Attorney General's August 2008 Guidelines for the Security and Non-Diversion of Marijuana Grown for Medical Use recognize that the cultivation or other concentration of marijuana in any location or premises without adequate security increases the risk that nearby homes or businesses may be negatively impacted by nuisance activity such as loitering and/or crime; and

WHEREAS, unregulated indoor marijuana cultivation is likely to generate these negative effects on the public health, safety, and welfare in the Town, based on the experiences of other cities; and

WHEREAS, absent clear regulation, marijuana cultivation in the Town poses a potential threat to the public peace, health, and safety, and, unless the Town takes action to regulate it, the secondary impacts described above are likely to occur in the Town; and

WHEREAS, the Town has a compelling interest in protecting the public health, safety, and welfare of its citizens, residents, visitors and businesses, and in preserving the peace and quiet of the neighborhoods within the Town, by regulating the personal indoor cultivation of marijuana; and

WHEREAS, pursuant to the above-described express statutory authority and its police power, the Town may enact express reasonable regulations for the indoor personal cultivation of up to six marijuana plants, to protect the public health, safety and welfare, by adding a new Chapter 9.53 "Marijuana Uses Prohibited; Personal Marijuana Cultivation Regulations" to the Yucca Valley Municipal Code; and

WHEREAS, in October 2015, the State of California adopted AB 266, AB 243, and SB 643, which are collectively referred to as the Medical Cannabis Regulation and Safety Act ("MCRSA"), to establish a comprehensive regulatory and licensing scheme for commercial medical marijuana operations; and

WHEREAS, the MCRSA created 17 different categories of state licenses which will be issued by the State of California, including for medical marijuana cultivation, manufacturing, testing, dispensaries, distribution, and transportation; and

WHEREAS, the MCRSA's Business & Professions Code Section 19320 requires a person to obtain both a state license in one of the categories described above, as well as a local permit prior to engaging in any commercial medical marijuana activities; and

WHEREAS, the Town now desires to expressly prohibit any commercial medical marijuana activity under any and all state licenses issued pursuant to any of the 17 different categories of state licenses described above; and

WHEREAS, this Ordinance is also enacted, consistent with the Compassionate Use Act of 1996, the Medical Marijuana Program Act, and the Medical Cannabis Regulation and Safety Act, to protect the public health, safety, and welfare of Town residents in relation to the cultivation of medical marijuana; and

WHEREAS, nothing in this Ordinance shall be construed to: (1) allow any person to engage in conduct that endangers others or causes a public nuisance; or (2) allow any activity relating to the cultivation, distribution, or consumption of marijuana that is illegal under state or federal law; and

WHEREAS, this Ordinance will affect all properties Town-wide; and

WHEREAS, on March 14, 2017, the Planning Commission conducted a duly noticed public hearing on this Ordinance and continued to the meeting of May 9, 2017; and

WHEREAS, on May 9, 2017, the Planning Commission conducted a duly noticed public hearing on this Ordinance and recommended that the Town Council adopt the same; and

WHEREAS, on June 20, 2017 the Town Council conducted a duly noticed public hearing on this Ordinance, and all testimony received was made a part of the public record; and

WHEREAS, the Town Council has duly considered all information presented to it, including the Planning Commission findings, Planning Commission Resolution PC 01-17, written staff reports, and any testimony provided at the public hearing; and

WHEREAS, all legal prerequisites to the adoption of this Ordinance have occurred.

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

Section 1. The Town Council of the Town of Yucca Valley hereby makes the following findings:

- A. The above recitals are true and correct and incorporated fully herein by this reference.
- B. The prohibition of marijuana uses throughout the Town will not be detrimental to the public health, safety, or welfare of the Town or its residents.
- C. The regulations for indoor personal cultivation of marijuana are reasonable and necessary for the preservation and protection of the public health, safety, and welfare of the Town and its community.
- D. The amendments to the Yucca Valley Municipal Code contained in this Ordinance are consistent with the general plan.

Section 2. Yucca Valley Municipal Code Section 9.14.050, “Marijuana Dispensaries,” is hereby repealed

Section 3. Yucca Valley Municipal Code Section 9.99.140, “‘M’ Definitions,” is hereby amended as follows:

- A. The definition for “Medical Marijuana Cooperative” is hereby repealed.
- B. The definition for “Medical Marijuana Dispensary” is hereby repealed.

Section 4. A new Chapter, 9.53, “Marijuana Uses Prohibited; Personal Marijuana Cultivation Regulations,” is hereby added to the Yucca Valley Municipal Code to read, in its entirety, as follows:

“Chapter 9.53 MARIJUANA USES PROHIBITED; PERSONAL MARIJUANA CULTIVATION REGULATIONS

- 9.53.010 Intent**
- 9.53.020 Definitions**
- 9.53.030 Marijuana dispensaries prohibited**
- 9.53.040 Marijuana cultivation prohibited; exception**
- 9.53.050 Marijuana deliveries prohibited**
- 9.53.060 Additional prohibited marijuana uses**
- 9.53.070 Personal indoor cultivation of marijuana; permit required**
- 9.53.080 Personal indoor cultivation of marijuana; conditions**
- 9.53.090 Violation and enforcement; public nuisance declared**

9.53.010 Intent

The purpose of this Chapter is to prohibit all recreational and medical marijuana uses and activities in the Town to the extent allowable under state law, and to establish reasonable regulations for the indoor personal cultivation of no more than six marijuana plants.

9.53.020 Definitions

For purposes of this Chapter, the following words and phrases shall have the following meanings:

- A. “Accessory structure” means a detached subordinate building, the use of which is customarily incidental to that of the main building or to the main use of the land, and which is located in the same or a less restrictive zone on the same lot or parcel of land with the main building or use.

B. "Applicant" means a person applying for a Personal Marijuana Cultivation Permit pursuant to this Chapter.

C. "Cultivation" means any activity involving the planting, growing, harvesting, drying, curing, grading, or trimming of one or more marijuana plants or any part thereof, whether for recreational, medical, or any other use.

D. "Delivery" means the commercial transfer of marijuana or marijuana products to a customer. "Delivery" also includes the use by a dispensary of any technology platform owned and controlled by the dispensary, or independently licensed under this Chapter that enables customers to arrange for or facilitate the commercial transfer by a dispensary of marijuana or marijuana products.

E. "Director" means the Community Development Director of the Town of Yucca Valley, or his or her designee.

F. "Dispensary" means a premises where marijuana, marijuana products, or devices for the use of marijuana or marijuana products are offered, either individually or in any combination, for retail sale, including an establishment that delivers marijuana or marijuana products, whether such marijuana is used for recreational, medical or any other purpose. "Dispensary" also includes any for profit or not-for-profit cooperative, collective, association or similar entity that distributes, dispenses, stores, exchanges, processes, delivers, transmits, gives away, or otherwise makes available marijuana in the Town for any purpose, whether for medical, recreational, commercial, or any other use.

G. "Fire Department" means the San Bernardino County Fire Department.

H. "Marijuana" has the same definition as provided for in Business & Professions Code Section 19300.5(f) for the term "cannabis," and as may be amended, defined as "all parts of the plant *Cannabis sativa* Linnaeus, *Cannabis indica*, or *Cannabis ruderalis*, whether growing or not; the seeds thereof; the resin, whether crude or purified, extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds, or resin. 'Cannabis' also means the separated resin, whether crude or purified, obtained from marijuana. 'Cannabis' also means marijuana as defined by Section 11018 of the Health and Safety Code as enacted by Chapter 1407 of the Statutes of 1972. 'Cannabis' does not include the mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture, or preparation of the mature stalks (except the resin extracted therefrom), fiber, oil, or cake, or the sterilized seed of the plant which is incapable of germination."

I. "Marijuana cultivation site" means the private residence, or fully enclosed accessory structure to that residence, at which marijuana cultivation is occurring under the provisions of this Chapter, or the property on which the private residence, or fully enclosed

accessory structure to that residence, at which an applicant for a personal marijuana cultivation permit proposes to conduct marijuana cultivation.

J. “Marijuana distribution” means the procurement, sale, and transport of marijuana and marijuana products between entities licensed by the State of California, whether such marijuana or marijuana products are used for recreational, medical, or any other purposes.

K. “Marijuana manufacturing” means any activity related to conducting the production, preparation, propagation, or compounding of marijuana or marijuana products either directly or indirectly or by extraction methods, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis at a fixed location that packages or repackages marijuana or marijuana products or labels or re-labels its container.

L. “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.

M. “Marijuana transportation” means the transfer of marijuana or marijuana products from the business location of one state licensee to the business location of another state licensee.

N. “Permit” means a Personal Marijuana Cultivation Permit described in this Chapter.

O. “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.

P. “Primary caregiver” has the same definition as provided for in Health and Safety Code Section 11362.7(d), and as may be amended, defined in part as “the individual, designated by a qualified patient or by a person with an identification card, who has consistently assumed responsibility for the housing, health, or safety of that patient or person.”

Q. “Private residence” has the same definition as provided for in Health & Safety Code Section 11362.2(b)(5), and as may be amended, defined as “a house, an apartment unit, a mobile home, or other similar dwelling.”

R. “Qualified Patient” has the same definition as provided for in Health and Safety Code Section 11362.7(f), and as may be amended, defined as “a person who is entitled to the protections of Section 11362.5, but who does not have an identification card issued pursuant to this article.”

9.53.030 Marijuana Dispensaries Prohibited

A. Marijuana dispensary is not a permitted use and is prohibited in all zones throughout the Town. No permit or any other applicable license or entitlement for use, nor any business license, shall be approved or issued for the establishment, maintenance or operation of a marijuana dispensary within the Town.

B. This Section explicitly prohibits, without limitation, any use or activity that may be authorized under a state license described in Business & Professions Code Sections 26050(a)(17) or (19), as amended, as well as any use or activity that may be authorized under a state license described in Business & Professions Code Sections 19300.7(n) and (o), as amended.

9.53.040 Marijuana Cultivation Prohibited; Exception

A. Marijuana cultivation is not a permitted use and is prohibited in all zones throughout the Town. No permit or any other applicable license or entitlement for use, nor any business license shall be approved or issued for marijuana cultivation within the Town.

B. This Section explicitly prohibits, without limitation, any marijuana cultivation in the Town that may be authorized under a state license described in Business & Professions Code Sections 26050(a)(1) through (13) or (19), as amended, as well as any marijuana cultivation in the Town that may be authorized under a state license issued pursuant to Business & Professions Code Sections 19300.7(a) through (j).

C. This Section does not apply to the indoor cultivation of six or fewer marijuana plants inside a private residence or its accessory structures for personal use as authorized under Health & Safety Code Sections 11362.1(a)(3) and 11362.2, as amended, provided that the provisions of this Chapter are otherwise complied with.

9.53.050 Marijuana Deliveries Prohibited

A. Marijuana delivery is prohibited in the Town, and no person shall deliver marijuana to or from any location within the Town. No permit or any other applicable license or entitlement for use, nor any business license, shall be approved or issued for marijuana delivery within the Town.

B. This Section explicitly prohibits, without limitation, any marijuana delivery in the Town that may be authorized by a state license described in Business & Professions Code Sections 26050(a)(10) or (18), as amended, as well as any marijuana delivery in the Town that may be authorized by a state license described in Business & Professions Code Section 19300.7(n), as amended.

9.53.060 Additional Prohibited Marijuana Uses

A. Marijuana Manufacturing Prohibited

1. Marijuana manufacturing is not a permitted use and is prohibited in all zones throughout the Town. No permit or any other applicable license or entitlement for use, nor any business license, shall be approved or issued for marijuana manufacturing within the Town.

2. This Section explicitly prohibits, without limitation, any marijuana manufacturing in the Town that may be authorized under a state license described in Business & Professions Code Sections 26050(a)(14) or (15), as amended, as well as any marijuana manufacturing in the Town that may be authorized under a state license described in Business & Professions Code Sections 19300.7(k) or (l), as amended.

B. Marijuana Testing Prohibited

1. Marijuana testing is not a permitted use and is prohibited in all zones throughout the Town. No permit or any other applicable license or entitlement for use, nor any business license, shall be approved or issued for marijuana testing within the Town.

2. This Section explicitly prohibits, without limitation, any marijuana testing in the Town that may be authorized under a state license described in Business & Professions Code Section 26050(a)(16), as amended, as well as any marijuana testing in the Town that may be authorized under a state license described in Business & Professions Code Section 19300.7(m).

C. Marijuana Distribution Prohibited

1. Marijuana distribution is not a permitted use and is prohibited in all zones throughout the Town. No permit or any other applicable license or entitlement for use, nor any business license, shall be approved or issued for marijuana distribution within the Town.

2. Except as provided below, this Section explicitly prohibits, without limitation, any marijuana distribution in the Town that may be authorized under a state license described in Business & Professions Code Sections 26050(a)(18), as amended, as well as any marijuana distribution in the Town that may be authorized under a state license described in Business & Professions Code Section 19300.7(p), as amended. This Section does not prohibit the transportation of marijuana or marijuana products on the public roads in the Town.

D. Marijuana Transportation Prohibited

1. Marijuana transportation is not a permitted use and is prohibited in all zones throughout the Town. No permit or any other applicable license or entitlement for use, nor any business license, shall be approved or issued for marijuana transportation within the Town.

2. Except as provided below, this Section explicitly prohibits, without limitation, any marijuana transportation in the Town that may be authorized under a state license described in Business & Professions Code Section 19300.7(q), as amended. This Section does not prohibit the transportation of marijuana or marijuana products on the public roads in the Town.

9.53.070 Personal Indoor Cultivation of Marijuana; Permit Required

A. Permit required. No person, who is otherwise qualified to engage in the cultivation of marijuana under Health & Safety Code Sections 11362.1 and 11362.2, and as may be amended, shall engage in the cultivation of marijuana, unless that person has a current valid permit issued pursuant to this Chapter.

B. Cultivation Application. An applicant shall submit a cultivation application to the Director, on a form provided by the Director, and proof of payment of the permit fee, in an amount to be set by resolution of the Town Council.

1. The cultivation application submitted by an applicant shall include, but not be limited to, the following information, affirmed under penalty of perjury by the applicant:

- a. The property address where the marijuana will be cultivated.
- b. The name of each person owning, leasing, occupying, or having charge of any legal parcel or premises where marijuana will be cultivated.
- c. The name of each person who participates in the marijuana cultivation.
- d. Property owner acknowledgement of cultivation of marijuana at the subject property, affirmed under penalty of perjury.

2. The cultivation application submitted by an applicant shall include a scaled property site plan and a scaled diagram of the floor plan within the residence or fully enclosed accessory structure to be used for cultivation at the marijuana cultivation site, and an itemized list of measures taken to comply with the provisions of this Chapter, including but not limited to odor control, security, electrical, and building and safety provisions, as well as any equipment that will be used for marijuana cultivation.

3. Within thirty (30) calendar days of receiving a cultivation application, the Director either shall accept for processing the cultivation application upon finding that

the cultivation application fully meets the requirements of this Chapter, or shall return the cultivation application to the applicant with a written description of the reasons for rejecting the cultivation application, and so notify the applicant by United States mail, first class postage prepaid, addressed to the applicant at the address stated in the application.

C. Application approval. Upon verification of the information described in subsection (B) above, for a cultivation application which fully meets all the requirements of this Chapter, the Director shall issue a Notice of Decision of a Personal Marijuana Cultivation Permit within sixty (60) calendar days, upon making the following findings, or shall deny the application if the following findings cannot be made, and so notify the applicant in writing by United States mail, first class postage prepaid, addressed to the applicant at the address stated in the application:

1. The applicant meets all the requirements of this Chapter, including but not limited to those described in Section 9.53.080, as well as any other applicable requirements of this code.

2. The applicant for the permit and the marijuana cultivation site are both in compliance with state law, including but not limited to, Health & Safety Code Sections 11362.1, 11362.2 and 11362.3, and as they may be amended, and as submitted on the application by the applicant.

D. Permits not transferable. A permit issued pursuant to this Chapter is non-transferable and is specific to the permit-holder and the private residence or fully enclosed accessory structure for which it is issued.

E. Permit Renewal. A permit issued under this Section shall automatically expire one year after the Notice of Decision. Permit renewal shall be requested through compliance with the procedures for issuance of a permit as provided in this Section. An applicant for a permit renewal shall be required to pay a permit renewal fee in an amount to be set by resolution of the Town Council. However, an applicant for permit renewal shall not be required to submit a new cultivation plan annually, provided the marijuana cultivation site follows the original cultivation plan and the permit holder is not engaged in additional or expanded marijuana cultivation, as affirmed in the renewal form. Renewal applications must be received at least thirty (30) calendar days prior to the expiration of an existing permit, but not earlier than ninety (90) calendar days prior to such expiration.

F. Permit revocation. Permits issued under this Section may be revoked by the Director upon making any of the following findings:

1. The permit was issued in error or the cultivation plan included incorrect information.

2. The marijuana cultivated at the marijuana cultivation site has been sold or used for any commercial use, or any other use or activity has occurred that is prohibited by Health & Safety Code Sections 11362.1, 11362.2 and 11362.3, and as they may be amended.
3. Any violation of the Adult Use of Marijuana Act, which was approved by California voters at the November 8, 2016 general election as Proposition 64, and as it may be amended, has occurred at the marijuana cultivation site.
4. Violation of any of the provisions of this Chapter has occurred at the marijuana cultivation site.
5. The marijuana cultivation site has become a public nuisance or has been operated in a manner constituting a public nuisance.
6. The marijuana cultivation is not in compliance with conditions of the permit.
7. The permit holder has engaged in any activity for which the permit could have been denied originally.

G. Appeals. Any decision of the Director under this Chapter may be appealed to the Town Manager or his or her designee, or a hearing officer. Any such appeal must be in writing, stating the grounds therefore, and be filed within fifteen (15) calendar days of the date of the decision being appealed. The written appeal shall specify the person making the appeal, specify the decision appealed from, state the reasons for the appeal, and include any evidence in support of the appeal which the appellant seeks to be considered by the Town Manager or his or her designee. The appeal must include the filing of an appeal fee as established by resolution of the Town Council. Notice of the time and place of an appeal hearing shall be provided to the appellant at least fifteen (15) calendar days before the date set for the hearing. The Town Manager shall, within sixty (60) calendar days of receipt of the appeal, review the facts of the matter, written documents submitted for review, the basis for making the decision which is under appeal, consider any oral testimony offered at the hearing, and then determine whether the appealed decision should be reversed or affirmed. The determination made shall be in writing, shall set forth the reasons for the determination, and shall be final. The provisions of Sections 1094.5 and 1094.6 of the Code of Civil Procedure set forth the procedures for judicial review of any final determination.

9.53.080 Personal Indoor Cultivation of Marijuana; Conditions

A. Conditions

1. Visibility. All marijuana cultivation authorized by this Chapter shall be conducted inside a private residence or inside a fully enclosed accessory structure and shall not occur in an area visible from any neighboring property, any public right of way, or public

view. No exterior evidence of marijuana cultivation occurring at the property shall be visible from public view. A fully enclosed accessory structure shall be located within a securely fenced in rear yard of the private residence.

2. Odor. The odor resulting from all marijuana cultivation shall not be detectable by unaided human senses from any neighboring property or any public right of way. A marijuana cultivation site must have a ventilation and filtration system installed that shall prevent marijuana plant odors from exiting the interior of the structure and that shall comply with all applicable building code regulations, including obtaining all required permits and approvals. The ventilation and filtration system must be approved by the Town and installed prior to commencing cultivation at the marijuana cultivation site.

3. Security. Any private residence or fully enclosed accessory structure utilized for marijuana cultivation pursuant to this Chapter shall be secured with locks to prevent unauthorized entry and/or theft, remain secure at all times, and have a working security system which consists of a standard audible residential alarm.

4. Fire Extinguisher. A fully charged portable fire extinguisher, which complies with the regulations and standards adopted by the state fire marshal and applicable law, shall be kept in the fully enclosed and secure structure used for cultivation of marijuana. If cultivation occurs in a residential structure, the portable fire extinguisher shall be kept in the cultivation room.

5. Six Plants. Cultivation at a single private residence (which includes fully enclosed accessory structures on the grounds of that private residence) is limited to up to six living plants.

6. Residence. The person or primary caregiver cultivating the marijuana shall reside full-time on the premises where the marijuana cultivation occurs.

7. Personal Use. Marijuana plants shall be cultivated by a person or primary caregiver exclusively for personal use only and shall not be donated, sold, distributed, transported, or given to any other person or entity, with the exception that a primary caregiver may cultivate for a qualified patient.

8. Electricity use. The collective draw from all electrical appliances at the marijuana cultivation site shall not exceed the maximum rating of the approved electrical panel for the primary legal residence at the marijuana cultivation site. The maximum rating shall be as established in the manufacturer specifications for the approved electrical panel. Gas products (including, without limitation, CO₂, butane, propane, and natural gas) or generators shall not be used for the cultivation of marijuana.

9. Lighting. Any lighting fixture used for marijuana cultivation shall not exceed the rated wattage and capacity of the circuit breaker and shall be shielded so as to completely confine light and glare to the interior of the private residence or fully enclosed accessory structure.

10. Humidity and mold. Marijuana cultivation shall not create a humidity or mold issue within the private residence or fully enclosed accessory structure in violation of the building code, as adopted by the Town, or the Town's health and safety regulations, including but not limited to the property maintenance standards of the Yucca Valley Municipal Code.

11. Code compliance. The private residence or fully enclosed accessory structure used for marijuana cultivation shall at all times be in full compliance with the Town building code, electrical code, mechanical code, plumbing code, fire code, and any other requirement found in Title 8 of the Yucca Valley Municipal Code, or any other applicable building, health, or safety standard in the Yucca Valley Municipal Code or under any other applicable law.

12. Residential Structure. The residential structure shall remain at all times a residence, with legal and functioning cooking, sleeping, and sanitation facilities with code-compliant ingress and egress. These rooms shall not be used for marijuana cultivation where such cultivation will prevent their primary use for cooking of meals, sleeping, and bathing.

13. Accessory Structure. A fully-enclosed accessory structure, as defined in this Chapter, used for the cultivation of marijuana shall be located in a fully fenced and secured rear yard of the residence, and shall maintain the minimum rear and side yard setbacks required for the residential lot. An accessory structure operating as a marijuana cultivation site shall at all times be fully enclosed so that none of the interior area is visible from any neighboring property, any public right of way, or public view.

14. Building and Fire Code Compliance: The private residence or fully enclosed accessory structure, including but not limited to the area dedicated to marijuana cultivation, shall be in compliance with the cultivation application, this Chapter, the building code, the electrical code, the plumbing code, the mechanical code, San Bernardino County Fire Department regulations, and any other applicable requirement of Title 8 of this code.

B. The Town Council may, by resolution, adopt additional conditions to further the purposes of this Section, as well as additional regulations to further the purposes of this Chapter. The Town Council may also delegate, by resolution, authority to adopt such conditions or regulations to the Town Manager or his or her designee.

9.53.090 Violation and Enforcement; Public Nuisance Declared.

A. A violation of this Chapter or noncompliance with any of the requirements of this Chapter shall be subject to any criminal or civil enforcement remedies available under the law and the Yucca Valley Municipal Code. In addition, the Town may prosecute a violation of this Chapter by means of civil enforcement through a restraining order, a preliminary or permanent injunction, or by any other means authorized by law or equity. Notwithstanding any other provision of this code, no conduct which is protected from criminal liability pursuant to state law shall be made criminal by this Chapter.

B. Any violation of the provisions of this Chapter is declared to be a public nuisance and may be abated by the Town either pursuant to the Yucca Valley Municipal Code, including but not limited to procedures provided for in Chapter 6.04 (Abatement of Public Nuisances) or any other available remedies at law or equity.

C. Any person violating or causing or permitting the violation of any of the provisions of this Chapter shall be guilty of a misdemeanor.”

Section 5: Yucca Valley Municipal Code Section 9.07.040, Residential and Hillside Reserve Zoning Districts, Table 2-3, is amended as follows:

- A. Marijuana dispensaries, marijuana cultivation, marijuana deliveries, Additional prohibited marijuana: NP, in all Districts, added under “Other Uses”.

Section 6: Yucca Valley Municipal Code Section 9.09.020, Commercial Land Uses, Table 2-15, amended as follows:

- A. Repealing Medical marijuana dispensary from “Other uses” from all Districts and
- B. Adding: Marijuana dispensaries, marijuana cultivation, marijuana deliveries, Additional prohibited marijuana: NP in all Districts, added under “Other Uses”.

Section 7: Yucca Valley Municipal Code Section 9.10.020, Industrial Land Uses, Table 2-18, is amended as follows:

- A. Repealing Medical marijuana dispensary from “Other uses” and
- B. Adding: Marijuana dispensaries, marijuana cultivation, marijuana deliveries, Additional prohibited marijuana: NP, added under “Other Uses”.

Section 8: Yucca Valley Municipal Code Section 9.50.020, Home Occupations, Table 3-26, is amended as follows:

- A. Repealing Medical marijuana dispensary from “Other Uses” and;

- B. Adding Marijuana dispensaries, marijuana cultivation, marijuana deliveries, Additional prohibited marijuana: NP, added under "Other Uses".

Section 9: Yucca Valley Municipal Code Section 9.12.030, Public/Quasi-Public and Open Space Districts, Table 2-21, is amended as follows:

- A. Marijuana dispensaries, marijuana cultivation, marijuana deliveries, Additional prohibited marijuana: NP, in all Districts, added under "Other Uses".

Section 10: Yucca Valley Municipal Code Section 9.13.051, Specific Plan Districts, is amended as follows:

- A. Adding, Section 9.13.051, Prohibited Uses: Marijuana dispensaries, marijuana cultivation, marijuana deliveries, Additional prohibited marijuana, are prohibited uses in all Specific Plan Districts.

Section 11: If any part of this Ordinance is held to be invalid or unconstitutional by decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance, and the Town hereby declares that it would have passed the remainder of this Ordinance if such invalid portion thereof had been declared invalid or unconstitutional.

Section 12. This Ordinance shall take effect thirty (30) days from the date of adoption.

Section 13. The Town Clerk shall certify to the adoption of this Ordinance and shall cause a copy of the same to be published in a manner prescribed by law.

APPROVED, and ADOPTED this ____ day of ____, 2017.

MERL ABEL, MAYOR

ATTEST:
STATE OF CALIFORNIA)
COUNTY OF SAN BERNARDINO) ss.
TOWN OF YUCCA VALLEY)

I, Lesley Copeland, Town Clerk of the Town of Yucca Valley, do hereby certify that the foregoing Ordinance ____ was introduced at a regular meeting of the Town Council held on ____, 2017, and was adopted by the Town Council at its regular meeting held on ____, 2017, by the following vote of the Council:

AYES: COUNCILMEMBERS:
NOES: COUNCILMEMBERS:
ABSENT: COUNCILMEMBERS:
ABSTAIN: COUNCILMEMBERS:

LESLEY COPELAND, TOWN CLERK

INTRODUCED