



Solano County
Airport Land Use Commission
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Stephen Vancil
Chairman

DATE: June 13, 2013

MEMORANDUM:

To: Solano County Airport Land Use Commission
From: Jim Leland, Principal Planner
Subject: **ITEM 9B: ALUC-13-02:** Medical Marijuana Zoning Regulations

Conduct a Public Hearing to consider the consistency of ALUC-13-02, the County of Solano Medical Marijuana Zoning Regulations with the Nut Tree Airport, Rio Vista Airport and Travis Air Force Base Land Use Compatibility Plans: Applicant: County of Solano

RECOMMENDATION

Adopt the recommended findings and determine that the County of Solano's Medical Marijuana Zoning Regulations (ZT-13-02) are **consistent** with the Travis Air Force Base Land Use Compatibility Plan, the Nut Tree Airport Land Use Compatibility Plan and the Rio Vista Land Use Compatibility Plan.

INTRODUCTION

In response to a growing interest in the establishment of medical marijuana dispensaries, the Board of Supervisors adopted an interim ordinance prohibiting the establishment of any business that cultivates, sells, or distributes medical marijuana within the unincorporated territory of the County. The interim ordinance will expire in August of this year.

The Board of Supervisors further directed the staff to prepare a permanent ordinance banning dispensaries within the unincorporated territory of Solano

County. The Planning Services Division, in consultation with the County Counsel's office, has been developing a permanent ordinance to regulate medical marijuana through the Zoning Regulations contained in Chapter 28 of the Solano County Code. The proposed ordinance is contained in Attachment A.

The Board of Supervisors is scheduled to hold its first public hearing on the Zoning Ordinance Amendments later this summer. State law requires that any proposed zoning amendments or revisions be reviewed for consistency with adopted airport land use compatibility plans.

PROJECT DESCRIPTION

The proposed revisions to Chapter 28 pertaining to medical marijuana fall into two broad categories

- 1) Revisions to Definitions (Section 28.01), and
- 2) Revisions to Land Use Regulations (section 28.70)

1. REVISIONS TO DEFINITIONS (SECTION 28.01)

The following definition is added, in alphabetical order, to Section 28.01 of Chapter 28 of the Solano County Code:

“Medical Marijuana Dispensary. *A facility or business at which marijuana is sold, distributed, dispensed, administered, delivered, made available, or given away for medical purposes in accordance with the Compassionate Use Act of 1996 (Proposition 215; Health and Safety Code section 11362.5). A medical marijuana dispensary organized or operated as a cooperative or a collective, as referenced in Health and Safety Code section 11362.775, is included within this definition. The dispensing of marijuana by a primary caregiver to a qualified patient or a person with an identification card at the temporary or permanent place of residence of such patient or person shall not cause that place of residence, the residence of the primary caregiver, or a facility described in Health and Safety Code section 11362.7, subdivision (d) (1), in cases where the primary caregiver is an owner, operator, or employee of such facility, to be a medical marijuana dispensary.”*

2. REVISIONS TO LAND USE REGULATIONS (SECTION 28.70)

Land use regulations are contained within Article III of Chapter 28, beginning with Section 28.70 – Land Use Regulations. A new subsection, 28.70.20 is proposed which will enumerate prohibited land uses, as follows:

“28.70.20 Prohibited Land Uses

- A. Public Nuisance.** *Any use of buildings or land not authorized by this Chapter, or which has not been authorized in the manner required by this Chapter, is prohibited and is declared to be a public nuisance.*
- B. Land Uses Prohibited in Some Zoning Districts.** *In addition to land uses expressly prohibited in the version of Table A applicable to a zoning district, any use of buildings or land within a zoning district that is not listed in the version of Table A applicable to that zoning district is prohibited.*
- C. Land Uses Prohibited in All Zoning Districts.** *The following land uses are prohibited in all zoning districts:*
1. *Medical Marijuana Dispensary”*

ALUCP REVIEW REQUIREMENTS

State law, under Section 21661.5 of the Public Utilities Code, requires that any proposed zoning regulations or revisions to the local zoning ordinance be reviewed for consistency with adopted airport land use compatibility plans. The proposed revision to the County’s Zoning Regulations requires review by the ALUC.

Required Tests for Consistency

California Airport Land Use Planning Handbook (2011)

The State Department of Aeronautics has published the California Airport Land Use Planning Handbook (2011) as a guide for Airport Land Use Commissions in the preparation and implementation of Land Use Compatibility Plans and Procedure Documents. Section 6.4.2 (p. 6-14) sets forth procedures for the review of local zoning ordinances and directs agencies to consider the topics listed in Table 5A, as follows:

Zoning or Other Policy Documents (from Table 5A, CalTrans Airport Land Use Planning Handbook)

The Handbook lists the following topics for consideration when reviewing zoning or other policy documents.

- *Intensity Limitations on Nonresidential Uses*
- *Identification of Prohibited Uses*
- *Open Land Requirements*
- *Infill Development*
- *Height Limitations and Other Hazards to Flight*

- *Buyer Awareness Measures*
- *Non-conforming Uses and Reconstruction*

Staff has reviewed the proposed zoning regulation changes in light of the tests outlined above. Our analysis is presented below.

DISCUSSION

The amendments to the County's zoning regulations pertaining to medical marijuana apply to properties throughout the unincorporated area and therefore have the potential to affect the Travis Air Force Base Land Use Compatibility Plan, the Nut Tree Airport Land Use Compatibility Plan and the Rio Vista Land Use Compatibility Plan. The Commission is required by law to make a consistency determination with respect to any changes to local zoning regulations.

Upon closer review, the proposed amendments establish a prohibition on the establishment of medical marijuana dispensaries within the unincorporated territory of Solano County. As a result, these zoning amendments do not authorize any development.

TOPICS FOR REVIEW

Intensity Limitations on Nonresidential Uses

The changes do not include changes to controls on intensity of use, but rather aim to prevent a specific use.

Identification of Prohibited Uses

The County is proposing to identify medical marijuana dispensaries as a prohibited land use.

Open Land Requirements

This amendment makes no changes to the open land requirements, which are controlled by setbacks and coverage limitations within the development standards of each zoning district.

Infill Development

There are no proposed changes to the residential zoning districts, which is where infill development occurs within the County.

Height Limitations and Other Hazards to Flight

There are no changes proposed to the height limits or other development attributes which might be considered a hazard to flight.

Buyer Awareness Measures

There are no changes to the residential districts where buyer awareness applies.

Non-conforming Uses and Reconstruction

There are no changes to the non-conforming uses and reconstruction sections of the zoning regulations.

In summary, none of the topics for review are impacted by the proposed medical marijuana regulations which institute a prohibition on the use and do not modify any existing development regulations.

MECHANISMS FOR ASSURANCE OF COMPLIANCE

Each parcel within the unincorporated County is subject to General Provisions within the zoning regulations. One of the General Provisions deals with airport land use compatibility. To the point, Solano County has taken the approach of incorporating into the zoning regulations a standard which requires that projects conform to the Airport Land Use Commission plans and policies, as follows:

28.70.10. D. Airport Land Use Compatibility Plans. *Within an airport area of influence or area of concern depicted in an airport land use compatibility plan adopted by the Solano County Airport Land Use Commission, land uses allowed by this Zoning Ordinance shall conform with the applicable compatibility policies and criteria set forth in that airport land use compatibility plan.*

This in effect gives the County an absolute basis for requiring that projects under review comply with the applicable Airport land Use Compatibility Plan(s).

As a result, the County zoning regulations and review procedures are adequate to assure that applicable compatibility criteria will be tied to an individual development and continue to be enforced.

Conclusion

In conclusion, staff believes that the zoning amendments regulating medical marijuana are consistent with the applicable land use compatibility plans for the reasons discussed above.

RECOMMENDATION

Based on the analysis and discussions above, Staff recommends that the Solano County Airport Land Use Commission find as follows:

Determination: That the proposed amendments to the County zoning regulations pertaining to medical marijuana are

- 1) substantially consistent with the Travis Air Force Base Land Use Compatibility Plan, the Nut Tree Airport Land Use Compatibility Plan and the Rio Vista Land Use Compatibility Plan because no direct

conflicts exist between the zoning amendments and any Airport Land Use Compatibility Plan, and

- 2) mechanisms for assurance of compliance with applicable compatibility criteria are in place.

Attachments:

Attachment A – ZT-13-02: Proposed Ordinance Amending Chapter 28

ORDINANCE NO. 2013-__(DRAFT)___

AN ORDINANCE AMENDING CHAPTER 28 OF THE SOLANO COUNTY CODE
TO DEFINE AND PROHIBIT “MEDICAL MARIJUANA DISPENSARIES”
WITHIN THE UNINCORPORATED TERRITORY OF THE COUNTY OF SOLANO

The Board of Supervisors of the County of Solano ordains as follows:

SECTION 1. Findings and Purpose

- A. The federal Controlled Substances Act (“CSA”) prohibits, except for certain research purposes, the possession, distribution, and manufacture of marijuana, and there is no medical necessity exception to prosecution and conviction under the federal act.
- B. California statutes similarly specify that, except as authorized by law, the possession, cultivation, possession for sale, transportation, administration, or furnishing of marijuana are state criminal violations. State law further punishes one who maintains a place for the purpose of unlawfully selling, using, or furnishing, or who knowingly makes available a place for storing, manufacturing, or distributing, marijuana. The so-called “drug den” abatement law additionally provides that every place used to unlawfully sell, serve, store, keep, manufacture, or give away marijuana is a nuisance that shall be enjoined, abated, and prevented, and for which damages may be recovered.
- C. In November 1996, California voters approved The Compassionate Use Act of 1996 (Proposition 215; Health & Safety Code, section 11362.5), an initiative that exempted certain patients and their primary caregivers from criminal liability under state law for the possession and cultivation of marijuana. One of the stated purposes of the Compassionate Use Act is to ensure that seriously ill Californians have the right to obtain and use marijuana for medical purposes where that medical use is deemed appropriate and has been recommended by a physician. The California Supreme Court has said that the Compassionate Use Act did not create a broad right to use marijuana without hindrance or inconvenience; instead, the only “right” created by the Act is the right of a patient, or a patient’s primary caregiver, to possess or cultivate marijuana for the personal medical purposes of the patient upon the recommendation of a physician without thereby becoming subject to punishment under specified provisions of state law.
- D. The Courts have held that Proposition 215 does not conflict with the federal Controlled Substances Act because, in adopting these state laws, California did not “legalize” marijuana but instead exercised the state’s reserved powers not to punish certain marijuana offenses under state law when a physician has recommended its use to treat a serious medical condition.

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- E. In 2003, the Legislature enacted Senate Bill 420, also known as the Medical Marijuana Program Act, to clarify the scope of Proposition 215 and to facilitate the prompt identification of qualified patients and their primary caregivers.
 - F. The California Supreme Court has recently held that the Compassionate Use Act and the Medical Marijuana Program Act do not preempt a local government from enacting and enforcing a zoning ordinance declaring a medical marijuana dispensary to be a prohibited land use anywhere within that local government's territorial limits.
 - G. There are currently no ordinances in Chapter 28 of the Solano County Code ("Zoning Regulations") specifically regulating the location, zoning standards, or other aspects of facilities where medical marijuana may be dispensed to eligible persons under Proposition 215.
 - H. The lawful sale or distribution of prescription and non-prescription drugs and medical remedies is generally an acceptable type of land use in most commercial zoning districts in the unincorporated areas of Solano County. Further, although the County regulates, through its Zoning Regulations, the locations where medical practitioners and health care providers may operate places of business, the County does not regulate the type of medical or health care services offered by these providers to their patients.
 - I. In other California jurisdictions where storefront medical marijuana dispensaries have been established, such facilities have often created additional demands for law enforcement services that are disproportional to the demands created by other types of businesses in the community. The establishment of dispensaries within Solano County could place excessive demands for the provision of law enforcement services by the Solano County Sheriff's Department.
 - J. Since 1980, Solano County has pursued a land use and development policy of city-centered development. As a result, residents of the unincorporated area often must go into incorporated areas or elsewhere in order to obtain the products and services they need or want, including medical products and services.
 - K. Although a storefront medical marijuana dispensary may be a reasonably convenient method for a qualified patient to obtain marijuana based on the recommendation of his or her physician, the Compassionate Use Act and the Medical Marijuana Program Act do not require local governments to allow the establishment of such facilities. Instead, those laws provide qualified patients with alternative, legal means of acquiring marijuana for medical purposes, either by cultivating it themselves or obtaining it through their primary caregivers.
 - L. A qualified patient under the Compassionate Use Act and the Medical Marijuana Program Act is someone who is seriously ill or has a serious medical condition. To the extent some qualified patients are unable to cultivate marijuana themselves

- and must obtain it through their primary caregivers, it is appropriate to require that such caregivers deliver the medical marijuana to the patient.
- M. The purpose of this ordinance is to implement the Compassionate Use Act and Medical Marijuana Program Act by prohibiting the establishment and operation of storefront medical marijuana dispensaries within the unincorporated area of Solano County.
- N. The adoption of this ordinance is not an activity subject to the California Environmental Quality Act because there is no possibility that such action will result in a direct or reasonably foreseeable indirect physical change in the environment.

SECTION 2. Applicability

- A. Nothing in this ordinance is intended, nor shall it be construed, to burden any defense to criminal prosecution afforded by the Compassionate Use Act or the Medical Marijuana Program Act.
- B. Nothing in this ordinance is intended, nor shall it be construed, to make legal any cultivation, sale, or other use of medical marijuana that is otherwise prohibited under California law.
- C. Nothing in this ordinance is intended, nor shall it be construed, to preclude any landlord from limiting or prohibiting the cultivation, distribution, or use of medical marijuana, or other related activities, by tenants.
- D. Nothing in this ordinance is intended, nor shall it be construed, to exempt any activity related to or involving the cultivation or use of medical marijuana from any applicable electrical, plumbing, land use, business licensing, or other building or land use standards or permitting requirements.
- E. Nothing in this ordinance is intended, nor shall it be construed, to regulate or limit the services or medical remedies provided by licensed medical professionals to their patients, either within medical offices and facilities of the licensed medical professional or within the patient's home.
- F. Nothing in this ordinance is intended, nor shall it be construed, to regulate or limit the services or remedies provided by in-home health care providers or primary caregivers to their patients within the patient's home.
- G. Nothing in this ordinance is intended, nor shall it be construed, to regulate or limit the services or remedies provided by a clinic licensed pursuant to Chapter 1 (commencing with Section 1200) of Division 2 of the Health and Safety Code, a health care facility licensed pursuant to Chapter 2 (commencing with Section 1250) of Division 2 of the Health and Safety Code, a residential care facility for persons with chronic life-threatening illness licensed pursuant to Chapter 3.01

(commencing with Section 1568.01) of Division 2 of the Health and Safety Code, a residential care facility for the elderly licensed pursuant to Chapter 3.2 (commencing with Section 1569) of Division 2 of the Health and Safety Code, a hospice, or a home health agency licensed pursuant to Chapter 8 (commencing with Section 1725) of Division 2 of the Health and Safety Code.

- H. Nothing in this ordinance is intended, nor shall it be construed, to regulate or limit the cultivation, possession, or use of medical marijuana by a qualified patient or person with an identification card, as defined in Health and Safety Code section 11362.7, at the temporary or permanent residence of such patient or person; for purposes of the County's Zoning Regulations, such activities are incidental to that patient or person's residential use of the property.
- I. Nothing in this ordinance is intended, nor shall it be construed, to regulate or limit the cultivation or possession of medical marijuana by a primary caregiver, as defined in Health and Safety Code section 11362.7, at the residence of such caregiver; for purposes of the County's Zoning Regulations, such activities are incidental to that caregiver's residential use of the property.

SECTION 3.

The following definition is added, in alphabetical order, to Section 28.01 of Chapter 28 of the Solano County Code:

Medical Marijuana Dispensary. A facility or business at which marijuana is sold, distributed, dispensed, administered, delivered, made available, or given away for medical purposes in accordance with the Compassionate Use Act of 1996 (Proposition 215; Health and Safety Code section 11362.5). A medical marijuana dispensary organized or operated as a cooperative or a collective, as referenced in Health and Safety Code section 11362.775, is included within this definition. The dispensing of marijuana by a primary caregiver to a qualified patient or a person with an identification card at the temporary or permanent place of residence of such patient or person shall not cause that place of residence, the residence of the primary caregiver, or a facility described in Health and Safety Code section 11362.7, subdivision (d)(1), in cases where the primary caregiver is an owner, operator, or employee of such facility, to be a medical marijuana dispensary.

SECTION 4.

Subsection 28.70.20 is added to Section 28.70 of Chapter 28, as follows:

28.70.20 Prohibited Land Uses

- A. **Public Nuisance.** Any use of buildings or land not authorized by this Chapter, or which has not been authorized in the manner required by this Chapter, is prohibited and is declared to be a public nuisance.

B. Land Uses Prohibited in Some Zoning Districts. In addition to land uses expressly prohibited in the version of Table A applicable to a zoning district, any use of buildings or land within a zoning district that is not listed in the version of Table A applicable to that zoning district is prohibited.

C. Land Uses Prohibited in All Zoning Districts. The following land uses are prohibited in all zoning districts:

1. Medical Marijuana Dispensary

SECTION 5. Effective Date

This ordinance will be effective thirty (30) days after its adoption.

SECTION 6. Severability

If any provision of this ordinance or the application of it to any persons or circumstances is held invalid, such invalidity shall not affect other provisions or applications of the ordinance which can be given effect without the invalid provision or application, and to this end the provisions of the interim ordinance are declared to be severable.

SECTION 7. Publication

A summary of this ordinance shall be published once in the Daily Republic, a newspaper of general circulation in the County of Solano, not later than fifteen (15) days after the date of its adoption.

PASSED AND ADOPTED by the Solano County Board of Supervisors at its regular meeting on _____, 2013, by the following vote:

AYES: SUPERVISORS: _____

NOES: SUPERVISORS: _____

EXCUSED: SUPERVISORS: _____

Linda J. Seifert, Chair
Solano County Board of Supervisors

Ordinance No. 2013- _____

ATTEST:
Birgitta E. Corsello, Clerk

By: _____
Patricia J. Crittenden, Chief Deputy Clerk

DRAFT