



Town of Chino Valley

MEETING NOTICE TOWN COUNCIL

REGULAR MEETING
Tuesday, April 22, 2014
6:00 P.M.

Council Chambers
202 N. State Route 89
Chino Valley, Arizona

AGENDA

- 1) **CALL TO ORDER, INVOCATION; PLEDGE OF ALLEGIANCE; ROLL CALL**
- 2) **INTRODUCTIONS, PRESENTATIONS, AND PROCLAMATIONS**
 - a) Presentation of Certificate of Recognition to Elizabeth Vicory, Arizona Miss Amazing Preteen Queen 2014. (Mayor Marley)
 - b) Introduction of the Business Appreciation Program and recognition of new and existing businesses. (Cecilia Watts, General Services Director)
 - c) Proclamation declaring May 1-7, 2014 as "Youth Week," sponsored by the Chino Valley Elks Lodge #2842. (Mayor Marley)

3) **CALL TO THE PUBLIC**

Call to the Public is an opportunity for the public to address the Council concerning a subject that is not on the agenda. Public comment is encouraged. Individuals are limited to speak for three (3) minutes. The total time for Call to the Public may be up to 30 minutes per meeting. Council action taken as a result of public comment will be limited to directing staff to study the matter, scheduling the matter for further consideration and decision at a later date, or responding to criticism.

4) **RESPONSE TO THE PUBLIC**

Response to the Public is an opportunity for the Mayor to inform the public about how Town officials addressed matters raised during Call to the Public at a previous meeting.

- a) Presentation of the final costs associated with the Road 4 South Construction Project. (Ron Grittmann, Public Works Director/Town Engineer)

5) CURRENT EVENT SUMMARIES AND REPORTS

This item is for information only. The Mayor, any Councilmember, or Town Manager may present a brief summary or report of current events, or ask a staff member to provide the same. Presentation on information requested by the Mayor and Council will be made and questions answered. No action will be taken.

- a) Status and membership report regarding the SR 89 Utility Project Citizen Committee. (Mayor and Council)
- b) Report regarding the General Plan Public Hearing before Council on May 13, 2014. (Mayor Marley)
- c) Status report and presentation regarding HB 2826, related to consolidated elections. (Jami Lewis, Town Clerk)
- d) Status report by Town Manager Robert Smith regarding Town accomplishments, and current or upcoming projects.

6) CONSENT AGENDA

All those items listed below are considered to be routine and may be enacted by one motion. Any Councilmember may request to remove an item from the Consent Agenda to be considered and discussed separately.

- a) Consideration and possible action to approve the April 3, 2014 study session minutes. (Jami Lewis, Town Clerk)
- b) Consideration and possible action to approve the April 8, 2014 regular meeting minutes. (Jami Lewis, Town Clerk)
- c) Consideration and possible action to adopt Resolution No. 14-1031, adopting a Relocation Assistance Plan, as required by the Department of Housing to receive Community Development Block Grant (CDBG) funding. (Cecilia Watts, General Services Director)
- d) Council will recess to observe Councilmember Wojcik's birthday.

7) EXECUTIVE SESSION

Council may vote to recess the Regular Meeting and hold an executive session, which will not be open to the public, for the following purposes.

- a) Pursuant to A.R.S. § 38-481.03(A)(1) for discussion or consideration of employment, assignment, salaries, or disciplining of Town Manager Robert Smith. (Mayor and Council)

8) ACTION ITEMS

- a) Consideration and possible action to approve a 5-year real property lease with Yavapai County Community Health Services for the trailer located at the North Campus, 1951 Voss Drive, beginning May 1, 2014 for \$1.00 / year and appropriate utilities. (Cecilia Watts, General Services Director)

Recommended Action: Approve a 5-year real property lease with Yavapai County Community Health Services for the trailer located at the North Campus, 1951 Voss Drive, beginning May 1, 2014 for \$1.00 / year and appropriate utilities.

- b) Consideration and possible action to authorize the Mayor to sign a letter to the Yavapai College President, Dr. Penny Wills, regarding disposition of the Chino Valley Campus in the College's 10-year plan. (Mayor Marley)

Recommended Action: Discuss and revise draft letter per discussion and authorize the Mayor to sign and send the letter.

- c) Consideration and possible action to to adopt Ordinance No. 14-783, amending the Town Code, Title II Administration, Chapter 30 Governing Body and Chapter 36 Legislative Provisions, and adding new Chapter 37 Elections, related to reorganizing the Code for clarity and to update the Code to conform to state law with regard to elections. (Jami Lewis, Town Clerk)

Recommended Action: Adopt Ordinance No. 14-783, amending the Town Code, Title II Administration, Chapter 30 Governing Body and Chapter 36 Legislative Provisions, and adding new Chapter 37 Elections.

- d) Consideration and possible action to adopt Resolution No. 14-1028, extending the terms of the sitting mayor and councilmembers to comply with A.R.S. S 16-204, as amended, related to consolidated elections. (Jami Lewis, Town Clerk)

Recommended Action: Adopt Resolution No. 14-1028, extending the terms of the sitting mayor and councilmembers.

- e) Consideration and possible action to adopt Resolution No. 14-1029, prescribing standards of financial disclosure for local public officers. (Jami Lewis, Town Clerk)

Recommended Action: Adopt Resolution No. 14-1029, prescribing standards of financial disclosure for local public officers.

- f) Consideration and possible action to adopt Resolution No. 14-1030 in support of legislation to impose tax on facilities growing medical marijuana. (Councilmember Hatch; Mayor Marley)

Recommended Action: Adopt Resolution No. 14-1030 in support of legislation to impose tax on facilities growing medical marijuana.

9) **ADJOURNMENT**

Dated this 17th day of April, 2014.

By: **Jami C. Lewis, Town Clerk**

The Town of Chino Valley endeavors to make all public meetings accessible to persons with disabilities. Please call 636-2646 (voice) or 1-(800) 347-1695 (Arizona Relay Service) 48 hours prior to the meeting to request a reasonable accommodation to participate in this meeting.

Supporting documentation and staff reports furnished to the Council with this agenda are available for review on the Town website at <http://www.chinoaz.net/clerk/townagenda.shtml>, and in the Public Library and Town Clerk's Office.

CERTIFICATION OF POSTING		
The undersigned hereby certifies that a copy of this notice was duly posted at Chino Valley South Campus, Chino Valley Post Office, and Chino Valley North Campus in accordance with the statement filed by the Town Council with the Town Clerk.		
Date: _____	Time: _____	By: _____ Jami C. Lewis, Town Clerk



TOWN OF CHINO VALLEY COUNCIL AGENDA ITEM STAFF REPORT

Town Council Regular Meeting

Item No. 2. a.

Meeting Date: 04/22/2014
Contact Person: Jami Lewis, Town Clerk
 Phone: 928-636-2646 x-1208
Department: Council
Item Type: Presentation Only
Estimated length of Staff Presentation: 5 minutes
Physical location of item: N/A

AGENDA ITEM TITLE:

Presentation of Certificate of Recognition to Elizabeth Vicory, Arizona Miss Amazing Preteen Queen 2014. (Mayor Marley)

SITUATION & ANALYSIS:

Chino Valley resident, Elizabeth Vicory, age 11, a Mingus Springs Charter School 5th-grade student, competed in the Arizona Miss Amazing Pageant in Scottsdale, Arizona on March 29. She won her division, earning the title Arizona Miss Amazing Preteen Queen 2014. Elizabeth participated in an interview and onstage introduction, talent performance, and evening gown competition. For her talent, she performed a tall flag twirling routine set to the song "Watch Me" by Zen Daya and Bella Thorne. Elizabeth will now go to the national pageant in Omaha, Nebraska in August.

Attachments

No file(s) attached.

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TOWN OF CHINO VALLEY COUNCIL AGENDA ITEM STAFF REPORT

Town Council Regular Meeting

Item No. **2. b.**

Meeting Date: 04/22/2014
Contact Person: Cecilia Watts, General Services Director
 Phone: 928-636-2646 x-1202
Department: General Services
Item Type: Presentation Only
Estimated length of Staff Presentation: 10 minutes
Physical location of item: N/A

AGENDA ITEM TITLE:

Introduction of the Business Appreciation Program and recognition of new and existing businesses.
 (Cecilia Watts, General Services Director)

SITUATION & ANALYSIS:

The Town has begun a Business Appreciation Program in conjunction with the Chino Valley Chamber. The first component involves new businesses. Every two months we will give new businesses the opportunity to introduce their business to the Council. They will be given 90 seconds to introduce their business and meet their Town leaders. We will contact each new business that has obtained a Business License with the Town and invite them the opportunity to appear at a scheduled Council Meeting. We will give these businesses an "Open for Business" window decal and a signed and framed letter from the Mayor.

The second component will be the recognition of an existing business in the Town. The Chamber will select one long-term existing business in the Town and recognize them at the Council Meeting. We will be giving the existing business a take-away item as well as a signed letter from the Mayor, and allowing the Council to thank the business for their years of service in Chino Valley.

These efforts are in partnership with the Chino Valley Chamber and are an effort to recognize our local businesses.

There were four new businesses in the months of January and February for which we sent out invitations to attend the Council Meeting and offer the opportunity to speak. Those businesses were:

- 1) The Storage Auction Store
- 2) Copper Jacket, LLC
- 3) Statue-Esque
- 4) Gifts 4 Her

The only new business that is available to attend the Council meeting is the Storage Auction Store, owner Tamara Root.

Of the existing businesses, Circle C Construction has been chosen to be the long-standing business recognized and appreciated for doing business in Chino Valley. Debbie and Chuck Harper will be present to receive the recognition.

Attachments

No file(s) attached.



TOWN OF CHINO VALLEY COUNCIL AGENDA ITEM STAFF REPORT

Town Council Regular Meeting

Item No. **2. c.**

Meeting Date: 04/22/2014
Contact Person: Jami Lewis, Town Clerk
 Phone: 928-636-2646 x-1208
Department: Council
Item Type: Presentation Only
Estimated length of Staff Presentation: 5 minutes
Physical location of item: N/A

AGENDA ITEM TITLE:

Proclamation declaring May 1-7, 2014 as "Youth Week," sponsored by the Chino Valley Elks Lodge #2842. (Mayor Marley)

SITUATION & ANALYSIS:

The Benevolent and Protective Order of Elks has designated the first week in May as Youth Week to honor America's Junior Citizens for their accomplishments, and to give fitting recognition of their services to community, state and nation.

Attachments

Proclamation



PROCLAMATION

Youth Week – May 1-7, 2014



***Whereas**, the Benevolent and Protective Order of Elks has designated the first week in May as Youth Week to honor America's Junior Citizens for their accomplishments, and to give fitting recognition of their services to community, state and nation; and*

***Whereas**, Chino Valley Elks Lodge #2842 will sponsor an observance during that week in tribute to the Junior Citizens of this community; and*

***Whereas**, no event could be more deserving of our support and participation than one dedicated to these young people who represent the nation's greatest resource, and who in the years ahead will assume the responsibility for the advancement of our free society; and*

***Whereas**, our youth need the guidance, inspiration and encouragement which we alone can give in order to help develop those qualities of character essential for future leadership, and go forth to serve America; and*

***Whereas**, to achieve this worthy objective, we should demonstrate our partnership with youth, our understanding of their hopes and aspirations and a sincere willingness to help prepare them in every way for the responsibilities and opportunities of citizenship;*

***Now, Therefore**, I, Chris Marley, Mayor of the Town of Chino Valley, do hereby proclaim the first week in May as **Youth Week** in Chino Valley, Arizona, and urge all departments of government, civic, fraternal and patriotic groups, and our citizens generally, to participate wholeheartedly in its observance.*

***In Witness Whereof**, I have hereunto set my hand and caused the Seal of the Town of Chino Valley to be affixed this **22nd** day of **April**, 2014.*

Chris Marley, Mayor

ATTEST:

Jami C. Lewis, Town Clerk



TOWN OF CHINO VALLEY COUNCIL AGENDA ITEM STAFF REPORT

Town Council Regular Meeting

Item No. 4. a.

Meeting Date: 04/22/2014
Contact Person: Ron Grittman, Town Engineer
Phone: 928-636-2646 x-1223
Department: Public Works
Item Type: N/A
Estimated length of Staff Presentation: 5 minutes
Physical location of item: Road 4 South

AGENDA ITEM TITLE:

Presentation of the final costs associated with the Road 4 South Construction Project. (Ron Grittman, Public Works Director/Town Engineer)

SITUATION & ANALYSIS:

See attached.

Attachments

Staff Report

Agenda Item Staff Report SITUATION & ANALYSIS

Issue Statement

In an effort to avoid further litigation, it was decided to extend Road 4 south from its eastern terminus at the solar electric facility, easterly to eastern line of section 1 Township 15 N, Range 2 W. This road construction was funded with from roads impact fees. Any impact fee can only be used to expand the system of that which the impact fee is collected. Therefore, in order to tap into the road impact fee dollars it must be demonstrated that the transportation system is expanded. By extending Center Street between Road 1 East and the Peavine Trail along with extending a roadway adjacent to the Peavine Trail between Center Street and Road 4 South, the expansion of the transportation system is accomplished.

Applicable “Policy”

- Pursuant to A.R.S. § 34-201(D), a street, road, bridge, water or sewer work may be constructed either with or without the use of the agent's regularly employed personnel without advertising for bids, provided that the total cost of the work does not exceed approximately \$216,000 in 2013.

Satisfaction of “Policy”

- The above A.R.S. applies to each phase of the Road 4 South Project. Phase 1 of the project totaled \$137,553.34. Phase 2 of the project totaled \$194,284.97. The \$60,000 APS power pole relocation still has not been received but is included in Phase 2 in its entirety. Each portion of the project, making up a total project that stands alone, is under the state limit of \$216,000.00.

Summary of Issues and Staff Rationale

On December 11, 2012, the Council approved the professional services agreement with Civil Tec, Engineering for the development of partial designs for Road 4 South, Center Street (with complete design plans of the box culvert at Center Street and the Santa Cruz Wash,) and the road adjacent to the Peavine Trail between Center Street and Road 4 South. The design fees for Road 4 South are \$31,144.00. On November 12, 2013, the Council approved the construction staking contract to Civil Tec, Engineering in the amount of \$23,856.00. Also on November 12, 2013 the Council approved the finding that the Road 4 South qualifies as an “in-house” project with the general cost estimates for drainage, guardrail, aggregate, etc. as \$199,975.00 (\$89,975.00 for Phase 1 and \$110,000.00 for Phase 2.) On December 10, 2013, the right-of-way for Road 4 South was accepted by the Town Council. Also on December 10, 2013, the Council approved the equipment rental contracts with ECCO Equipment Corporation and United Rentals in the amount of \$109,000.00 and \$17,644.00 respectively for a total of \$126,744.00 (\$42,148.00 for Phase 1 and \$84,296.00 for Phase 2.) On January 14, 2014 the Council approved the relocation of the APS power poles at a cost of \$60,000.00.

The project began construction on January 6, 2014 and reached substantial completion on March 29, 2014. Total project costs for phases 1 and 2 from previous estimates were \$194,296.00 and \$192,123.00 respectively. The following are the summaries of the actual construction costs:

Description	Phase 1	Phase 2
Misc. Invoices	\$8,808.13	\$10,111.71
Civil Tec Design	\$15,722.00	\$15,722.00
Civil Tec Construction Staking	\$11,928.00	\$11,928.00
Arrowhead (Aggregate)	\$20,457.90	\$20,458.06
ECCO	\$21,038.86	\$21,956.96
ETC (Testing)	\$520.00	\$400.00
Sunstate	\$0.00	\$2,264.23
Contech	\$15,737.52	\$8,103.05
AZ Highway Specialty	\$21,249.78	\$21,249.79
United Rentals	\$4,215.46	\$4,215.47
Bennett Oil (Fuel)	\$7,114.84	\$7,114.84
C&R Trucking	\$9,660.85	\$9,660.86
Barricades and Signage	\$1,100.00	\$1,100.00
APS Relocate (Not invoiced at this time)	\$0.00	\$60,000.00
Total	\$137,553.34	\$194,284.97

Findings of Fact

- Cost estimates for this project, had the Town sought a “normal” bidding process was \$557,846.00, per the January 14th Council meeting. Given the fact that this project was performed under the “in-house” designation, a cost savings of \$226,007.69 was achieved.

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TOWN OF CHINO VALLEY COUNCIL AGENDA ITEM STAFF REPORT

Town Council Regular Meeting

Item No. **5. c.**

Meeting Date: 04/22/2014
Contact Person: Jami Lewis, Town Clerk
Phone: 928-636-2646 x-1208
Department: Town Clerk
Item Type: Presentation Only
Estimated length of Staff Presentation: 15 minutes
Physical location of item: N/A

AGENDA ITEM TITLE:

Status report and presentation regarding HB 2826, related to consolidated elections. (Jami Lewis, Town Clerk)

SITUATION & ANALYSIS:

The Town Clerk will present an overview on the status of the Town's compliance with House Bill 2826 (2012) related to consolidated elections, including changes in election and voting procedures. Yavapai County Elections Director Lynn Constabile and County Recorder Leslie Hoffman will be present at the meeting to answer any questions Council may have about the County's new procedures.

Attachments

HB 2826 Presentation



HB 2826 Update

Town Clerk

April 22, 2014

Agenda

- Current Status
- New Election Changes – Town/County
- New Election Changes – Voters
- Internal Changes (items 8c-8e)

Current Status

- All *candidate* elections must be held in the fall in even numbered years – Town's next is fall 2016
- Does not apply to initiatives, referendums, recalls, filling Council vacancies, zoning and sales tax issues, and special district elections
- Subsequent conforming bill to address conflicting sections of state law, eliminated option to shorten council terms (Resolution 14-1028)

New Election Changes – Town/County

New contract with County – June timeframe

- Town provides Resolution (14-1028) for lengthening of terms

New Election Changes – Town/County

County Provides:

- Ballot programming and mailing
- Precinct registers
- Early voting
- Ballot boxes and other voting equipment
- Signature verification
- Ballot processing and tabulation

New Election Changes – Town/County

County Provides:

- Election-related reports
- Recounts
- Review of town outreach materials
- Provision of County PSAs
- Voter outreach to entities such as schools, clubs, HOAs, etc.

New Election Changes – Town/County

County Fee Schedule to Increase:

- Working on ballot sharing sliding scale, the more jurisdictions on ballot, lower cost for each
- Working on “not to exceed” cost
- To be brought to Board of Supervisors in May; effective July 1

New Election Changes – Town/County

County Fee Schedule to Increase:

- Discount available – We currently provide all services that grant us a discount; except to provide training facilities, which we have the option to do

New Election Changes – Voters

- 2 voter registration forms – federal vs. county – proof of ID
- No all “vote by mail” offered during even-numbered fall elections
 - Yavapai County proposed that Counties be allowed to do VBM, but county organization denied request; Yavapai County to try again

New Election Changes – Voters

Longer ballots - Town ballot issues on same ballot as federal/state/county issues

- Voter turnout may be impacted – primary turnout often below average
- Final results no longer available the day after election
- Canvass docs may take up to two weeks to prepare – may necessitate special Council meeting for canvass

New Election Changes – Voters

County cost-saving measures

- New precincts and precinct names – from 7 to 2 in Chino Valley
- New procedures at Vote Centers
- New voting equipment (to BOS in April for approval)
- Drop box assistance by Town on election night

New Election Changes – Voters

May 1, County to mail to all voters notification of Aug/Nov election, elections procedural changes, new voter I.D. cards.

Local Legislative Changes (Items 8c-8e)

New law necessitates amendments to:

- Several Town Code sections (Ord. 14-783)
- Mayor & Council terms (Res. 14-1028)
- Financial Disclosure Resolution 94 (Res.14-1029)



TOWN OF CHINO VALLEY COUNCIL AGENDA ITEM STAFF REPORT

Town Council Regular Meeting

Item No. **6. a.**

Meeting Date: 04/22/2014

Contact Person: Jami Lewis, Town Clerk

Phone: 928-636-2646 x-1208

Department: Town Clerk

Item Type: Consent

AGENDA ITEM TITLE:

Consideration and possible action to approve the April 3, 2014 study session minutes. (Jami Lewis, Town Clerk)

RECOMMENDED ACTION:

Approve the April 3, 2014 study session minutes.

Attachments

April 3, 2014 minutes

DRAFT

MINUTES OF THE STUDY SESSION OF THE TOWN COUNCIL OF THE TOWN OF CHINO VALLEY

**THURSDAY, APRIL 3, 2014
6:00 P.M.**

The Town Council of the Town of Chino Valley, Arizona, met for a Study Session in the Chino Valley Council Chambers, located at 202 N. State Route 89, Chino Valley, Arizona, on Thursday, April 3, 2014.

Present: Mayor Chris Marley; Vice-Mayor Darryl Croft; Councilmember Mike Best; Councilmember Linda Hatch; Councilmember Pat McKee; Councilmember Don Wojcik

Absent: Councilmember Lon Turner

Staff: Town Manager Robert Smith; General Services Director Cecilia Watts; Town Attorney Susan

Present: Goodwin; Finance Director Joe Duffy; Town Engineer/Public Works Director Ron Grittmann; Utility Supervisor Chris Bartels; Utilities Crew Leader Joe Grassi; Planner Ruth Mayday; Town Clerk Jami Lewis (recorder)

1) CALL TO ORDER; ROLL CALL

Mayor Marley called the meeting to order at 6:03 p.m.

2) Presentation by Economists.com regarding the results of the Utilities Rate Structure analysis, and review and discussion related to funding options, infrastructure, and bonding.

Town Engineer Grittmann related that the projects proposed within the rate structure analysis were developed as a step toward providing the Town with a strong economic foundation.

Finance Director Duffy reviewed the Town's financial condition over the last few years and the steps that Council had accomplished that led to the subject of tonight's meeting:

- In 2012, the Town was in a financial crisis, with general fund expenses outpacing revenues by over \$1 million dollars per year and water and sewer expenses outpacing revenues by over \$700,000 per year. All these funds were projected to run out of money in the middle of fiscal year 2015.
- *General Fund Solution:* After reviewing all possible new revenue options, as well as expenses, departments, and programs for potential cost savings and/or alternate ways of providing services, Council developed a strategic financial plan, reviewed and updated all user fees, increased sales tax 1%, made several program changes to reduce expenditures, updated the financial policy, including the contingency and reserve policies, fully funded the general fund reserve within one year, reformatted the budget, and continued to budget revenues and expenses conservatively.
- The net effect of these steps stabilized the general fund. However, the general fund was

still relying on transfers from the capital improvement fund to stay even. Without the transfers from the capital improvement fund, the general fund was still going into the negative each fiscal year, and because of the transfers, the capital improvement fund was unable to provide funds for capital replacement, such as police cars or maintenance equipment.

- *Water and Sewer Fund Solution:* The Town undertook a water and wastewater rate study and adopted a five-year rate plan that assumed 430 new accounts in 2014 and the town taking over the operation and ownership of the wastewater treatment plant, both of which were still not yet accomplished. The Town also undertook a water connection and valuation analysis of the Prescott water system, which was now completed.
- Even with the new rate structure, the water and sewer funds were still relying on subsidies from the capital improvement fund. Until the Town added more utility accounts, there were no funds available for capital maintenance, major repairs, or system extensions.
- If the Town could take the steps necessary to eliminate the capital improvement fund subsidy to the general fund and the water and sewer funds, it will be able to use these funds to replace capital equipment and begin to tackle road maintenance that had been deferred.

Mr. Duffy concluded by stating that he had reviewed the subject Utilities Rate Structure analysis, and he was confident that its projections were conservative and its assumptions were reasonable.

Dan Jackson, Managing Director and Chief Executive of Economists.com, reported on the results of the updated Utilities Rate Structure analysis:

- *History:* Over the past 18 months, Town staff and consultants had prepared several water and wastewater financial analyses, which included a general long-term water and wastewater rate and financial plan.
- *Purpose of Presentation:* To illustrate the combined impact of project analyses on water and wastewater funds and rates.
- *Current Rate Plan Principal Assumptions:*
 - Most operating expenses increased 3%-5% per year.
 - The Town would experience nominal growth in new accounts.
 - Increased buy-in fees in 2014, which occurred in January.
 - Acquisition of the wastewater treatment plant for \$2 million, funded through revenue bonds, resulting in a reduction of \$175,000 in annual operating expenses and benefits to ratepayers.
- *Current Rate Plan Annual Rates:*
 - Current water rates encouraged users to be more conservative. Current sewer rates were flat with increases each year through 2017.
 - In Arizona, average rates increased 5%-6% every year.
 - In 2014, average Town water and sewer payments were \$94.79 per month; per the rate plan, that amount would increase to \$122.45 in January 2018.
- *Scenarios Analyzed:* The proposed rate plan was developed to include three projects that would impact rates: (i) acquisition of Prescott and Wilhoit water accounts; (ii) acquisition of the wastewater treatment plant from Fann; and (iii) utility expansions along SR 89.
 - Scenario 1: The above projects would be financed through a revenue bond.
 - Scenario 2: Voters would enact a property tax to fund general obligation/tax bonds for the above projects.
 - Delays in hooking up SR 89 accounts or acquiring the water accounts will result in the need for additional rate adjustments.
- *Scenario 1 Assumptions*
 - \$13 million in total capital costs.
 - 1,000 new water accounts and new utility accounts on SR 89 to offset the total cost.

- Rate increases will still be necessary, but will not be as significant as the current rate plan.
- *Scenario 2 Assumptions*
 - Same as Scenario 1, except that through tax bonds, the Town could eliminate the need for rate adjustments for the next four to five years.
 - Rates will not go down.

Mark Reader, bond counsel, with Stifel, Nichlaus added that:

- At Council direction, he will prepare and present a comprehensive analysis regarding the bond issue, tax rate needed, and value of associated properties within the next few weeks.
- He would work to maximize low interest loans and possible grant funds from the Water Infrastructure Finance Authority whom he hoped would deem the Town a “disadvantaged community” and grant forgivable principle. At this point, WIFA was very interested in the project.

Town Manager Smith stated that this plan was important to the Town for these reasons:

- Because of the capital improvement fund’s subsidies to the general fund and utilities funds, the Town had thus far deferred \$8 million in roads maintenance. Stopping the utility funds’ dependence upon the capital funds will allow the Town to use capital funds for needed capital projects.
- As the Town had no way currently to transport the water it owned from the Paulden area, its main resource for water credits now was recharge; thus, it was important to increase sewer users.

Council asked about the following topics. Staff and consultants related that:

- *Current utility customers:* There were 600 customers on both water and sewer, just under 1,700 on sewer only, and 1,200 on water only. The Town’s current water customers were in Highlands Ranch and Bright Star subdivisions, with a few commercial accounts near Road 2 North and SR 89. Currently, commercial connection fees were paid to Fann; if the Town negotiated a settlement with Fann, then those capital dollars would come to the Town. Town citizens served by City of Prescott water paid a premium and would realize a rate reduction of 40%-45% if the Town took over those accounts.
- *Bond and tax burden:* Under revenue bonds (Scenario 1), current and new users would pay for the expansions, and there will still be rate increases over the next five years. Under the tax bonds (Scenario 2), all property owners in Town would contribute, and rate increases may not be needed for the next five years. Last year, Council’s Utilities Subcommittee projected a tax burden of \$8.73 per month for an assessed valuation of \$100,000. The bonds would most likely be for 20 years.
- *Changes from last year’s plan:* (i) Staff’s focus changed from financing through revenue bonds to tax bonds, as the revenue bond impact on ratepayers was found to be status quo, while a tax obligation would made an immediate impact and spread the cost over all homeowners. (ii) While it was previously thought that Fann could not be bought out with bond money, the Town’s financial advisor had clarified that the operations and maintenance contract with Fann could not, but the construction manager-at-risk (CM@R) contract could. If the Town could reach a settlement on the CM@R, it would save \$175,000 per year and be able to bank water through recharge.
- *Rate plan changes:* While none of the proposed components alone could cause the plan to fail, it would be prudent for the Town to monitor the financial condition continually of the utilities to assess and adapt to change.
- *Next steps:* Council was asked to consider re-activating the SR 89 Utility Project Citizen

Committee to review and provide an analysis of this proposal. They could also direct bond counsel to perform an analysis on the property tax issue.

Public members asked about the following topics. Staff and consultants reported that:

- *Utility extensions impacts to businesses:* The proposed expansions would be along SR 89 from Road 3 North to Road 2 North. The current plans were only at 20%, so the affected properties were not identified yet; however, the trunk lines were drawn to avoid residential properties. While property owners would be required to hookup to water for fire flow, they would not be required to abandon their wells. The Town intended to lay water and sewer lines at the same time, to reduce traffic issues.
- *New commercial businesses:* Large chains typically required water and sewer.
- *Commercial utility rates:* Rates were currently undetermined, but Town policy allowed property owners to amortize hookup fees over 10 years.

Public Comment:

Annie Lane expressed concern about tax fatigue.

Dave Mazy, Town business owner, expressed concern about sewer payments adding to small businesses' overhead and possible box stores hurting local businesses.

Tom Payne, Town business owner, spoke about the importance of safe yield, fire flow, Prescott no longer being willing to hook up businesses in Town, as they cannot get recharge credits for those hookups.

3) ADJOURNMENT

MOVED by Councilmember Linda Hatch, seconded by Councilmember Pat McKee to adjourn the meeting at 7:21 p.m.

Vote: 6 - 0 PASSED

Chris Marley, Mayor

ATTEST:

Jami C. Lewis, Town Clerk

CERTIFICATION:

I hereby certify that the foregoing minutes are a true and correct copy of the minutes of the Study Session of the Town Council of the Town of Chino Valley, Arizona held on the 3rd day of April, 2014. I further certify that the meeting was duly called and held and that a quorum was present.

Dated this 22nd day of April, 2014.

Jami C. Lewis, Town Clerk



TOWN OF CHINO VALLEY COUNCIL AGENDA ITEM STAFF REPORT

Town Council Regular Meeting

Item No. **6. b.**

Meeting Date: 04/22/2014

Contact Person: Jami Lewis, Town Clerk

Phone: 928-636-2646 x-1208

Department: Town Clerk

Item Type: Consent

AGENDA ITEM TITLE:

Consideration and possible action to approve the April 8, 2014 regular meeting minutes. (Jami Lewis, Town Clerk)

RECOMMENDED ACTION:

Approve the April 8, 2014 regular meeting minutes.

Attachments

April 8, 2014 minutes

DRAFT

MINUTES OF THE REGULAR MEETING OF THE TOWN COUNCIL OF THE TOWN OF CHINO VALLEY

**TUESDAY, APRIL 8, 2014
6:00 P.M.**

The Town Council of the Town of Chino Valley, Arizona, met for a Regular Meeting in the Chino Valley Council Chambers, located at 202 N. State Route 89, Chino Valley, Arizona, on Tuesday, April 8, 2014.

Present: Mayor Chris Marley; Vice-Mayor Darryl Croft; Councilmember Mike Best; Councilmember Linda Hatch; Councilmember Pat McKee; Councilmember Lon Turner; Councilmember Don Wojcik

Staff Town Manager Robert Smith; Planner Ruth Mayday; General Services Director Cecilia Watts; Town
Present: Attorney Phyllis Smiley; Town Attorney Sharon Sargent-Flack; Town Attorney Mark Drutz; Finance Director Joe Duffy; Police Chief Chuck Wynn; Magistrate John Walker; Town Engineer/Public Works Director Ron Gritman; Civil Engineer Richard Straub; Building Official Dan Trout; Town Clerk Assistant Liz Hart; Town Clerk Assistant Liz Hart (recorder); Town Clerk Jami Lewis (recorder)

1) **CALL TO ORDER, INVOCATION; PLEDGE OF ALLEGIANCE; ROLL CALL**

Mayor Marley called the meeting to order at 6:00 p.m.

Councilmember Best gave the invocation and Mayor Marley led the Pledge of Allegiance.

2) **INTRODUCTIONS, PRESENTATIONS, AND PROCLAMATIONS**

- a)** Proclamation declaring April 9, 2014 as "Arizona Gives Day," sponsored by West Yavapai Guidance Clinic Foundation.

Mayor Marley read the proclamation and presented it to Tina Blake with West Yavapai Guidance Clinic Foundation and Ashley Mains with Prescott College, who spoke about Arizona Gives Day and supporting local non-profits.

- b)** Presentation by Scott Freitag, Fire Chief, Chino Valley Fire District regarding current Fire District activities and partnerships with the Town.

Chief Freitag reported on the district's:

- financial condition;
- support of the town's intent to extend infrastructure;
- disposition of Station 64 next to Town Hall;
- partnerships with the town's building dept and public works director;
- search for a new fire marshal; and
- joint management agreement with Central Yavapai Fire District for admin staffing.

3) **CALL TO THE PUBLIC**

Call to the Public is an opportunity for the public to address the Council concerning a subject that is not on the agenda. Public comment is encouraged. Individuals are limited to speak for three (3) minutes. The total time for Call to the Public may be up to 30 minutes per meeting. Council action taken as a result of public comment will be limited to directing staff to study the matter, scheduling the matter for further consideration and decision at a later date, or responding to criticism.

Michael Edmonds, resident, asked for several pieces of information related to the Road 4 South extension project.

4) **RESPONSE TO THE PUBLIC**

Response to the Public is an opportunity for the Mayor to inform the public about how Town officials addressed matters raised during Call to the Public at a previous meeting.

- a) Possible Town plans to annex areas west of Reed Road.

Mayor Marley reported that the town had no current plans for any annexations.

5) **CURRENT EVENT SUMMARIES AND REPORTS**

This item is for information only. The Mayor, any Councilmember, or Town Manager may present a brief summary or report of current events, or ask a staff member to provide the same. Presentation on information requested by the Mayor and Council will be made and questions answered. No action will be taken.

Councilmember Hatch reported on the status of the magistrate evaluation process and an upcoming Magistrate Evaluation Subcommittee meeting.

Mayor Marley reported on the Granite Mountain Hotshots memorial bench and read the monthly mayor's report, which pertained to road conditions in the town and lack of funding for maintenance.

- a) Status report by Town Manager Robert Smith regarding Town accomplishments, and current or upcoming projects.

Mr. Smith reported on:

- the current budget process;
- the status of negotiations with the City of Prescott and Fann Contracting;
- Cortez Enterprises' rezoning status; and
- pending amendments to the Unified Development Ordinance.

6) **CONSENT AGENDA**

All those items listed below are considered to be routine and may be enacted by one motion. Any Councilmember may request to remove an item from the Consent Agenda to be considered and discussed separately.

MOVED by Vice-Mayor Darryl Croft, seconded by Councilmember Mike Best to approve consent agenda items 6a, b, c and d.

Vote: 7 - 0 PASSED

- a) Consideration and possible action to approve the March 5, 2014 study session minutes. (Jami Lewis, Town Clerk)
- b) Consideration and possible action to approve the March 11, 2014 regular meeting minutes. (Jami Lewis, Town Clerk)
- c) Consideration and possible action to approve the March 25, 2014 regular meeting minutes. (Jami Lewis, Town Clerk)
- d) Consideration and possible action to accept the Declaration of Right-of-Way by the Town of Chino Valley, for the creation of public right-of-way along the alignment of Jerome Junction Road. (Ron Gritman, Public Works Director/Town Engineer)

7) **EXECUTIVE SESSION**

Council may vote to recess the Regular Meeting and hold an executive session, which will not be open to the public, for the following purposes.

8) **ACTION ITEMS**

- a) Consideration and possible action to appoint new members to fill vacancies in the SR 89 Utility Project Citizen Committee. (Mayor Marley)

Recommended Action: Appoint new members to fill vacancies in the SR 89 Utility Project Citizen Committee.

Mayor Marley reported that:

- On April 9, 2013, Council was asked to consider establishing a citizen committee to review the SR 89 Utility Project ("Project"), which pertained to proposed extensions of sewer and water to the highway for economic development and financial stability purposes, and bringing a recommendation to the Council regarding a potential bond election in November 2013.
- On April 23, 2013, Council established the SR 89 Utility Project Citizen Committee ("Committee"), which met several times and issued a report of their findings and recommendations to Council on June 11, 2013.

- Since that time, staff, working with several consultants, revised the original Project parameters, drafted new bonding recommendations, and presented them to Council on April 3, 2014. Staff suggested that Council might want to re-activate the Committee to have them review the revised project and provide an updated recommendation.
- Currently, due to relocations and resignations, only three members of the seven Committee members remained: Gary Warren, Karrie Blum, and Bud Hanen; and Council had been asked to nominate candidates for appointment.

Council discussion:

- Some disagreed with having County residents on the committee as the project would impact only residents.
- Others believed that, a non-resident with a business in town should be able to serve, as the project would also impact businesses.
- Mayor Marley suggested that Councilmembers, excluding himself and Vice-Mayor Croft, nominate a member for the Committee and allow the Committee members to determine one of them as alternate.
- Council reviewed the Committee charter and discussed eligibility for the three current members.

Town Attorney Smiley advised that the agenda item did not allow them to amend either the charter or the current members.

Councilmember Hatch nominated Robert MacCaullay; Councilmember McKee nominated Michael Edmonds; Councilmember Turner nominated Dave Mazy, Councilmember Wojcik nominated Lee Dudley, and Councilmember Best stated that he did not have a nominee at this time.

Dave Mazy removed himself from nomination, as he was a county resident.

Mayor Marley stated that, as Council will need the Committee's recommendation by May 13, the Committee will need to meet very soon.

MOVED by Vice-Mayor Darryl Croft, seconded by Councilmember Linda Hatch to appoint those citizens and the other appointees from Councilmember Turner and Councilmember Best.

Vote: 7 - 0 PASSED

Mayor Marley stated that Council will announce the names of the other two appointees on April 22.

- b) Consideration and possible action to direct the SR 89 Utility Project Citizen Committee to review, comment on, and provide Council with a recommendation on a proposal for issuance of a general obligation (GO) bond for water and sewer infrastructure improvements subject to approval by the Chino Valley voters. (Ron Gritman, Public Works Director/Town Engineer)

Recommended Action: Direct the SR 89 Utility Project Citizen Committee to review, comment on, and provide Council with a recommendation on a proposal for the Town to issue a general obligation (GO) bond for water and sewer infrastructure improvements subject to approval by the Chino Valley voters.

Mr. Grittmann reported that the SR 89 Committee recommendations from 2013 were that:

- Council bring the question of project funding in the amount of \$9.5 million from general obligation bonds to voters at a bond election on November 5, 2013.
- Council prioritize project areas based on input from Committee members as follows:
 - Only extend transmission lines that were 12" and larger.
 - Smaller distribution piping will be the responsibility of each individual property owner.
 - Construct area 2 between Perkinsville Road and Road 2 North parallel to SR 89 - \$2.6 million.
 - Construct area 3 between Road 2 North and Center Street parallel to SR 89 - \$2.8 million.
 - Construct area 1A between Road 3 North and Perkinsville Road parallel to SR 89 - \$3.5 million.
 - Expand the Wastewater treatment plant to one million gallons per day - \$4.6 million.
 - Areas 2, 3, 1A and plant expansion total \$13.5 million.
 - Next area for prioritization will be area 4 between Center Street and Road 2 South parallel to SR 89.
- Two items must be completed prior to August 12, 2013:
 - Certainty that the wastewater treatment plant contract was negotiated.
 - Certainty that the acquisition of Prescott water customers and system was negotiated.
 - If these were not completed by August 12, Council should not move forward with bond election. If they were completed, Council should let the voters decide by putting forth the question on the November 5, 2013 ballot.

Since June 11, 2013, significant progress had been made on the two issues that the Committee raised. The City of Prescott water system had been valued and initial efforts had begun on forming an agreement. In addition, values associated with the Fann Construction wastewater treatment plant agreement, along with the Operation and Maintenance Agreement was within a reasonable range of costs.

Should Council choose to follow its path from last year, it would be reasonable to reconvene the SR 89 Committee and seek a recommendation from them as to the next steps. Because time was of the essence, the Committee should be directed to review the Economists.com analysis and other relevant information and provide recommendations to the Council related to the issuance of a general obligation bond for sewer and water system improvements no later than May 13.

Town Manager Smith indicated that he would be the staff liaison for the Committee, which should report their progress to Council on April 22 and their final recommendation on May 13.

Council asked Mr. Smith to provide them with the Committee's meeting schedule.

MOVED by Vice-Mayor Darryl Croft, seconded by Councilmember Pat McKee to direct the SR 89 Utility Project Citizen Committee to review, comment on, and provide Council with a recommendation on a proposal for the Town to issue a general obligation (GO) bond for water and sewer infrastructure improvements subject to approval by the Chino Valley voters.

Vote: 7 - 0 PASSED

- c) Consideration and possible action to schedule and discuss the process for the Town Manager's annual performance review. (Mayor Marley; Vice-Mayor Croft)

Recommended Action: Schedule a date for the Town Manager's annual performance review.

Council reviewed the proposed evaluation instrument, possible goals for the next year, possible parties to submit evaluations, and difficulties with performing last year's appraisal in open session.

Town Attorney Smiley advised that if Council set the appraisal as an executive session, the town manager had the right to request that it be held in open session.

Council preferred to use the instrument as presented, only allow Councilmembers to submit an evaluation, and conduct the appraisal and review goals for next year on April 22.

Town Manager Smith indicated that he did not object to holding the appraisal in executive session.

9) **ADJOURNMENT**

MOVED by Councilmember Linda Hatch, seconded by Councilmember Mike Best to adjourn the meeting at 6:58 p.m.

Vote: 7 - 0 PASSED

Chris Marley, Mayor

ATTEST:

Jami C. Lewis, Town Clerk

CERTIFICATION:

I hereby certify that the foregoing minutes are a true and correct copy of the minutes of the Regular Meeting of the Town Council of the Town of Chino Valley, Arizona held on the 8th day of April, 2014. I further certify that the meeting was duly called and held and that a quorum was present.

Dated this 22nd day of April, 2014.

Jami C. Lewis, Town Clerk

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TOWN OF CHINO VALLEY COUNCIL AGENDA ITEM STAFF REPORT

Town Council Regular Meeting

Item No. 6. c.

Meeting Date: 04/22/2014
Contact Person: Cecilia Watts, General Services Director
 Phone: 928-636-2646 x-1202
Department: General Services
Item Type: Consent
Estimated length of staff presentation: None
Physical location of item: N/A

AGENDA ITEM TITLE:

Consideration and possible action to adopt Resolution No. 14-1031, adopting a Relocation Assistance Plan, as required by the Department of Housing to receive Community Development Block Grant (CDBG) funding.

RECOMMENDED ACTION:

Adopt Resolution No. 14-1031, adopting a Relocation Assistance Plan, as required by the Department of Housing to receive Community Development Block Grant funding.

SITUATION AND ANALYSIS:

Although the project the Council selected for CDBG funding--the paving of roads in the Chino Meadows V area--will not displace any residents, the Department of Housing requires the Council to adopt a resolution stating that should the project displace any residents, the Town has a plan on the replacement of such dwellings. This resolution will become part of the application.

Fiscal Impact

Fiscal Impact?: No

If Yes, Budget Code:

Available:

Funding Source:

Attachments

Resolution 14-1031

RELOCATION ASSISTANCE PLAN
as required under Section 104(d) of the
Housing and Community Development Act of 1974 as amended

RESOLUTION NO. 14-1031

**A RESOLUTION OF THE MAYOR AND COUNCIL OF THE
TOWN OF CHINO VALLEY ADOPTING A RESIDENTIAL
ANTIDISPLACEMENT AND RELOCATION ASSISTANCE
PLAN FOR FY10, AS REQUIRED UNDER SECTION 104(d) OF
THE HOUSING AND COMMUNITY DEVELOPMENT ACT OF
1974 AS AMENDED.**

WHEREAS, Section 104(d) of the Housing and Community Development Act of 1974, as amended, and implementing regulations require that each applicant for Community Development Block Grant funds must adopt, make public and certify that it is following a residential antidisplacement and relocation assistance plan; and

WHEREAS, the Town of Chino Valley is submitting an application to the Arizona Department of Housing for Community Development Block Grant funds.

NOW, THEREFORE, BE IT RESOLVED, that the Mayor and Council of the Town of Chino Valley, do hereby adopt the residential antidisplacement and relocation assistance plan as described below.

RESIDENTIAL ANTIDISPLACEMENT AND RELOCATION ASSISTANCE PLAN

The Town of Chino Valley will replace all occupied and vacant occupiable low/moderate income dwelling units demolished or converted to a use other than as low/moderate income housing as a direct result of activities assisted with funds provided under the Housing and Community Development Act of 1974 as amended.

All replacement housing will be provided within three years of the commencement of the demolition or rehabilitation relating to conversion.

Before obligating or expending funds that will directly result in such demolition or conversion, the Town of Chino Valley will make public and submit to the ADOH CDBG Program the following information in writing:

1. A description of the proposed activity;
2. The general location on a map and approximate number of dwelling units by size (number of bedrooms) that will be demolished or converted to a use other than as LM dwelling units as a direct result of the assisted activity;
3. A time schedule for the commencement and completion of the demolition or conversion;
4. The general location on a map and approximate number of dwelling units by size (number of bedrooms) that will be provided as replacement dwelling units;

5. The source of funding and a time schedule for the provision of replacement dwelling units; and
6. The basis for concluding that each replacement dwelling unit will remain a LM dwelling unit for at least 10 years from the date of initial occupancy.
7. Information demonstrating that any proposed replacement of housing units with smaller dwelling units (e.g., a 2-bedroom unit with two 1-bedroom units), or any proposed replacement of efficiency or single-room occupancy (SRO) units with units of a different size, is appropriate and consistent with the housing needs and priorities identified in the State of Arizona's approved Consolidated Plan (ACP).

The Town of Chino Valley will provide relocation assistance, as described in the ACP and implementing regulations, to each LM household displaced by demolition of housing or by the conversion of a LM dwelling unit to another use as a direct result of assisted activities.

Consistent with the goals and objectives of activities assisted under the ACP, the Town of Chino Valley will take the following steps to minimize displacement of persons from their homes:

1. Coordinate code enforcement with rehabilitation and housing assistance programs.
2. Evaluate housing codes and rehabilitation standards in reinvestment areas to prevent undue financial burden on established owners and tenants.
3. Stage rehabilitation of apartment units to allow tenants to remain in the building/complex during and after the rehabilitation, working with empty units first.
4. Arrange for facilities to house persons who must be relocated temporarily during rehabilitation.
5. Adopt policies to identify and mitigate displacement resulting from intensive public investment neighborhoods.
6. Adopt policies that provide reasonable protections for tenants faced with conversion to a condominium or cooperative.
7. Adopt tax assessment policies, such as deferred tax payment plans, to reduce impact of increasing property tax assessments on lower income owner-occupants or tenants in revitalizing areas.
8. Establish counseling centers to provide homeowners and tenants with information on assistance available to help them remain in their neighborhood in the face of revitalization pressures.

PASSED AND ADOPTED by the Town Council of the Town of Chino Valley this 22nd day of April, 2014.

Chris Marley, Mayor

ATTEST:

Jami C. Lewis, Town Clerk

APPROVED AS TO FORM:

Curtis, Goodwin, Sullivan, Udall & Schwab, PLC
Town Attorneys
By: Phyllis Smiley

I hereby certify the above foregoing Resolution No. 14-1031 was duly passed by the Council of the Town of Chino Valley, Arizona, at a regular meeting held on April 22, 2014, and that quorum was present thereat and that the vote thereon was ____ ayes and ____ nays and ____ abstentions. ____ Council members were absent or excused.

Jami C. Lewis, Town Clerk



TOWN OF CHINO VALLEY COUNCIL AGENDA ITEM STAFF REPORT

Town Council Regular Meeting

Item No. **8. a.**

Meeting Date: 04/22/2014
Contact Person: Cecilia Watts, General Services Director
 Phone: 928-636-2646 x-1202
Department: General Services
Item Type: Action-Presentation
Estimated length of staff presentation: 5 minutes
Physical location of item: Campus at 1020 W Palomino Road, Chino Valley, AZ 86323

AGENDA ITEM TITLE:

Consideration and possible action to approve a 5-year real property lease with Yavapai County Community Health Services for the trailer located at the North Campus, 1951 Voss Drive, beginning May 1, 2014 for \$1.00 / year and appropriate utilities.

RECOMMENDED ACTION:

Approve a 5-year real property lease with Yavapai County Community Health Services for the trailer located at the North Campus, 1951 Voss Drive, beginning May 1, 2014 for \$1.00 / year and appropriate utilities.

SITUATION AND ANALYSIS:

The Yavapai County Community Health Services has leased the 12-foot wide Office Trailer located at the Town's Administration Building for the last ten years. The Office Trailer is a 1997 Redman mobile home, Vehicle Number #13517373. The County has remodeled the interior of the Office Trailer in accordance with the Arizona Department of Health Services licensing requirements for Outpatient Treatment Clinics. The Town will lease to the County for a fee of \$1.00 per year the trailer pad where the Office Trailer is located, and will pay \$150.00 per month for utilities (gas and electricity service).

There are three main services being provided in Chino Valley through the leased office space; they are Women, Infant Children (WIC), Health Start, and Nurse Family Partnership and Newborn Intensive Care Program (NICP), serving families throughout the area. The WIC clinic is open on Mondays, Wednesdays, and Thursdays. They see an average of 400 participants a month. Health Start and NICP are maternal child health programs, averaging over 40 visits per month for each program. The lease agreement is for a 5-year term, beginning May 1, 2014 through April 30, 2019.

Fiscal Impact

Fiscal Impact?: No

If Yes, Budget Code:

Available:

Funding Source:

Attachments

Final Lease Agmt

Exhibit A

**REAL PROPERTY LEASE BETWEEN
THE TOWN OF CHINO VALLEY, ARIZONA,
AND
YAVAPAI COUNTY COMMUNITY HEALTH SERVICES**

This Real Property Lease ("Lease") is entered into as of the ____ day of April, 2014 by and between the Town of Chino Valley, Arizona, a municipal corporation and political subdivision of the State of Arizona ("Landlord"), and Yavapai County Community Health Services ("Tenant"). Landlord and Tenant are collectively referred to as the "Parties" and individually referred to as a "Party" in this Lease.

RECITALS

A. Landlord warrants and represents that it owns the 12-foot wide Office Trailer, located at 1951 Voss Drive, Chino Valley, Arizona, in County of Yavapai, Arizona. The Office Trailer is a 1997 Redman Mobile Home, Vehicle Number #13517373. Tenant previously remodeled the interior of the Office Trailer to accommodate service delivery in accordance with Arizona Department of Health Services licensing requirements for Outpatient Treatment Clinics, including a handicap access ramp built in compliance with the Americans with Disabilities Act standards.

B. Landlord wishes to lease to Tenant and Tenant wishes to lease from Landlord the Premises described below, under the terms and conditions of this Lease.

NOW THEREFORE, in exchange for the mutual promises herein contained, Landlord and Tenant hereby agree to the terms and conditions set forth below:

TERMS

SECTION 1. THE PREMISES.

Landlord hereby agrees to lease to Tenant, and Tenant hereby agrees to lease from Landlord, the Office Trailer described above, the trailer pad where the Office Trailer is located, and surrounding area of six feet (6') perimeter of the trailer pad, along with walkways thereto, all of which shall be referred to herein as "the Premises" and is described in Exhibit A, attached hereto and incorporated herein by this reference.

SECTION 2. TERM; RENEWAL; TERMINATION.

A. Initial Term. The term of this Lease shall commence on May 1, 2014 and end on April 30, 2019 (the "Term") or until said term is sooner terminated or extended pursuant to the provisions of this Lease.

B. Renewals. Upon mutual written agreement of Landlord and Tenant, this Lease may be extended for one (1) additional five-year term.

C. Termination. In addition to the termination provisions set forth below in the event of default, either party may terminate this Lease with or without cause by providing written notice

to the other party of the intent to terminate at least ninety (90) days in advance of the termination, or as otherwise provided in A.R.S. § 38-511.

SECTION 3. POSSESSION.

Landlord covenants to provide Tenant with peaceful possession of the Premises and Tenant, by taking possession of the Premises, acknowledges that the Premises are in satisfactory and acceptable condition.

SECTION 4. TENANT'S USE.

A. Allowed Use. Tenant may use and occupy the Premises and improvements thereon for the exclusive purpose of conducting County Community Health Services programs, including, but not limited to: Women, Infants, and Children (WIC), Supplemental Nutrition Program, Immunizations, and other health services that can be appropriately provided in the space available.

B. Prohibited Uses. The Premises shall not be used or occupied for any purposes other than the Allowed Use without obtaining the prior written consent of Landlord, which consent may be withheld in Landlord's sole and arbitrary discretion. Tenant's use of the Premises for any purpose that is not an Allowed Use may, at the Landlord's discretion, constitute a breach.

SECTION 5. BASE RENT.

Tenant hereby agrees to pay and Landlord hereby agrees to accept as rent for the Premises One Dollar (\$ 1.00) per annum. Rent shall be due on the first day of May of each year the lease is in effect during the Term of this Lease. Such rent shall be exclusive of all other amounts payable by Tenant pursuant to this Lease.

SECTION 6. UTILITIES

Tenant shall be responsible for utilities used at the Premises, except water and sewer. Landlord will provide water and sewer utilities to the Premises at no cost to Tenant. As there are no submeters at the property to measure electricity or gas usage, the Public Works Department has estimated current electricity and gas service to be \$150.00 per month. These amounts will be adjusted annually according to the Consumer Price Index (CPI). The adjustment increase will be calculated annually and will be effective on May 1 of every contract year. These utilities will be billed monthly to Yavapai Community Health Services and shall be paid by Tenant within 10 working days of the billing date.

SECTION 7. ALTERATIONS AND IMPROVEMENTS.

Tenant shall make no alterations to or construct any improvements on the Premises without the prior written consent of Landlord. Any such alteration or improvement shall comply with applicable requirements and procedures of the Town of Chino Valley Unified Development Ordinance and technical codes. At the conclusion of the Lease, Tenant shall return property in the same or better condition.

SECTION 8. HAZARDS.

A. Prohibitions. So long as Landlord is required to maintain insurance upon the Premises, Tenant shall not use the Premises, nor permit them to be used, for any purpose which shall increase the existing insurance rates under Landlord's policies for the Premises, or cause the cancellation of any insurance policy of Landlord's covering the Premises without providing contemporaneous and reasonably equivalent replacement coverage, or sell or permit to be kept, used, or sold in or about the Premises, any item that may be prohibited by Landlord's insurance policies, unless the insurance policy is transferred to Tenant by prior written consent of Landlord. Additionally:

1. Tenant shall not store any waste upon the Premises including, but not limited to, pesticides, nor cause any public or private nuisance or other act that may disturb the quiet enjoyment of any other tenant.
2. Tenant shall not allow the Premises to be used for any unlawful or unsafe purpose including, but not limited to, the storage of any flammable materials or hazardous waste.
3. Tenant shall not use any machinery or device on said Premises that may make any noise or cause any vibration that exceeds the Chino Valley Municipal Code levels or that shall in any way be detrimental to the Premises, except by written agreement between the Parties.

B. Indemnification. Each party (as "indemnitor") agrees to indemnify, defend, and hold harmless the other party (as "indemnitee") from and against any and all claims, losses, liability, costs, or expenses (including reasonable attorney's fees) (hereinafter collectively referred to as "claims") arising out of bodily injury of any person (including death) or property damage, but only to the extent that such claims which result in vicarious/derivative liability to the indemnitee, are caused by the act, omission, negligence, misconduct, or other fault of the indemnitor, its officers, officials, agents, employees, or volunteers.

SECTION 9. ENTRY BY LANDLORD.

Landlord, its agents, contractors, and representatives may enter the Premises to inspect or show the Premises. Landlord shall provide Tenant with reasonable prior notice of entry into the Premises, which may be given orally. If reasonably necessary for the protection and safety of Tenant and its employees, Landlord shall have the right of entry into the Premises without prior notice. Nothing herein is intended to be nor shall it be deemed to be in derogation of Landlord's police and public safety powers granted under applicable law. Entry by Landlord shall not constitute constructive eviction or entitle Tenant to an abatement or reduction of rent.

SECTION 10. FIXTURES AND PERSONAL PROPERTY.

Any trade fixtures, equipment, or personal property permanently installed in or permanently attached to the Premises by or at the expense of Tenant shall be and shall remain the property of Tenant. Tenant shall have the right to remove any and all of such property prior to the expiration or termination of this Lease, so long as no default exists under this Lease. Tenant shall, at its expense,

repair any damage caused to the Premises by reason of the removal of any of its trade fixtures, equipment, or other permanently affixed personal property as described above.

SECTION 11. REPAIRS AND MAINTENANCE.

- A. Tenant shall maintain the Premises, including cleaning and general maintenance, and shall keep the Premises in good condition and repair during the term of this Lease. Tenant shall also repair any damage to the Premises caused by Tenant, its employees, agents, invitees, licensees, or visitors. If Tenant fails to make any such repairs or replacements promptly, Landlord may, in its sole discretion, make such repairs after providing at least thirty (30) days prior written notice to Tenant and Tenant shall repay the reasonable cost of such repairs to Landlord upon demand.
- B. Landlord shall provide not less than eight parking spaces, one of which will be marked "Handicapped" for the term of this Agreement. These spaces shall be adjacent to the west side of the Premises. Landlord is responsible for parking lot maintenance and snow removal as needed.
- C. The exterior of the Premises shall be maintained in good condition and repair by Tenant. All repairs or replacements to the Premises, including capital improvements or repairs, or replacement of the Office Trailer, shall be made by Tenant.
- D. All property of any kind which may be on or about the Premises during the term hereof shall be at the sole risk of Tenant and Landlord shall not be liable to Tenant, Tenant's employees, agents or patrons, for any damage caused to Tenant or its property by water, rain, snow, ice, sleet, fire, storms, and accidents or by breakage, stoppage, or leakage of water, gas, electricity, heating, sewer pipes or plumbing on, about, or adjacent to the Premises, and in the event of any such breakage, stoppage, leakage or accident, Tenant shall remedy the same promptly at Tenant's expense and shall hold Landlord harmless and indemnify Landlord from all damages.
- E. If the Premises is destroyed or damaged by fire or other casualty not caused by the act or default of Tenant or Landlord, this Lease may, at the Landlord's option, terminate without liability on the part of the Landlord.

SECTION 12. ASSIGNMENT AND SUBLETTING.

Tenant may not sublet or assign its interest under this Lease without the written consent of Landlord. Landlord's consent shall not be unreasonably withheld but may be conditioned upon Tenant remaining liable for the performance of all obligations under this Lease through the remainder of the Term, together with all extensions, expansions, and renewals that may have been executed by Tenant and Landlord prior to any such assignment.

SECTION 13. DEFAULT BY TENANT.

Tenant shall be considered to be in default of this Lease upon the occurrence of any of the following events of default:

A. Tenant's failure to pay when due all or any portion of the rent, if the failure continues for five (5) business days after written notice to Tenant ("Monetary Default").

B. Tenant's material breach (other than a Monetary Default) of any other term, provision, or covenant of this Lease, if such breach is not cured within ten (10) business days after written notice to Tenant. However, if Tenant's breach cannot reasonably be cured within ten (10) business days, Tenant shall be allowed additional time (not to exceed seventy-five (75) days) as is reasonably necessary to cure the breach so long as: (1) Tenant commences to cure the breach within ten (10) business days, and (2) Tenant diligently pursues a course of action that will cure the breach and bring Tenant back into compliance with the Lease. However, if Tenant's breach creates a hazardous condition including, but not limited to, any breach of the provisions of Section 8, above, the breach must be cured immediately upon notice to Tenant. In addition, if Landlord provides Tenant with notice of Tenant's failure to comply with any particular term, provision or covenant of the Lease on three (3) occasions during any twelve (12) month period, any subsequent violation of such term, provision or covenant shall, at Landlord's option, be an incurable event of default by Tenant.

C. Tenant is unable to pay its debts when due or admits in writing its inability to pay its debts when due, makes a transfer in fraud of creditors or makes an assignment for the benefit of creditors.

D. Tenant obtains its leasehold estate by a taking of the leasehold estate of a prior tenant hereunder by process or operation of law.

E. Tenant is in default beyond any notice and cure period under any other lease or agreement with Landlord.

SECTION 14. REMEDIES.

Upon the occurrence of any Event of Default under this Lease, regardless of whether specifically enumerated in Section 13, Landlord shall have the option to terminate this Lease and Tenant's right of possession, in addition to any relief allowed at law or in equity.

SECTION 15. REDELIVERY OF PREMISES.

Upon termination or expiration of the Lease, Tenant shall return the Premises and physical possession thereof to Landlord in substantially similar or better condition as delivered to Tenant at the commencement of this Lease. All improvements placed on the Premises during the Term of this Lease shall be removed at Landlord's request and at the cost of Tenant. If Tenant fails to remove the improvements within thirty (30) days of written notice by Landlord to do so, Landlord may remove the improvements and charge the cost to the Tenant. Tenant shall pay such costs within ten (10) business days of the date of the invoice for such removal.

SECTION 16. HOLDING OVER.

Any holding over, after the expiration of the Term of this Lease, shall be deemed to constitute a tenancy from month to month only and shall be on the same terms and conditions as specified in

this Lease, so far as applicable, and at a monthly rental equal to that for the last month of the Term of the Lease.

SECTION 17. ATTORNEYS' FEES.

If either Party institutes a lawsuit against the other to construe, enforce, or for breach of this Lease, or if either Party intervenes in any suit in which the other is a Party to enforce or protect its interest or rights pursuant to the Lease, the prevailing Party shall be entitled to all of its costs and expenses including, without limitation, reasonable attorneys' fees.

SECTION 18. TIME IS OF THE ESSENCE.

Time is of the essence in this Lease.

SECTION 19. LIABILITY INSURANCE.

Tenant shall, at Tenant's expense, obtain and keep in force during the term of this Lease a policy of Comprehensive General Liability insurance insuring Landlord and Tenant against any liability and loss arising out of the ownership, use, occupancy or maintenance of the Premises and all areas appurtenant thereto. Minimum coverage for Comprehensive General Liability insurance is \$1,000,000 per occurrence and \$2,000,000 aggregate. The limit of said insurance shall not, however, limit the liability of Tenant hereunder. Tenant may carry said insurance under a blanket policy, providing, however, said insurance by Tenant shall have a Landlord's protective liability endorsement attached thereto. If Tenant shall fail to procure and maintain said insurance, Landlord may, but shall not be required to, procure and maintain same, but at the expense of Tenant. Insurance required hereunder, shall be in companies rated A+, AAA or better in "Best's Insurance Guide". Tenant shall deliver to Landlord, prior to occupancy of the Premises, copies of policies of liability insurance required herein or certificates evidencing the existence and amounts of such insurance with loss payable clauses satisfactory to Landlord. No policy shall be cancelable or subject to reduction of coverage except after ten (10) days' prior written notice to Landlord. In lieu of the above requirements, Tenant, since it is self-insured, shall provide Landlord with proof of its ability to provide similar or greater coverage in the event of a claim. This may be accomplished by providing Landlord with a certificate of self-insurance or similar documentation.

SECTION 20. COMPLIANCE WITH LAWS.

Tenant agrees to observe all laws and governmental regulations applicable to its use of the Premises, together with all reasonable rules and regulations that may be promulgated from time to time by Landlord.

SECTION 21. DEFINITION OF "LANDLORD".

At any relevant point in time, the term "Landlord" shall mean the present owner of the Premises and, in the event of any transfer of ownership, the prior owner shall be released and discharged from future performance of the covenants and obligations of Landlord pursuant to this Lease, but such covenants and obligations shall be binding during the Lease Term on each new owner, and their successors and assigns for the duration of this Lease.

SECTION 22. LANDLORD'S LIEN.

A. Lien. Landlord shall have, at all times, a valid lien for all rentals and other sums of money becoming due under this Lease from Tenant, subject to any purchase money liens or security interests outstanding from time to time to third parties, on all goods, wares, equipment, fixtures, furniture, and other personal property of Tenant situated on and in the Premises. After notice of default is given by Landlord, such property shall not be removed from the Premises without the consent of Landlord which shall be given when all rent in arrears, as well as any and all other sums of money then due to Landlord under this Lease, have been paid.

SECTION 23. ENTIRE AGREEMENT.

This Lease constitutes the entire agreement between the Parties and supersedes all prior agreements and understandings related to the Premises, including all lease proposals, letters of intent and other documents.

SECTION 24. NOTICE.

Wherever in this Lease it is required or permitted that notice or demand be given or served by either Party on the other, such notice or demand shall be deemed given or served when written and hand delivered, or deposited in the United States Mail, certified, return receipt requested, postage prepaid, addressed as follows:

To Landlord: Town Manager
Town of Chino Valley
202 N. State Route 89
Chino Valley, AZ 86323

To Tenant: Director
Yavapai County Community Health Services
1090 Commerce Drive
Prescott, AZ 86305-3700

SECTION 25. NON-AVAILABILITY OF FUNDS

Every payment obligation of Landlord (Town) and Tenant (County) under this Agreement is conditioned upon the availability of funds appropriated or allocated for the payment of such obligation. If funds are not allocated and available for the continuance of the Agreement, this Agreement may be terminated by Landlord or Tenant at the end of the period for which funds are available. No liability shall accrue to Landlord or Tenant in the event this provision is exercised, and neither Landlord nor Tenant shall not be obligated or liable for any future payments or for any damages as a result of termination under this paragraph.

SECTION 26. CONFLICT OF INTEREST

This Agreement is subject to cancellation by either party for conflicts of interest pursuant to A.R.S. § 38-511, as may be amended from time to time. In the event either party elects to

exercise its rights thereunder, the cancelling party agrees to immediately give notice thereof to the other party.

SECTION 27. GOVERNING LAW.

The Lease is governed by the laws of the State of Arizona.

IN WITNESS WHEREOF, each of Landlord and Tenant has caused this Lease to be executed on this ____ day of _____, 2014.

TENANT: Yavapai County Community Health Services

By: _____

Name: _____

Title: _____

LANDLORD: Town of Chino Valley, Arizona

By: _____

Chris Marley, Mayor

APPROVED AS TO FORM:

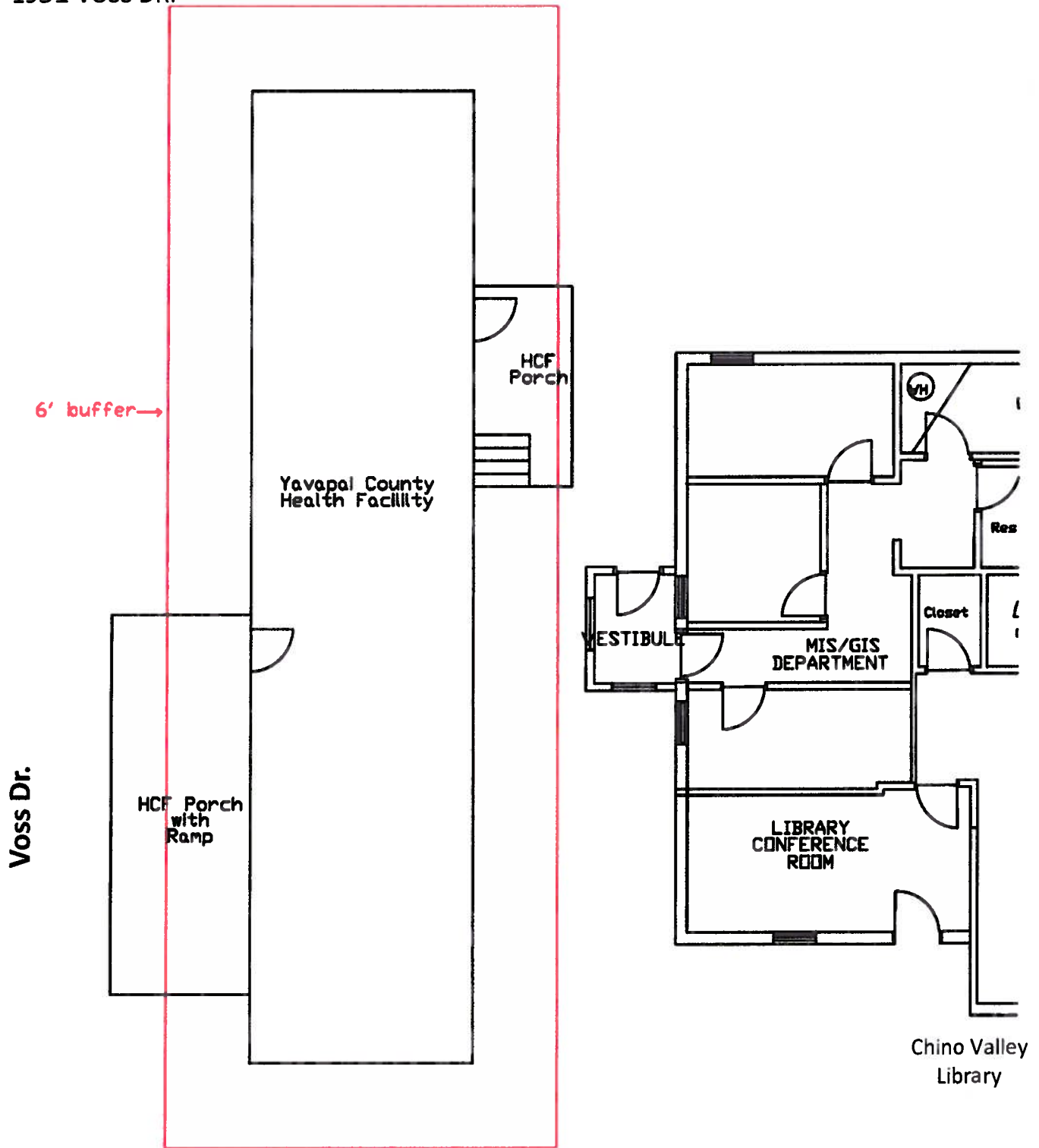
Curtis, Goodwin, Sullivan, Udall & Schwab, PLC
Town Attorneys
By: Phyllis Smiley

Kristina Jezairian
Deputy County Attorney

YAVAPAI COUNTY HEALTH BUILDING

EXHIBIT "A"

1951 VOSS DR.



Palomino Rd.

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TOWN OF CHINO VALLEY COUNCIL AGENDA ITEM STAFF REPORT

Town Council Regular Meeting

Item No. **8. b.**

Meeting Date: 04/22/2014
Contact Person: Jami Lewis, Town Clerk
 Phone: 928-636-2646 x-1208
Department: Council
Item Type: Action
Estimated length of staff presentation: None
Physical location of item: Yavapai Community College Chino Valley campus, Old Home Manor, 2275 Old Home Manor Drive

AGENDA ITEM TITLE:

Consideration and possible action to authorize the Mayor to sign a letter to the Yavapai College President, Dr. Penny Wills, regarding disposition of the Chino Valley Campus in the College's 10-year plan.

RECOMMENDED ACTION:

Discuss and revise draft letter per discussion and authorize the Mayor to sign and send the letter.

SITUATION AND ANALYSIS:

Per the Yavapai Community College District's 10-year plan, which is still under review, the college's satellite facility in Chino Valley at Old Home Manor will be closed. This item is designed to give Council an opportunity to provide feedback on the College's long range plan and to discuss a draft letter to send to the College.

Fiscal Impact

Fiscal Impact?: No

If Yes, Budget Code:

Available:

Funding Source:

Attachments

Draft letter to Yavapai College President



Mayor Chris Marley
202 N State Route 89
Chino Valley, AZ 86323

Phone (928) 636-2646
Fax (928) 636-2144
cmarley@chinoaz.net
www.chinoaz.net

April #, 2014

Dr. Penny Wills, President
Yavapai College
1100 E. Sheldon
Prescott, AZ 8630__

Dear Dr. Wills:

After considered thought and discussion, the Town of Chino Valley would like to express its concern over the possible closure of the College's satellite facility in Chino Valley at Old Home Manor. We understand the College's 10 year plan is still under review, and that the college's business model must shift with changing regulatory, economic and educational environments, however, we believe the satellite facility will prove to be a critical asset for our community as it grows and develops.

The Town has several initiatives under way that will facilitate the addition of employers, retail and commercial functions, tourism and development to Town, and we believe that the College's physical presence in our community will be a much needed element in our success. In short, the following initiatives should conclude by or before mid 2016 – the bulk of which are designed to stimulate economic development and the expansion of infrastructures. We are certain that we will need the college's assistance through and after this effort and know that the satellite will be a strategic asset as our local market and community mature.

1. Adoption and public vote on Town's new General Plan & Policies
2. Adoption of Council's Strategic Plan
3. Creation and Adoption of an Economic Development Plan
4. ADOT Expansion of HWY 89 to 4 lanes from Town to Ruger Road
5. ADOT installation of round-a-bouts at Road 4 North, Perkinsville Road and Road 4 ½ South
6. Installation of Road 1 East Extension and collector streets to Hwy 89 near Road 5 South
7. Installation of Road 4 South extension, to the Peavine ROW
8. Installation of Flood Control facilities at the east end of Center Street
9. Installation of Center Street to make it a through road to Hwy 89
10. Installation of a road in the Peavine Right of Way, Connecting Road 4 South to Center Street
11. Possible \$13M Bond Issue Nov. 2014 for expansion of water & sewer systems on Hwy 89
12. Grant Applications to extend water, sewer and natural gas to Old Home Manor Industrial Park, creating shovel ready lots
13. Grant Applications to extend Road 4 North to Old Home Manor, creating alternate access to the industrial park
14. Development exactions to pave & create an entrance to Old Home Manor Industrial Park
15. Grant funding to expand shooting facilities and expo space at Old Home Manor's East end
16. Grant funding to install RV facilities to support multi-day tourism events at Old Home Manor's East end



Mayor Chris Marley
202 N State Route 89
Chino Valley, AZ 86323

Phone (928) 636-2646
Fax (928) 636-2144
cmarley@chinoaz.net
www.chinoaz.net

17. \$268,000 CDBG paving project in Chino Meadows
18. \$275,000 Housing Rehabilitation Project

The Town is actively seeking to facilitate forward motion in our economy, and knows it will need the College's help in doing so – and the loss or closure of the satellite at Old Home Manor would deal a heavy blow to our efforts to improve the community. Further, the property at Old Home Manor plays a prominent role in our efforts to create employment centers, and we are certain that our relationship with the College, through the satellite facility, will be a core success factor in our plans.

While we understand the constraints and difficulties faced in planning for today's 'new normal' we adamantly request that the College reconsider its plan for abandoning the Chino Valley satellite. We need your help and the enrichment you can bring to our community, and we look forward to the leveraged impact we can create for our community by working together.

Respectfully,

Chris Marley, Mayor
Town of Chino Valley

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TOWN OF CHINO VALLEY COUNCIL AGENDA ITEM STAFF REPORT

Town Council Regular Meeting

Item No. **8. c.**

Meeting Date: 04/22/2014
Contact Person: Jami Lewis, Town Clerk
 Phone: 928-636-2646 x-1208
Department: Town Clerk
Item Type: Action-Presentation
Estimated length of staff presentation: 15 minutes
Physical location of item: N/A

AGENDA ITEM TITLE:

Consideration and possible action to adopt Ordinance No. 14-783, amending the Town Code, Title II Administration, Chapter 30 Governing Body and Chapter 36 Legislative Provisions, and adding new Chapter 37 Elections, related to reorganizing the Code for clarity and to update the Code to conform to state law with regard to elections.

RECOMMENDED ACTION:

Adopt Ordinance No. 14-783, amending the Town Code, Title II Administration, Chapter 30 Governing Body and Chapter 36 Legislative Provisions, and adding new Chapter 37 Elections.

SITUATION AND ANALYSIS:

See Attached

Fiscal Impact

Fiscal Impact?: No

If Yes, Budget Code:

Available:

Funding Source:

Attachments

Situation & Analysis

Ordinance 14-783

Presentation

Consolidated Elections Code Amendments

SITUATION & ANALYSIS

Issue Statement

In 2013, the Arizona Legislature amended ARS § 16-204, consolidating municipal elections with state elections and requiring municipal candidate elections to be held in the fall of even-numbered years, beginning with elections in the year 2014. In order to comply with this new state law, Chino Valley is required to amend its Town Code election provisions and provisions related to the Mayor taking office and the election of the Vice Mayor by the Council.

When we began to prepare these Code amendments, it became clear that there were other revisions to the Town Code that we would recommend for clarification and organization:

- The “Initiative and Referendum” and “Qualified Elector” definitions are in the “Legislative Provisions” Chapter of the Town Code and should, instead be in a separate “Elections” chapter.
- In Chapter 36 of the Town Code, the only section under the heading “Petition Circulators” is the definition of “Qualified Elector” which is not related to Petition Circulators. We recommend deleting the heading and the definition.
- § 36.21 is unclear. We recommend it be reworded to clarify its meaning.
- §§ 36.22 and 36.23 merely restate State law and are unnecessary. We recommend deleting them so that the Town Code does not need to be amended every time the Arizona legislature amends state law.
- § 36.40, the definition of “Qualified Elector” only applies to the reservation of the rights of referendum and initiative and is a restatement of state law. We recommend it be deleted from the Town Code.

Applicable “Policy”

- Conformity with State laws related to elections, including but not limited to A.R.S. § 16-204.
- Provide for clear, up-to-date Town Code for better understanding of its provisions.

Satisfaction of “Policy”

- Deleting provisions that are restatement of State law eliminates redundancy and prevents future conflicts between State and Town laws.
- Locating all election-related provisions to be found in one Chapter (new Chapter 37) of the Town Code provides clarity and better organization of the Code.

Summary of Issues and Staff Rationale

To achieve the goals stated above, we prepared the attached ordinance, as follows:

- § 30.003 is amended to change the dates for assuming office for the Mayor and Council members from June to January since the election was moved from spring to fall.

- § 30.020 is amended by amending the title of the section only from “Election” to “Direct Election of Mayor” since that is what the section addresses and we need to use “Elections” for the name of the new Chapter 37 that is all about elections.
- § 30.021 is amended to say that the election of the Vice Mayor will now occur at the first regularly meeting in January following an election, rather than June.
- §§ 30.040 Primary Election, 30.041 Non-Political Ballot, 30.042 General Election Nomination, 30.043 Election to Office, 30.044 Candidate Financial Disclosure, 36.20 Power Reserved; Time of Election, 36.21 Number of Signatures, 36.22 Time of Filing, and 36.23 Sample Ballots and Publicity Pamphlets are all deleted, although some of the provisions re-appear in the new Chapter 37.
- New Chapter 37 Elections is adopted and added to the Code, consisting of separate headings for “In General”, “Council Elections” and “Initiative and Referendum Elections” and the following sections:
 - o § 37.001 Election Day: setting the primary and general elections on the same dates as the dates of the primary and general elections for the State of Arizona.
 - o § 37.020 Non-political Ballot which is the same as the prior § 30.041.
 - o § 37.021 Election of Mayor or Councilmember at Primary Election includes prior § 30.040 and addresses the situation where more candidates receive a majority of votes than are seats available and also includes the manner of calculating whether a candidate receives a majority of all votes cast.
 - o § 37.022 General Election Nomination which is basically a re-wording of prior § 36.042.
 - o § 37.023 Election to Office is the same as prior § 30.043.
 - o § 37.024 Candidate Financial Disclosure is the same as prior § 30.044 with the addition of “pursuant to state law” at the end of the sentence.
 - o § 37.030 Power Reserved which is the first sentence of prior § 36.20.
 - o § 37.031 Time of Election addresses what was previously addressed in the second sentence of prior § 36.20. It reflects current State law.
 - o § 37.032 Number of Signatures contains the same information as prior § 36.21. It has been reworded for clarity.

Findings of Fact

Staff recommends approval of the Ordinance amending the Town Code election provisions to conform to State law and better organize and clarify the provisions of the Town Code.

ORDINANCE NO. 14-783

AN ORDINANCE OF THE MAYOR AND COMMON COUNCIL OF THE TOWN OF CHINO VALLEY, ARIZONA, AMENDING THE CODE OF THE TOWN OF CHINO VALLEY, YAVAPAI COUNTY, ARIZONA, TITLE III, ADMINISTRATION, CHAPTER 30 GOVERNING BODY, SUBHEADING TOWN COUNCIL BY AMENDING § 30.003 DUTIES OF OFFICE TO CHANGE THE DATE FOR ASSUMING OFFICE FROM JUNE TO JANUARY; AMENDING SUBHEADING “MAYOR” BY AMENDING THE NAME OF § 30.020 ELECTION TO CLARIFY THAT IT REFERS TO DIRECT ELECTION OF THE MAYOR; AND BY AMENDING § 30.021 VICE MAYOR TO CHANGE THE ELECTION OF THE VICE MAYOR FROM JUNE TO JANUARY; DELETING SUBHEADING “COUNCIL ELECTION” AND §§ 30.040 PRIMARY ELECTION, 30.041 NON-POLITICAL BALLOT, 30.042 GENERAL ELECTION NOMINATION, 30.043 ELECTION TO OFFICE, AND 30.044 CANDIDATE FINANCIAL DISCLOSURE TO UPDATE THE PROVISIONS AND MOVE THEM TO NEW CHAPTER 37; AMENDING CHAPTER 36 LEGISLATIVE PROVISIONS BY DELETING SUBHEADINGS “INITIATIVE AND REFERENDUM” AND “PETITION CIRCULATORS” AND SECTIONS 36.20 POWER RESERVED; TIME OF ELECTION, 36.21 NUMBER OF SIGNATURES, 36.22 TIME OF FILING, 36.23 SAMPLE BALLOTS AND PUBLICITY PAMPHLETS AND 36.40 QUALIFIED ELECTOR; DEFINITION; AND BY ADDING NEW CHAPTER 37 ELECTIONS, SUBHEADING “IN GENERAL”, § 37.001 ELECTION DAY RELATED TO SETTING FORTH THE DATES FOR ELECTIONS IN COMPLIANCE WITH A.R.S. SECTION 16-204, SUBHEADING “COUNCIL ELECTIONS”, §§ 37.020 NON-POLITICAL BALLOT, 37.021 ELECTION OF MAYOR OR COUNCILMEMBER AT PRIMARY ELECTION, 37.022 GENERAL ELECTION NOMINATION, 37.023 ELECTION TO OFFICE, 37.024 CANDIDATE FINANCIAL DISCLOSURE, AND SUBHEADING “INITIATIVE AND REFERENDUM ELECTIONS”, §§ 37.030 POWER RESERVED, 37.031 TIME OF ELECTION AND 37.032 NUMBER OF SIGNATURES, ALL RELATED TO REORGANIZING THE CODE FOR CLARITY AND TO UPDATE THE CODE TO CONFORM TO STATE LAW; PROVIDING FOR REPEAL OF CONFLICTING ORDINANCES; AND PROVIDING FOR SEVERABILITY

WHEREAS, the Town of Chino Valley currently holds its primary and general elections in the spring of odd-numbered years; and

WHEREAS, Arizona Revised Statutes § 16-204 was amended to require candidate elections for municipalities beginning in the year 2014 to be held in the fall of even numbered years; and

WHEREAS, Arizona Revised Statutes § 16-204 was also amended to provide an alternative method for municipalities to calculate the number of votes cast at a municipal election for the purpose of determining whether a candidate for mayor or council received a majority of the votes cast at a primary election; and

WHEREAS, the Town Council hereby determines that adopting the alternative allowed by the statute may reduce election expenses to the Town,

NOW THEREFORE BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF CHINO VALLEY, AS FOLLOWS:

Section I. In General.

The Town of Chino Valley, Arizona, Code of Ordinances, Title III Administration, Chapter 30 Town Council, is hereby amended by amending Section 30.003 Duties Of Office to read as follows (additions in ALL CAPS; deletions in ~~strikeout~~):

§ 30.003 DUTIES OF OFFICE.

The Mayor and Council members shall assume the duties of office at the first regularly scheduled meeting in ~~June~~ JANUARY following an election at which the Mayor or Council members were elected.

The Town of Chino Valley, Arizona, Code of Ordinances, Title III Administration, Chapter 30 Town Council, is hereby amended by amending Section 30.020 Election to read as follows (additions in ALL CAPS; deletions in ~~strikeout~~):

§ 30.020 DIRECT Election OF MAYOR.

The Mayor shall be directly elected by the qualified electors of the town.

The Town of Chino Valley, Arizona, Code of Ordinances, Title III Administration, Chapter 30 Town Council, is hereby amended by amending Section 30.021 Vice Mayor to read as follows (additions in ALL CAPS; deletions in ~~strikeout~~):

§ 30.021 VICE MAYOR.

At the first regular meeting in ~~June~~ JANUARY following an election, the newly elected Mayor shall nominate ~~±~~ONE of the Council members as Vice Mayor, and upon approval by the majority of the Council including the Mayor, the Vice Mayor shall be so elected and shall serve at the pleasure of the Council. The Vice Mayor shall perform the duties of the Mayor during the Mayor's absence or disability.

The Town of Chino Valley, Arizona, Code of Ordinances, Title III Administration, Chapter 30 Town Council, is hereby amended by deleting the heading "Council Election" and Sections 30.040 Primary Election, 30.041 Non-Political Ballot, 30.042 General Election Nomination, 30.043 Election to Office, and 30.044 Candidate Financial Disclosure.

The Town of Chino Valley, Arizona, Code of Ordinances, Title III Administration, Chapter 36 Legislative Provisions, is hereby amended by deleting the headings "Initiative and

Referendum” and “Petition Circulators” and Sections 36.20 Power reserved; time of election, 36.21 Number of Signatures, 36.22 Time of Filing, 36.23 Sample ballots and Publicity Pamphlets, and 36.40 Qualified Elector; Definition.

The Town of Chino Valley, Arizona, Code of Ordinances, Title III Administration, is hereby amended by creating a new Chapter 37 Elections to read as follows:

CHAPTER 37: ELECTIONS

IN GENERAL

§ 37.001 ELECTION DAY.

COMMENCING WITH THE ELECTIONS IN 2014, THE PRIMARY ELECTION SHALL BE HELD ON THE DATE OF THE PRIMARY ELECTION OF THE STATE OF ARIZONA. THE GENERAL ELECTION SHALL BE HELD ON THE DATE OF THE GENERAL ELECTION OF THE STATE OF ARIZONA.

COUNCIL ELECTIONS

§ 37.020 NON-POLITICAL BALLOT.

NOTHING ON THE BALLOT IN ANY ELECTION SHALL BE INDICATIVE OF THE SOURCE OF THE CANDIDACY OR SUPPORT OF THE CANDIDATE.

§ 37.021 ELECTION OF MAYOR OR COUNCILMEMBER AT PRIMARY ELECTION.

A. AT THE PRIMARY ELECTION, ANY CANDIDATE FOR THE OFFICE OF MAYOR OR TOWN COUNCIL WHO RECEIVES A MAJORITY OF ALL VOTES CAST AT SUCH ELECTION SHALL BE DECLARED ELECTED TO THE OFFICE FOR WHICH HE OR SHE IS A CANDIDATE, EFFECTIVE AS OF THE DATE OF THE GENERAL ELECTION, AND NO FURTHER ELECTION SHALL BE HELD AS TO SUCH CANDIDATE.

B. IF MORE CANDIDATES RECEIVE A MAJORITY THAN THERE ARE OFFICES TO BE FILLED, THEN THOSE EQUAL IN NUMBER TO THE OFFICES TO BE FILLED RECEIVING THE HIGHEST NUMBER OF VOTES SHALL BE DECLARED ELECTED.

C. THE TOTAL OF ALL VOTES CAST FOR THE CANDIDATES FOR THE OFFICE OF MAYOR CONSTITUTES THE TOTAL NUMBER OF VOTES CAST AT THE ELECTION AND SHALL BE THE BASIS FOR CALCULATING WHETHER A CANDIDATE FOR MAYOR OR TOWN COUNCIL HAS RECEIVED A MAJORITY OF ALL VOTES CAST AT THE ELECTION.

§ 37.022 GENERAL ELECTION NOMINATION.

IF AT A PRIMARY ELECTION THERE IS ANY OFFICE FOR WHICH NO CANDIDATE WAS ELECTED, THEN AS TO THAT OFFICE, THE ELECTION SHALL BE CONSIDERED TO BE A PRIMARY ELECTION FOR NOMINATION

OF CANDIDATES FOR THE OFFICE, AND A GENERAL ELECTION SHALL BE HELD TO VOTE FOR CANDIDATES TO FULFILL THE OFFICE. CANDIDATES TO BE PLACED ON THE BALLOT AT THE GENERAL ELECTION SHALL BE THOSE NOT ELECTED AT THE PRIMARY ELECTION, SHALL BE EQUAL IN NUMBER TO TWICE THE NUMBER TO BE ELECTED TO ANY GIVEN OFFICE OR LESS THAN THAT NUMBER IF THERE ARE FEWER THAN THAT NUMBER NAMED ON THE PRIMARY ELECTION BALLOT, AND PERSONS WHO RECEIVE THE HIGHEST NUMBER OF VOTES FOR THE RESPECTIVE OFFICES AT THE PRIMARY ELECTION SHALL BE THE ONLY CANDIDATES AT THE GENERAL ELECTION; PROVIDED, THAT IF THERE IS ANY PERSON WHO, UNDER THE PROVISIONS OF THIS SUBCHAPTER, WOULD HAVE BEEN ENTITLED TO BECOME A CANDIDATE FOR ANY OFFICE EXCEPT FOR THE FACT THAT SOME OTHER CANDIDATE RECEIVED AN EQUAL NUMBER OF VOTES THEREFOR, THEN ALL SUCH PERSONS RECEIVING AN EQUAL NUMBER OF VOTES SHALL LIKEWISE BECOME CANDIDATES FOR THE OFFICE.

§ 37.023 ELECTION TO OFFICE.

THE CANDIDATES EQUAL IN NUMBER TO THE PERSONS TO BE ELECTED WHO RECEIVE THE HIGHEST NUMBER OF VOTES SHALL BE DECLARED ELECTED.

§ 37.024 CANDIDATE FINANCIAL DISCLOSURE.

EACH CANDIDATE FOR THE OFFICE OF MAYOR OR COUNCILMEMBER SHALL FILE A FINANCIAL DISCLOSURE STATEMENT WHEN THE CANDIDATE FILES A NOMINATION PAPER. THE STATEMENT SHALL CONTAIN SUCH INFORMATION AS REQUIRED BY RESOLUTION OF THE COUNCIL PURSUANT TO STATE LAW.

INITIATIVE AND REFERENDUM ELECTIONS

§ 37.030 POWER RESERVED.

THERE IS RESERVED TO THE QUALIFIED ELECTORS OF THE TOWN THE POWER OF THE INITIATIVE AND REFERENDUM AS PRESCRIBED BY THE STATE CONSTITUTION.

§ 37.031 TIME OF ELECTION.

A. WHEN A REFERENDUM OR INITIATIVE IS REQUIRED TO BE PLACED UPON THE BALLOT, THE COUNCIL SHALL DO SO EITHER:

1. AT THE NEXT REGULARLY SCHEDULED TOWN PRIMARY OR GENERAL ELECTION OR STATE GENERAL ELECTION; OR
2. AT ITS DISCRETION, THE COUNCIL MAY CALL A SPECIAL ELECTION TO BE HELD ON ANY DATE AUTHORIZED BY

A.R.S. SECTION 16-204 TO PLACE A REFERENDUM OR
INITIATIVE UPON THE BALLOT.

B. AT ALL TIMES THE CITIZENS SHALL RETAIN THE RIGHT TO VOTE BY ABSENTEE BALLOT.

§ 37.032 NUMBER OF SIGNATURES.

A. THE BASIS UPON WHICH THE NUMBER OF QUALIFIED ELECTORS OF THE TOWN REQUIRED TO FILE AN INITIATIVE PETITION SHALL BE THE TOTAL NUMBER OF REGISTERED VOTERS QUALIFIED TO VOTE IN THE LAST TOWN ELECTION, WHETHER PRIMARY, GENERAL, OR SPECIAL, IMMEDIATELY PRECEDING THE DATE UPON WHICH ANY INITIATIVE PETITION IS FILED.

B. THE BASIS UPON WHICH THE NUMBER OF QUALIFIED ELECTORS OF THE TOWN REQUIRED TO FILE A REFERENDUM PETITION SHALL BE AS DETERMINED BY STATE LAW.

Section II. Repeal of Conflicting Ordinances.

All ordinances and parts of ordinances in conflict with the provisions of this Ordinance are hereby repealed.

Section III. Providing for Severability.

If any section, subsection, sentence, clause, phrase or portion of this Ordinance or any part of the Code adopted herein by reference, is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions thereof.

PASSED AND ADOPTED by the Mayor and Common Council of the Town of Chino Valley, Arizona, this 22nd day of April, 2014 by the following vote:

AYES: _____
NAYS: _____

ABSENT: _____
ABSTAINED: _____

APPROVED this 22nd day of April, 2014.

Chris Marley, Mayor

ATTEST:

Jami C. Lewis, Town Clerk

APPROVED AS TO FORM:

Curtis, Goodwin, Sullivan, Udall & Schwab, PLC
Town Attorneys
By: Phyllis L.N. Smiley

I, JAMI LEWIS, TOWN CLERK, DO HEREBY CERTIFY THAT A TRUE AND CORRECT COPY OF THE ORDINANCE NO. 14-783 ADOPTED BY THE COMMON COUNCIL OF THE TOWN OF CHINO VALLEY ON THE 22ND DAY OF APRIL, 2014, WAS POSTED IN THREE PLACES ON THE ____ DAY OF _____, 2014.

Jami C. Lewis, Town Clerk



Town Code Update Ordinance 14-783

Town Clerk

April 22, 2014

Town Code Changes

HB 2826 necessitates certain amendments to Town Code:

- Chapter 30 Governing Body
 - Subheadings: Town Council; Mayor; Council Election
- Chapter 36 Legislative Provisions
 - Subheadings: Initiative and Referendum; Petition Circulators

Town Code Changes

Good opportunity to amend other sections of Town Code to consolidate election-related text in §§ 30.040-30.044 Council Election and §§ 36.20-36.40 Initiative and Referendum to new Chapter 37

§ 30.003 Duties of Office

The Mayor and Council members shall assume the duties of office at the first regularly scheduled meeting in ~~June~~ JANUARY following an election at which the Mayor or Council members were elected.

§ 30.021 Vice Mayor

At the first regular meeting in ~~June~~ JANUARY following an election, the newly elected Mayor shall nominate 1 of the Council members as Vice Mayor . . .

Chapter 30 to New 37

Council Elections

- § ~~30.040~~ 37.021 Primary Election
- § ~~30.041~~ 37.020 Non-Political Ballot
- § ~~30.042~~ 37.022 General Election
Nomination (with minor amendments)
- § ~~30.043~~ 37.023 Election to Office
- § ~~30.044~~ 37.024 Candidate Financial
Disclosure

Chapter 36 to New 37

Initiative and Referendum

- ~~§ 36.20~~ 37.030 Power Reserved; Time of Election (with minor amendment)
- ~~§ 36.21~~ 37.032 Number of Signatures (with minor amendments)
- ~~§ 36.22~~ Time of Filing (deleted-redundant)
- ~~§ 36.23~~ Sample Ballots and Publicity Pamphlets (deleted-redundant)

Chapter 36 Restructure

Petition Circulators

- ~~§ 36.40~~ Qualified Elector; Definition (deleted-redundant)

New Chapter 37 Elections New Sections/Amendments

§ 37.001 Election Day (new)

COMMENCING WITH THE ELECTIONS IN 2014, THE PRIMARY ELECTION SHALL BE HELD ON THE DATE OF THE PRIMARY ELECTION OF THE STATE OF ARIZONA. THE GENERAL ELECTION SHALL BE HELD ON THE DATE OF THE GENERAL ELECTION OF THE STATE OF ARIZONA.

§ 37.021 Election of Mayor or Councilmember at Primary Election

C. THE TOTAL OF ALL **VOTES CAST** FOR THE CANDIDATES FOR THE **OFFICE OF MAYOR** CONSTITUTES THE TOTAL NUMBER OF VOTES CAST AT THE ELECTION AND SHALL BE THE BASIS FOR CALCULATING WHETHER A CANDIDATE FOR MAYOR OR TOWN COUNCIL HAS RECEIVED A MAJORITY OF ALL VOTES CAST AT THE ELECTION.

§ 37.030 Power Reserved (Initiative and Referendum)

There is reserved to the qualified electors of the town the power of the initiative and the referendum as prescribed by the state constitution. ~~Any initiative or referendum matter may be voted on at the next ensuing primary or general election, or at a special election called by the Council for such purpose.~~ (sentence re-worded in § 37.031)

§ 37.031 Time of Election

A. WHEN A REFERENDUM OR INITIATIVE IS REQUIRED TO BE PLACED UPON THE BALLOT, THE COUNCIL SHALL DO SO EITHER:

1. AT THE NEXT REGULARLY SCHEDULED TOWN PRIMARY OR GENERAL ELECTION OR STATE GENERAL ELECTION; OR
2. AT THEIR DISCRETION, THE COUNCIL MAY CALL A SPECIAL ELECTION TO BE HELD ON ANY DATE AUTHORIZED BY A.R.S. SECTION 16-204.

B. AT ALL TIMES THE CITIZENS SHALL RETAIN THE RIGHT TO VOTE BY ABSENTEE BALLOT.



TOWN OF CHINO VALLEY COUNCIL AGENDA ITEM STAFF REPORT

Town Council Regular Meeting

Item No. **8. d.**

Meeting Date: 04/22/2014
Contact Person: Jami Lewis, Town Clerk
 Phone: 928-636-2646 x-1208
Department: Town Clerk
Item Type: Action-Presentation
Estimated length of staff presentation: None
Physical location of item: N/A

AGENDA ITEM TITLE:

Consideration and possible action to adopt Resolution No. 14-1028, extending the terms of the sitting mayor and councilmembers to comply with A.R.S. S 16-204, as amended, related to consolidated elections.

RECOMMENDED ACTION:

Adopt Resolution No. 14-1028, extending the terms of the sitting mayor and councilmembers.

SITUATION AND ANALYSIS:

See Attached

Fiscal Impact

Fiscal Impact?: No
If Yes, Budget Code:
Available:
Funding Source:

Attachments

Situation & Analysis
Resolution 14-1028

Agenda Item Staff Report SITUATION & ANALYSIS

Issue Statement

Brief narrative description of the issue at hand, including information about the problem or reason why Council involvement is required, why the item is now suitable for Council consideration and requires Council action for the item to move forward.

In 2012, the Arizona State Legislature amended A.R.S. § 16-204 to consolidate all regular candidate elections including those of the Town of Chino Valley, Arizona to the fall of even numbered years starting in 2014. As such, the Town cannot hold a candidate election at the end of the mayor's and councilmembers' terms. In subsequent action, the legislature deemed that municipalities could not shorten the terms of their mayor and council; therefore, in order to comply with the new law, the Town must adjust the mayor's and councilmembers' current length of terms so that their terms will expire following the next General Election, which will be held in November 2016.

Therefore, it will be necessary to: (i) extend Mayor Chris Marley's term so that it expires when his successor assumes office following the 2016 election; (ii) extend Vice-Mayor Croft's, Councilmember Best's, and Councilmember Turner's terms so that they expire when their successors assume office following the 2016 election; and (iii) extend Councilmember Hatch's, Councilmember McKee's, and Councilmember Wojcik's terms so that they expire when their successors assume office following the 2018 election.

Applicable "Policy"

Bulleted list, by section number and title, of the statute, code, plan, policy, goal, initiative, etc. relevant to the issue that must be satisfied in order to resolve the issue. A brief summary of the "policy" section(s) may be included if there are multiple issues or details that need to be covered.

- A.R.S. § 16-204
- Requested by Yavapai County Recorder/Elections with regard to the Town's Contract for Election Services

Satisfaction of "Policy"

Bulleted list, by section number and title, of the above relevant "policies," with a narrative explaining how each of them were/will be met or satisfied.

- While a resolution is not required by law, the County is requesting something in writing to the effect that the Town is lengthening the terms of its mayor and council; and the town clerk, as records manager, has historically entered such historic changes into the permanent record by resolution.

Summary of Issues and Staff Rationale

Narrative explaining the issue at hand and how/why the staff proposed solution(s) are best for the Town. This may include more than one resolution or solution/alternative for Council to consider.

N/A

Findings of Fact

Bulleted list of staff findings that support the determination that the proposed resolution is the best solution for the Town.

- The amendment to A.R.S. § 16-204 requires that the Town change its candidate elections from the spring of odd-numbered years to the fall of even-numbered years.

- The only option given by the legislature to address the terms of the current sitting mayor and council is to lengthen their terms.
- While the law necessitates this action and the proposed resolution is not required, it is the Town's practice to enter such actions into the permanent record by resolution.

RESOLUTION NO. 14-1028

A RESOLUTION OF THE MAYOR AND COMMON COUNCIL OF THE TOWN OF CHINO VALLEY, COUNTY OF YAVAPAI, ARIZONA, EXTENDING THE TERMS OF THE SITTING MAYOR AND COUNCILMEMBERS TO COMPLY WITH A.R.S. § 16-204, AS AMENDED, RELATED TO CONSOLIDATED ELECTIONS

WHEREAS, the Arizona State Legislature in 2012 amended A.R.S. § 16-204 to consolidate all regular candidate elections including those of the Town of Chino Valley, Arizona to the fall of even numbered years; and

WHEREAS, the amendments to A.R.S. § 16-204 consolidate elections beginning in 2014; and

WHEREAS, because of the consolidated elections, the Town of Chino Valley cannot hold elections at the end of the terms of the Mayor and Councilmembers; and

WHEREAS, in order to comply with the consolidation of elections, the Town must adjust the length of terms of the Mayor and members of the Town Council currently so that their terms will expire following the General Election in November of even numbered years;

NOW THEREFORE, BE IT RESOLVED by the Mayor and Common Council of the Town of Chino Valley, Arizona, that:

1. The term of Mayor Chris Marley will expire when his successor assumes office following the 2016 election.

2. The terms of those Council Members whose terms expire in the Spring of 2015 will be extended to when their successors assume office following the 2016 election.

3. The terms of those Council Members whose terms expire in the Spring of 2017 will be extended to when their successors assume office following the 2018 election.

PASSED AND ADOPTED by the Mayor and Common Council of the Town of Chino Valley, Arizona this 22nd day of April, 2014.

Chris Marley, Mayor

ATTEST:

Jami C. Lewis, Town Clerk

APPROVED AS TO FORM:

Curtis, Goodwin, Sullivan, Udall & Schwab, PLC
Town Attorneys
By: Phyllis Smiley

I hereby certify the above foregoing Resolution No. 14-1028 was duly passed by the Council of the Town of Chino Valley, Arizona, at a regular meeting held on April 22, 2014, and that quorum was present thereat and that the vote thereon was ____ ayes and ____ nays and ____ abstentions. ____ Council members were absent or excused.

Jami C. Lewis, Town Clerk

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TOWN OF CHINO VALLEY COUNCIL AGENDA ITEM STAFF REPORT

Town Council Regular Meeting

Item No. **8. e.**

Meeting Date: 04/22/2014
Contact Person: Jami Lewis, Town Clerk
 Phone: 928-636-2646 x-1208
Department: Town Clerk
Item Type: Action
Estimated length of staff presentation: None
Physical location of item: N/A

AGENDA ITEM TITLE:

Consideration and possible action to adopt Resolution No. 14-1029, prescribing standards of financial disclosure for local public officers.

RECOMMENDED ACTION:

Adopt Resolution No. 14-1029, prescribing standards of financial disclosure for local public officers.

SITUATION AND ANALYSIS:

See Attached

Fiscal Impact

Attachments

Situation & Analysis

Resolution 14-1029

Agenda Item Staff Report SITUATION & ANALYSIS

Issue Statement

Brief narrative description of the issue at hand, including information about the problem or reason why Council involvement is required, why the item is now suitable for Council consideration and requires Council action for the item to move forward.

Pursuant to A.R.S. § 38-545, the Town is required to adopt standards of financial disclosure for local public officers consistent with the provisions of A.R.S. Title 38, Chapter 3.1, Article 1. The Town Council adopted such standards via Resolution No. 94 in 1984.

Resolution No. 94 requires that elected officials file a financial disclosure statement in January for each prior calendar year that they held office. This also includes filing a statement for the partial year they served at the end of their term. A couple years ago, the state legislature added a provision to A.R.S. § 38-545 that allows council members whose final terms expire between January 1 and January 31 to file their final financial disclosures at the same time as the disclosures for the preceding year. Without this provision, elected officials whose terms ended in January would have to wait until the following January to file their statement for the current calendar year, in which they served only less than 31 days.

Before the 2012 amendment to A.R.S. § 16-204 (HB 2826), requiring Council elections to move to fall of even-numbered years, the amendment to A.R.S. § 38-545 did not apply to the Town's elected officials, as their terms ended in June. However, with the change to consolidated elections, the mayor and council's terms will end in January starting in 2017 at which time this provision will be applicable. The town attorney has drafted a new Resolution that adds the new provision (Section 2(D)(2)) and repeals Resolution No. 94. Nothing else substantive from Resolution No. 94 was changed.

Applicable "Policy"

Bulleted list, by section number and title, of the statute, code, plan, policy, goal, initiative, etc. relevant to the issue that must be satisfied in order to resolve the issue. A brief summary of the "policy" section(s) may be included if there are multiple issues or details that need to be covered.

- A.R.S. § 38-545
- A.R.S. § 16-204
- Town Clerk goal to bring Town into compliance with HB 2826.

Satisfaction of "Policy"

Bulleted list, by section number and title, of the above relevant "policies," with a narrative explaining how each of them were/will be met or satisfied.

- A.R.S. § 38-545 – Resolution No. 14-1029 continues to meet the requirement for financial disclosure under this statute and also provides that the Town allow the new provision that will be applicable in 2017 as a result of the consolidation election changes.

Summary of Issues and Staff Rationale

Narrative explaining the issue at hand and how/why the staff proposed solution(s) are best for the Town. This may include more than one resolution or solution/alternative for Council to consider.

Adding this new provision to the financial disclosure resolution will allow elected officials to file their final financial disclosure statement in the same month as the end of their term, rather than having to file it one year later.

Findings of Fact

Bulleted list of staff findings that support the determination that the proposed resolution is the best solution for the Town.

- The Town is required to adopt standards of financial disclosure for local public officers. This was done in 1984 via Resolution 94.
- Resolution 14-1029 replaces Resolution 94 and adds one new provision that previously did not apply to the Town's elected officials, but does now under the new consolidated elections changes.
- Added this provision will simplify the "exit" process for elected officials.

RESOLUTION NO. 14-1029**A RESOLUTION OF THE COMMON COUNCIL OF THE TOWN OF CHINO VALLEY, ARIZONA, PRESCRIBING STANDARDS OF FINANCIAL DISCLOSURE FOR LOCAL PUBLIC OFFICERS; PROVIDING FOR REPEAL OF CONFLICTING RESOLUTIONS; AND PROVIDING FOR SEVERABILITY.**

WHEREAS, pursuant to the provisions of Arizona Revised Statutes Section 38-545, as amended, the Town of Chino Valley is required to adopt standards of financial disclosure for local public officers consistent with the provisions of Title 38, Chapter 3.1, Article 1, Arizona Revised Statutes, as amended; and

WHEREAS, the Common Council has determined that the standards of financial disclosure hereinafter adopted are, with respect to the Town of Chino Valley, consistent with such standards of financial disclosure;

NOW, THEREFORE, BE IT RESOLVED by the Common Council of the Town of Chino Valley, Arizona, that the following are hereby adopted as the Standards of Financial Disclosure for the local public officers of the Town of Chino Valley, Arizona:

Section 1: Definitions.

A. "Business" includes any enterprise, organization, trade, occupation or profession, whether or not operated as a legal entity or for profit, including any business trust, corporation, partnership, joint venture or sole proprietorship.

B. "Compensation" means anything of value or advantage, present or prospective, including the forgiveness of debt.

C. "Controlled business" means any business in which the local public officer or any member of his/her household has an ownership or beneficial interest, individually or combined, amounting to more than a fifty percent (50%) interest.

D. "Dependent business" means any business in which the local public officer or any member of his/her household has an ownership or beneficial interest, individually or combined, amounting to more than a ten percent (10%) interest, and during the preceding calendar year the business received from a single source more than ten thousand dollars (\$10,000) and more than fifty percent (50%) of its gross income.

E. "Gift" includes any gratuity, special discount, favor, hospitality, service, economic opportunity, loan or other benefit received without equivalent consideration and not provided to members of the public at large.

F. "Local public officer" means a person holding an elective office in the Town of Chino Valley, Arizona.

G. "Member of household" means a local public officer's spouse and any minor child of whom the local public officer has legal custody.

Section 2: Duty to File Financial Disclosure Statement; Contents; Exceptions

A. In addition to other statements and reports required by law, each local public officer, as a matter of public record, shall file with the Town Clerk on a form prescribed by the Town Clerk, a verified financial disclosure statement covering the preceding calendar year ending December 31. The statement shall disclose:

(1) The name and address of the local public officer and each member of his or her household and all names and addresses under which each does business.

(2) The name and address of each employer and of each other source of compensation other than gifts amounting to more than one thousand dollars (\$1,000) received during the preceding calendar year by the local public officer and members of his household in their own names, or by any other person for the use or benefit of the local public officer or members of his or her household, a description of the services for which the compensation was received and the nature of the employer's business. This paragraph shall not be construed to require the disclosure of individual items of compensation that constituted a portion of the gross income of the business from which the local public officer or members of his or her household derived compensation.

(3) For a controlled business, a description of the goods or services provided by the business, and if any single source of compensation to the business during the preceding calendar year amounts to more than ten thousand dollars (\$10,000) and is more than twenty-five percent (25%) of the gross income of the business, the disclosure shall also include a description of the goods or services provided to the source of compensation. For a dependent business, the statement shall disclose a description of the goods or services provided by the business and a description of the goods or services provided to the source of compensation from which the dependent business derived the amount of gross income described in Section 1, Paragraph 4. If the source of compensation for a controlled or dependent business is a business, the statement shall disclose a description of the business activities engaged in by the source of compensation.

(4) The names and addresses of all businesses and trusts in which the local public officer or members of his or her household, or any other person for the use or benefit of the local public officer or members of his or her household, had an ownership or beneficial interest of over one thousand dollars (\$1,000) at any time during the preceding calendar year, and the names and addresses of all businesses and trusts in which the local public officer or any member of his or her household held any office or had a fiduciary relationship at any time during the preceding calendar year, together with the amount or value of the interest and a description of the interest, office or relationship.

(5) All Arizona real property interests and real property improvements, including specific location and approximate size, in which the local public officer, any member of his or her household or a controlled or dependent business held legal title or a beneficial interest at any time during the preceding calendar year, and the value of any such interest, except that this paragraph does not apply to a real property interest and improvements thereon used as the primary personal residence or for the personal recreational use of the local public officer. If a local public officer, any member of his or her household or a controlled or dependent business

acquired or divested any such interest during the preceding calendar year, he or she shall also disclose that the transaction was made and the date it occurred. If the controlled or dependent business is in the business of dealing in real property interests or improvements, disclosure need not include individual parcels or transactions as long as the aggregate value of all parcels of such property is reported.

(6) The names and addresses of all creditors to whom the local public officer or members of his or her household, in their own names or in the name of any other person, owed a debt of more than one thousand dollars (\$1,000) or to whom a controlled business or a dependent business owed a debt of more than ten thousand dollars (\$10,000) which was also more than thirty percent (30%) of the total business indebtedness at any time during the preceding calendar year, listing each such creditor. This paragraph shall not be construed to require the disclosure of debts owed by the local public officer or any member of his or her household resulting from the ordinary conduct of a business other than a controlled or dependent business. Nor shall disclosure be required of credit card transactions, retail installment contracts, debts on residences or recreational property exempt from disclosure under paragraph (5) of this subsection, debts on motor vehicles not used for commercial purposes, debts secured by cash values on life insurance or debts owed to relatives. It is sufficient disclosure of a creditor if the name and address of a person to whom payments are made is disclosed. If the local public officer, any member of his or her household or a controlled or dependent business incurred or discharged a debt which is reportable under this subsection during the preceding calendar year, the report shall disclose that the transaction was made and the date it occurred.

(7) The identification and amount of each debt exceeding one thousand dollars (\$1,000) owed at any time during the preceding calendar year to the local public officer and members of his or her household in their own names, or to any other person for the use or benefit of the local public officer or any member of his or her household. The disclosure shall include the identification and amount of each debt exceeding ten thousand dollars (\$10,000) to a controlled business or dependent business which was also more than thirty percent (30%) of the total indebtedness to the business at any time during the preceding calendar year. This paragraph shall not be construed to require the disclosure of debts from the ordinary conduct of a business other than a controlled or dependent business. If the local public officer, any member of his or her household or a controlled or dependent business incurred or discharged a debt which is reportable under this subsection during the preceding year, the report shall disclose that the transaction was made and the date it occurred.

(8) The name of each source of any gift, or accumulated gifts from a single source, of more than five hundred dollars (\$500) received by the local public officer and members of his or her household in their own names during the preceding calendar year, or by any other person for the use or benefit of the local public officer or any member of his or her household except gifts received by will or by virtue of intestate succession, or received by way of distribution from any intervivos or testamentary trust established by a spouse or by an ancestor, or gifts received from any other member of the household or relatives to the second degree of consanguinity. Political campaign contributions shall not be construed as gifts if otherwise publicly reported as political campaign contributions as required by law.

(9) A list of all business licenses issued to, held by or in which the local public officer or any member of his or her household had an interest at any time during the

preceding calendar year, including the name in which the license was issued, the type of business and its location.

(10) A list of all bonds, together with their value, issued by this state or any political subdivision of this state held at any time during the preceding calendar year by the local public officer or any member of his or her household, which bonds issued by a single entity had a value in excess of one thousand dollars (\$1,000). If the local public officer or any member of his or her household acquired or divested any bonds during the preceding calendar year which are reportable under this paragraph, the fact that the transaction occurred and the date shall also be shown.

B. If an amount or value is required to be reported pursuant to this Section, it is sufficient to report whether the amount or value of the equity interest falls within:

(1) Category 1, one thousand dollars (\$1,000) to twenty-five thousand dollars (\$25,000).

(2) Category 2, more than twenty-five thousand dollars (\$25,000) to one hundred thousand dollars (\$100,000).

(3) Category 3, more than one hundred thousand dollars (\$100,000).

C. This Resolution does not require the disclosure of any information that is privileged by law.

D. The statement required to be filed pursuant to subsection A shall be filed by all persons who qualified as local public officers at any time during the preceding calendar year on or before January 31 of each year, with the following exceptions:

(1) A local public officer appointed to fill a vacancy shall, within sixty days following his taking of such office, file a financial disclosure statement covering as his annual period the twelve month period ending with the last full month prior to the date of his taking office; and

(2) A local public officer whose final term expires less than thirty-one days into the immediately following calendar year, may file his final financial disclosure at the same time as the disclosure for the last immediately preceding year.

E. The Town Clerk shall prepare written guidelines, forms and samples for completing the financial disclosure statement required by this Resolution. A copy of the guidelines, forms and samples shall be distributed to each local public officer and shall be made available to each candidate required to file a financial disclosure statement pursuant to Section 3 of this Resolution.

Section 3: Duty to File Financial Disclosure Statement by Candidates for Local Public Office in the Town of Chino Valley.

At the time of filing of nomination papers, a candidate for local public office shall file a financial disclosure statement on a form prescribed by the Town Clerk, covering the preceding twelve month period and containing the information described in Section 2 hereof.

BE IT FURTHER RESOLVED that Resolution 94 and all other resolutions or parts of resolutions in conflict with the provisions of this resolution are hereby repealed.

BE IT FURTHER RESOLVED that if any section, subsection, sentence, clause, phrase or portion of this Resolution is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions thereof.

PASSED AND ADOPTED BY THE COMMON COUNCIL OF THE TOWN OF CHINO VALLEY, ARIZONA THIS 22nd DAY OF April, 2014.

Chris Marley, Mayor

ATTEST:

Jami C. Lewis, Town Clerk

APPROVED AS TO FORM:

Curtis, Goodwin, Sullivan, Udall & Schwab, PLC
Town Attorneys
By: Phyllis L.N. Smiley

I hereby certify the above foregoing Resolution No. 14-1029 was duly passed by the Council of the Town of Chino Valley, Arizona, at a regular meeting held on April 22, 2014, and that quorum was present thereat and that the vote thereon was ____ ayes and ____ nays and ____ abstentions. ____ Council members were absent or excused.

Jami C. Lewis, Town Clerk



TOWN OF CHINO VALLEY COUNCIL AGENDA ITEM STAFF REPORT

Town Council Regular Meeting

Item No. **8. f.**

Meeting Date: 04/22/2014
Contact Person: Jami Lewis, Town Clerk
 Phone: 928-636-2646 x-1208
Department: Council
Item Type: Action
Estimated length of staff presentation: None
Physical location of item: N/A

AGENDA ITEM TITLE:

Consideration and possible action to adopt Resolution No. 14-1030 in support of legislation to impose tax on facilities growing medical marijuana.

RECOMMENDED ACTION:

Adopt Resolution No. 14-1030 in support of legislation to impose tax on facilities growing medical marijuana.

SITUATION AND ANALYSIS:

During Council's strategic planning sessions, one topic discussed pertained to working with the state to impose a tax on medical marijuana growing facilities. Councilmember Linda Hatch and Mayor Marley are proposing that Council adopt a resolution and forward it to the League of Arizona Cities and Towns, as well as the State Legislature.

The sale and cultivation of Medical Marijuana is now legal in Arizona and facilities growing Medical Marijuana are now located in many Arizona Communities. Such growing facilities are considered by many citizens to be a "soft target" for criminals, increasing the workload for local law enforcement and thus impacting municipal expenses. As no tax revenues to municipalities are generated by the growing facilities to offset the increased expenses, this resolution will indicate the Council's support for the legislature to introduce and support legislation taxing medical marijuana growing facilities, and that such taxes be provided to and used by the municipalities in which such facilities are located to help offset the strain on the resources and infrastructure of those communities in which medical marijuana growing facilities are located.

Fiscal Impact

Fiscal Impact?: No
If Yes, Budget Code:

Available:

Funding Source:

Attachments

Resolution 14-1030

Colarado-Washington article

Seattle, WA article

Florida financial impact statement

Maine legislation

accountingweb.com article

Fox Business article

RESOLUTION NO. 14-1030**A RESOLUTION OF THE MAYOR AND COMMON COUNCIL OF
THE TOWN OF CHINO VALLEY, COUNTY OF YAVAPAI,
ARIZONA, IN SUPPORT OF LEGISLATION TO IMPOSE TAX
ON FACILITIES GROWING MEDICAL MARIJUANA**

WHEREAS, the sale and cultivation of Medical Marijuana is now legal in Arizona, pursuant to Arizona law and regulations; and

WHEREAS, facilities growing Medical Marijuana are now located in many Arizona Communities; and

WHEREAS, Medical Marijuana growing facilities are considered by many citizens to be a “soft target” for criminals, increasing the workload for local law enforcement and thus impacting municipal expenses; and

WHEREAS, no tax revenues to municipalities are generated by the growing facilities to offset the increased expenses;

NOW, THEREFORE, BE IT RESOLVED by the Mayor and Common Council of the Town of Chino Valley, County of Yavapai, Arizona:

1. That the Mayor and Town Council of Chino Valley, Arizona hereby request and urge our State Legislators sponsor, introduce and support legislation taxing medical marijuana growing facilities; and
2. That taxes on medical marijuana growing facilities be provided to and used by the municipalities in which such facilities are located to help offset the strain on the resources and infrastructure of those communities in which medical marijuana growing facilities are located.

BE IT FURTHER RESOLVED that all resolutions or parts of resolutions in conflict with the provisions of this resolution are hereby repealed.

BE IT FURTHER RESOLVED that if any section, subsection, sentence, clause, phrase or portion of this Resolution is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions thereof.

PASSED AND ADOPTED by the Mayor and Common Council of the Town of Chino Valley, Arizona this 22nd day of April, 2014.

Chris Marley, Mayor

ATTEST:

Jami C. Lewis, Town Clerk

APPROVED AS TO FORM:

Curtis, Goodwin, Sullivan, Udall & Schwab, PLC
Town Attorneys
By: Phyllis Smiley

I hereby certify the above foregoing Resolution No. 14-1030 was duly passed by the Council of the Town of Chino Valley, Arizona, at a regular meeting held on April 22, 2014, and that quorum was present thereat and that the vote thereon was ____ ayes and ____ nays and ____ abstentions. ____ Council members were absent or excused.

Jami C. Lewis, Town Clerk

Colorado marijuana farmers unlikely to see farm tax perks

By KRISTEN WYATT Associated Press The Denver Post

Posted:

DenverPost.com

Marijuana farmers and agricultural tax breaks are the next wrinkle facing the states that have legal weed as lawmakers debate how to tax the product while it's growing.

Legislatures in both Colorado and Washington are taking a look at pot farmers this session.

The states have already decided how to tax finished marijuana. But they are still mulling taxes as pot is produced, such as how the land on which marijuana is grown should be assessed for property taxes.

Some lawmakers in both states say marijuana growers shouldn't be eligible for any taxation perks afforded to farmers that grow conventional crops. Others say that marijuana while it's growing should be treated like the hops and barley that go on to become highly taxed alcohol.

Colorado lawmakers delayed a vote last week on whether marijuana greenhouses should be considered agricultural or commercial property. The bill, meant to codify the already-common practice of assessing conventional nurseries and greenhouses, ran into confusion when its sponsor added a last-minute amendment to ban pot growers from getting the advantage.

Republican Sen. Kevin Grantham said he wanted pot growers to "not see any benefit from the ag designation."

Grantham opposed marijuana legalization in 2012, but said his latest effort to block marijuana tax breaks isn't a knock on the growers. Instead, he says, he simply wanted to keep the focus of his bill on traditional crops and avoid a marijuana debate.

"It's not the fight we're fighting right now," Grantham said before his bill was first heard. Later the same day, while explaining his bill to colleagues, Grantham joked that his effort backfired, and that the pot language was "quickly growing to be the fun part of this bill now, apparently."

Washington lawmakers, meanwhile, are considering a bill to prohibit marijuana growers from qualifying for agriculture tax breaks for 10 years—giving the state time to collect information and make a decision.

The states flouting federal drug law and establishing commercial pot industries have settled how to tax marijuana once it's dried and ready to smoke. But how to tax growing marijuana and the land it's grown on is still under debate.

"We're too early in the process to make a determination how to do this right," said Meg Sanders, owner of Gaia Plant-Based Medicine in Denver.

Sanders owns a three-store chain of medical marijuana dispensaries and a 35,000-square-foot warehouse in Denver where her marijuana is grown. Denver considers marijuana growing sites commercial property, while a warehouse growing commercial tomatoes or lettuce is considered "other agriculture."

The difference for tax purposes is significant, though rates vary by county.

"I believe that retail marijuana should be treated as any other agricultural crop in a state where it is legal. It is a plant, just like any other plant grown for consumption," Sanders said.

Colorado voters last year overwhelmingly approved steep taxes on finished marijuana, which is taxed at least 25 percent, in addition to local taxes. But Colorado law is still murky on how growing marijuana should be taxed.

Grantham believes marijuana producers should enjoy none of the property tax perks afforded to conventional farmers. Others point out that alcohol is highly taxed, but the hops and barley raised to make it qualify for agriculture tax rates.

"Why should this be any different?" asked Sen. Jessie Ulibarri, D-Westminster. Ulibarri's district includes many marijuana warehouses located along Interstate 70 just north of Denver.

Grantham's bill awaits a vote in the Senate Finance Committee. The agriculture assessment change wouldn't cost the state any money, and almost all local assessors already use the agricultural property tax category for conventional greenhouses and nurseries. Any differing tax collections would be felt at the county level, with no estimates available. Current Colorado law says that medical marijuana growers are eligible for no agricultural tax breaks, but the law is silent on how recreational pot land should be taxed.

In Washington, lawmakers have yet to vote on a bill prohibiting marijuana growers from qualifying for agriculture tax breaks.

Washington officials estimate that the industry could currently qualify for three dozen different tax breaks, largely surrounding agricultural production. But a state House committee is exploring a bill that would block those tax breaks for 10 years.

Democratic Rep. Reuven Carlyle, a sponsor of the bill, said he doesn't think the tax preferences were designed to help the marijuana industry, which is currently under development.

"I don't know that we have a problem in the marketplace that these exemptions would be designed to fix," said Carlyle, who represents portions of Seattle.

Washington officials estimate that the new rules would increase state and local tax revenues by a combined \$3.5 million over the span of one year.

Washington lawmakers have not scheduled any votes on the bill.

Both states voted in 2012 to legalize and regulate the recreational use of pot by adults over 21, with retail marijuana shops allowed. Sales began Jan. 1 in Colorado and are due to begin in Washington in the coming months.

Marijuana in Washington will be taxed 25 percent at three possible transfer points from production to retail sale, plus sales taxes. Colorado voters approved a 25 percent sales and excise tax on finished marijuana, plus local taxes.

Associated Press writer Mike Baker in Seattle contributed to this report.

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Posted: 8:28 p.m. Monday, March 3, 2014

Marijuana farmers lose Seattle tax exemption



Related

By Essex Porter

SEATTLE — The Seattle City Council moved to close a tax loophole that benefits the pot growing business Monday, but it left the loophole alone for all other farmers.

Councilmember Nick Licata said that Medical Marijuana Dispensaries are already paying a business tax, giving the city more than \$100,000 a year. And he believes marijuana farmers should be treated the same way. He won a unanimous council vote to change the law so that marijuana farmers will no longer be treated the same as the growers of fruits and vegetables. Marijuana farmers will no longer be able to take the agricultural exemption from the Business and Occupation tax.

"All of these advocates in the marijuana business, growing business agree that they want to pay taxes," Licata said.

All Seattle businesses are subject to a B&O tax of .215 percent. On a million dollars of revenue, that's \$2,150. All farmers were completely exempt, but now pot farmers must pay.

Todd Arkley is an accountant serving many in the emerging marijuana businesses. He was the only person to oppose the tax before the council vote. "I don't think it is fair," Arkley said.

Marijuana growers will already pay a 25 percent excise tax, and Arkley said they cannot take advantage of federal business tax deductions because pot is still illegal under federal law.

"Obviously, the city wants these companies to succeed and let's make sure that we give them a fair tax burden," he said.

But City Attorney Pete Holmes said marijuana isn't your traditional crop. "It is a new industry that is promising to be a good strong commercial industry and it's appropriate that it should bear its tax burden as well," Holmes said.

Holmes said the additional money will likely be needed for law enforcement activities related to legal marijuana. And because it's applied at sale, the city will get the money no matter where the marijuana is grown.

INITIATIVE FINANCIAL INFORMATION STATEMENT FOR USE OF MARIJUANA FOR CERTAIN MEDICAL CONDITIONS

SUMMARY OF INITIATIVE FINANCIAL INFORMATION STATEMENT

The amendment allows the use of medical marijuana for certain specified medical conditions, as well as other conditions, for which a physician licensed in Florida believes the medical use of marijuana would likely outweigh the potential health risks for the patient. In addition, a process is established for the sale of medical marijuana to qualifying patients and designated caregivers. Based on the information provided through public workshops and staff research, the Financial Impact Estimating Conference expects that the proposed amendment will have the following financial effects:

- According to the final analysis provided by the Department of Health, the department will incur an estimated \$1.1 million in costs each year to comply with the regulatory responsibilities assigned to it by the constitutional amendment. These costs will likely be offset through fees charged to the medical marijuana industry and users, but this may require further action by the Legislature.
- The Department of Business and Professional Regulation, the Agency for Health Care Administration, and the Department of Agriculture and Consumer Services do not expect the amendment's passage to produce a significant impact on their regulatory functions. To the extent regulatory impacts occur, they will likely be offset through fees charged to the affected industries.
- The Department of Highway Safety and Motor Vehicles, the Police Chiefs Association, and the Sheriffs Association expect additional law enforcement costs based on the experience from other states that have similar amendments or laws, but the magnitude could not be determined at this time.
- Other state and local agencies were unable to quantify the amendment's impact, if any, on the services they provide.
- The Conference has determined that the purchase of medical marijuana is subject to Florida sales and use tax since medical marijuana is tangible personal property for the purposes of Chapter 212, Florida Statutes, unless a specific exemption exists.
- After testimony from the Department of Revenue, the Conference determined that agricultural-related exemptions apply to sales of medical marijuana when the grower or cultivator sells or dispenses the product directly to the end-user or designated caregiver. However, if the grower or cultivator sells the product to a third-party retailer (a non-taxable transaction) which then sells or dispenses the product to the end-user or a caregiver, the agricultural exemption on the final sale is lost and that transaction becomes taxable. Since the sponsors indicated that the proposed amendment was drafted to allow various levels of industry integration, the potential for both taxable and exempt activities exists. In the case of a segmented market structure, the determination of whether medical marijuana is a common household remedy (and therefore exempt) becomes significant. Until this determination is made by the Department of Revenue and/or the Department of Business and Professional Regulation or by a future action of the Legislature, the tax treatment of a sale through a third-party to the end-user is uncertain.
- The magnitude of the impact on property taxes, either positive or negative, cannot be determined.

FINANCIAL IMPACT STATEMENT

Increased costs from this amendment to state and local governments cannot be determined. There will be additional regulatory and enforcement activities associated with the production and sale of medical marijuana. Fees will offset at least a portion of the regulatory costs. While sales tax may apply to purchases, changes in revenue cannot reasonably be determined since the extent to which medical marijuana will be exempt from taxation is unclear without legislative or state administrative action.

I. SUBSTANTIVE ANALYSIS

A. Proposed Amendment

Ballot Title:

Use of Marijuana for Certain Medical Conditions.

Ballot Summary:

Allows the medical use of marijuana for individuals with debilitating diseases as determined by a licensed Florida physician. Allows caregivers to assist patients' medical use of marijuana. The Department of Health shall register and regulate centers that produce and distribute marijuana for medical purposes and shall issue identification cards to patients and caregivers. Applies only to Florida law. Does not authorize violations of federal law or any non-medical use, possession or production of marijuana.

Proposed Amendment to the Florida Constitution:

ARTICLE X, SECTION 29. Medical marijuana production, possession and use.—

(a) PUBLIC POLICY.

- (1) The medical use of marijuana by a qualifying patient or personal caregiver is not subject to criminal or civil liability or sanctions under Florida law except as provided in this section.
- (2) A physician licensed in Florida shall not be subject to criminal or civil liability or sanctions under Florida law for issuing a physician certification to a person diagnosed with a debilitating medical condition in a manner consistent with this section.
- (3) Actions and conduct by a medical marijuana treatment center registered with the Department, or its employees, as permitted by this section and in compliance with Department regulations, shall not be subject to criminal or civil liability or sanctions under Florida law except as provided in this section.

(b) DEFINITIONS. For purposes of this section, the following words and terms shall have the following meanings:

- (1) "Debilitating Medical Condition" means cancer, glaucoma, positive status for human immunodeficiency virus (HIV), acquired immune deficiency syndrome (AIDS), hepatitis C, amyotrophic lateral sclerosis (ALS), Crohn's disease, Parkinson's disease, multiple sclerosis or other conditions for which a physician believes that the medical use of marijuana would likely outweigh the potential health risks for a patient.
- (2) "Department" means the Department of Health or its successor agency.

- (3) "Identification card" means a document issued by the Department that identifies a person who has a physician certification or a personal caregiver who is at least twenty-one (21) years old and has agreed to assist with a qualifying patient's medical use of marijuana.
- (4) "Marijuana" has the meaning given cannabis in Section 893.02(3), Florida Statutes (2013).
- (5) "Medical Marijuana Treatment Center" means an entity that acquires, cultivates, possesses, processes (including development of related products such as food, tinctures, aerosols, oils, or ointments), transfers, transports, sells, distributes, dispenses, or administers marijuana, products containing marijuana, related supplies, or educational materials to qualifying patients or their personal caregivers and is registered by the Department.
- (6) "Medical use" means the acquisition, possession, use, delivery, transfer, or administration of marijuana or related supplies by a qualifying patient or personal caregiver for use by a qualifying patient for the treatment of a debilitating medical condition.
- (7) "Personal caregiver" means a person who is at least twenty-one (21) years old who has agreed to assist with a qualifying patient's medical use of marijuana and has a caregiver identification card issued by the Department. A personal caregiver may assist no more than five (5) qualifying patients at one time. An employee of a hospice provider, nursing, or medical facility may serve as a personal caregiver to more than five (5) qualifying patients as permitted by the Department. Personal caregivers are prohibited from consuming marijuana obtained for the personal, medical use by the qualifying patient.
- (8) "Physician" means a physician who is licensed in Florida.
- (9) "Physician certification" means a written document signed by a physician, stating that in the physician's professional opinion, the patient suffers from a debilitating medical condition, that the potential benefits of the medical use of marijuana would likely outweigh the health risks for the patient, and for how long the physician recommends the medical use of marijuana for the patient. A physician certification may only be provided after the physician has conducted a physical examination of the patient and a full assessment of the patient's medical history.
- (10) "Qualifying patient" means a person who has been diagnosed to have a debilitating medical condition, who has a physician certification and a valid qualifying patient identification card. If the Department does not begin issuing identification cards within nine (9) months after the effective date of this section, then a valid physician certification will serve as a patient identification card in order to allow a person to become a "qualifying patient" until the Department begins issuing identification cards.

(c) LIMITATIONS.

- (1) Nothing in this section shall affect laws relating to non-medical use, possession, production or sale of marijuana.
- (2) Nothing in this section authorizes the use of medical marijuana by anyone other than a qualifying patient.
- (3) Nothing in this section allows the operation of a motor vehicle, boat, or aircraft while under the influence of marijuana.
- (4) Nothing in this law section requires the violation of federal law or purports to give immunity under federal law.

- (5) Nothing in this section shall require any accommodation of any on-site medical use of marijuana in any place of education or employment, or of smoking medical marijuana in any public place.
- (6) Nothing in this section shall require any health insurance provider or any government agency or authority to reimburse any person for expenses related to the medical use of marijuana.

(d) DUTIES OF THE DEPARTMENT. The Department shall issue reasonable regulations necessary for the implementation and enforcement of this section. The purpose of the regulations is to ensure the availability and safe use of medical marijuana by qualifying patients. It is the duty of the Department to promulgate regulations in a timely fashion.

- (1) Implementing Regulations. In order to allow the Department sufficient time after passage of this section, the following regulations shall be promulgated no later than six (6) months after the effective date of this section:
 - a. Procedures for the issuance of qualifying patient identification cards to people with physician certifications, and standards for the renewal of such identification cards.
 - b. Procedures for the issuance of personal caregiver identification cards to persons qualified to assist with a qualifying patient's medical use of marijuana, and standards for the renewal of such identification cards.
 - c. Procedures for the registration of Medical Marijuana Treatment Centers that include procedures for the issuance, renewal, suspension, and revocation of registration, and standards to ensure security, record keeping, testing, labeling, inspection, and safety.
 - d. A regulation that defines the amount of marijuana that could reasonably be presumed to be an adequate supply for qualifying patients' medical use, based on the best available evidence. This presumption as to quantity may be overcome with evidence of a particular qualifying patient's appropriate medical use.
- (2) Issuance of identification cards and registrations. The Department shall begin issuing qualifying patient and personal caregiver identification cards, as well as begin registering Medical Marijuana Treatment Centers no later than nine months (9) after the effective date of this section.
- (3) If the Department does not issue regulations, or if the Department does not begin issuing identification cards and registering Medical Marijuana Treatment Centers within the time limits set in this section, any Florida citizen shall have standing to seek judicial relief to compel compliance with the Department's constitutional duties.
- (4) The Department shall protect the confidentiality of all qualifying patients. All records containing the identity of qualifying patients shall be confidential and kept from public disclosure other than for valid medical or law enforcement purposes.

(e) LEGISLATION. Nothing in this section shall limit the Legislature from enacting laws consistent with this provision.

(f) SEVERABILITY. The provisions of this section are severable and if any clause, sentence, paragraph or section of this measure, or an application thereof, is adjudged invalid by any court of competent jurisdiction other provisions shall continue to be in effect to the fullest extent possible.

Effective Date:

Article XI, Section 5(e), of the Florida Constitution states that, unless otherwise specified in the Florida Constitution or the proposed constitutional amendment, the proposed amendment will become effective on the first Tuesday after the first Monday in January following the election. This amendment does not specify an effective date and will be effective as stated in Article XI, Section 5(e), of the Florida Constitution. However, the amendment delays implementation of certain provisions by allowing the Department of Health six months after the effective date to promulgate regulations and nine months after the effective date to begin issuing identification cards.

B. Substantive Effect of Proposed Amendment*Input Received from Proponents and Opponents*

The Conference sought input from those groups who were on record as supporting or opposing the petition initiative. The proponents chose not to provide a response to a request for overall input on the initiative. However, a representative responded to a specific request from staff regarding the market structure envisioned by the sponsors.

An opponent group, Save Our Society from Drugs (S.O.S.), a non-profit drug policy organization based in St. Petersburg, submitted written testimony specific to the petition initiative. The testimony focused on the status of marijuana as not approved by the federal Food and Drug Administration (FDA) and the resulting unregulated nature of the use of marijuana, emphasizing that “crude (smoked) marijuana does not meet the standards of modern medicine.” The testimony also noted that “the approval of medicines and the protection of consumers are the responsibility of the FDA, not state legislators, not voters and not governors petitioning for marijuana to be rescheduled.” The testimony also expressed concerns relating to: potential impacts on public safety, with an emphasis on drugged driving; environmental impacts of marijuana production, including water quality and water use, wildlife, and wildfires; and the fiscal impact of regulating and policing “pot shops.”

Background*Current Legal Status of Marijuana in Florida*

Florida law defines Cannabis as “all parts of any plant of the genus *Cannabis*, 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 or its seeds or resin”¹ and places it, along with other sources of tetrahydrocannabinol (THC), on the list of Schedule I drugs.² Schedule I drugs are substances that have a high potential for abuse and no currently accepted medical use in treatment in the United States. As a Schedule I drug, possession and trafficking in cannabis carry criminal penalties that vary from a misdemeanor of the first degree³ up to a felony of the first degree with a possible minimum sentence of 15 years in prison and a

¹ S. 893.02(c), F.S.

² S. 893.03(c)7. and 37., F.S.

³ For possessing or delivering less than 20 grams. See s. 893.13(3) and (6)(b), F.S.

\$200,000 fine.⁴ Paraphernalia⁵ that is sold, manufactured, used, or possessed with the intent to be used to plant, propagate, cultivate, grow, harvest, manufacture, compound, convert, produce, process, prepare, test, analyze, pack, repack, store, contain, conceal, inject, ingest, inhale, or otherwise introduce into the human body a controlled substance is also prohibited and carries criminal penalties ranging from a misdemeanor of the first degree to felony of the third degree.⁶

The Necessity Defense in Florida

Despite the fact that the use, possession, and sale of marijuana is prohibited by state law, Florida courts have found that circumstances can necessitate medical use of marijuana and circumvent the application of any criminal penalties. The necessity defense was successfully applied in a marijuana possession case in *Jenks v. State*⁷ where the First District Court of Appeal found that “section 893.03 does not preclude the defense of medical necessity” for the use of marijuana if the defendant:

- Did not intentionally bring about the circumstance which precipitated the unlawful act;
- Could not accomplish the same objective using a less offensive alternative available; and
- The evil sought to be avoided was more heinous than the unlawful act.

In the cited case the defendants, a married couple, were suffering from uncontrollable nausea due to AIDS treatment and had testimony from their physician that he could find no effective alternative treatment. Under these facts, the First District found that the Jenks met the criteria for the necessity defense and ordered an acquittal of the charges of cultivating cannabis and possession of drug paraphernalia.

Medical Marijuana Laws in Other States

Currently, 20 states and the District of Columbia⁸ have some form of law that permits the use of marijuana for medicinal purposes. These laws vary widely in detail but most are similar in that they touch on several recurring themes. Most state laws include the following in some form:

- A list of medical conditions for which a practitioner can recommend the use of medical marijuana to a patient.
 - Nearly every state has a list of medical conditions though the particular conditions vary from state to state. Most states also include a way to expand

⁴ Trafficking in more than 25 pounds, or 300 plants, of cannabis is a felony of the first degree with a minimum sentence that varies from 3 to 15 years in prison depending on the amount of cannabis. See s. 893.135(1)(a), F.S.

⁵ As defined in s. 893.145, F.S.

⁶ S. 893.147, F.S.

⁷ 582 So. 2d 676

⁸ These states include Alaska, Arizona, California, Colorado, Connecticut, Delaware, Hawaii, Illinois (effective 2014), Maine, Maryland, Massachusetts, Michigan, Montana, Nevada, New Hampshire, New Jersey, New Mexico, Oregon, Rhode Island, Vermont, and Washington. California was the first to establish a medical marijuana program in 1996 and Illinois was the most recent state to pass medical marijuana legislation in August of 2013. Illinois legislation does not become effective until 2014. See <http://www.ncsl.org/issues-research/health/state-medical-marijuana-laws.aspx>. Last visited on Oct. 17, 2013.

the list either by allowing a state agency or board to add medical conditions to the list or by including a “catch-all” phrase.⁹ Most states require that the patient receive certification from at least one, but often two, physicians designating that they have a qualifying condition before they can be issued an ID card.

- Provisions for the patient to designate one or more caregivers who can possess the medical marijuana and assist the patient in preparing and using the medical marijuana.
 - The number of caregivers allowed and the qualifications to become a caregiver vary from state to state. Most states allow 1 or 2 caregivers and require that they be at least 21 years of age and, typically, cannot be the patient’s physician. Caregivers are generally allowed to purchase or grow marijuana for the patient, be in possession of the allowed quantity of marijuana, and aid the patient in using the marijuana, but are strictly prohibited from using the marijuana themselves.
- A required identification card for the patient, caregiver, or both that is typically issued by a state agency.
- A registry of people who have been issued an ID card.
 - A method for registered patients and caregivers to obtain medical marijuana.
- General restrictions on where medical marijuana may be used.
- Provisions allowing a patient to either self-cultivate marijuana, creating regulated marijuana “dispensaries” where a patient may purchase marijuana, or both. The regulations governing such dispensaries, in states that allow them, vary widely.

Medical Marijuana Laws and the Federal Government

Regardless of whether an individual state has allowed the use of marijuana for medicinal purposes, or otherwise, the Federal Controlled Substances Act lists it as a Schedule I drug with no accepted medical uses. Under federal law possession, manufacturing, and distribution of marijuana is a crime.¹⁰ Although state medical marijuana laws protect patients from prosecution for the legitimate use of marijuana under the guidelines established in that state, such laws do not protect individuals from prosecution under federal law should the federal government choose to act on those laws.

In August of 2013, the United States Justice Department issued a publication entitled “Smart on Crime: Reforming the Criminal Justice System for the 21st Century.”¹¹ This document details the federal government’s changing stance on low-level drug crimes announcing a “change in Department of Justice charging policies so that certain people who have committed low-level, nonviolent drug offenses, who have no ties to large-scale organizations, gangs, or cartels will no longer be charged with offenses that impose draconian mandatory minimum sentences. Under the revised policy, these people would instead receive sentences better suited to their individual conduct rather than excessive prison terms more appropriate for violent criminals or drug

⁹ Such as in California’s law that includes “any other chronic or persistent medical symptom that either: Substantially limits the ability of the person to conduct one or more major life activities as defined in the Americans with Disabilities Act of 1990, or if not alleviated, may cause serious harm to the patient’s safety or physical or mental health.”

¹⁰ The punishments vary depending on the amount of marijuana and the intent with which the marijuana is possessed. See <http://www.fda.gov/regulatoryinformation/legislation/ucm148726.htm#cntlsbd>. Last visited Oct. 17, 2013.

¹¹ See <http://www.justice.gov/ag/smart-on-crime.pdf>. Last visited on Oct. 17, 2013

kingpins.” This announcement indicates the justice department’s relative unwillingness to prosecute low-level drug cases leaving such prosecutions largely up to state authorities.

Proposed Florida Laws

Distinct from the petition initiative, Florida legislation was proposed to enact concepts similar to the subject of the amendment. During the 2013 legislative session, identical bills were introduced in the Senate and House of Representatives relating to medical cannabis. The bill established regulatory responsibilities and rulemaking authority for the Department of Health (DOH) and the Department of Business and Professional Regulation (DBPR), and provided rulemaking authority for the Department of Revenue (DOR) specific to taxation and reporting responsibility for specified entities. The bill:

- Authorized a qualifying patient and the patient's qualified caregiver to possess and administer medical cannabis to a qualifying patient, and to possess and use paraphernalia for specified purposes;
- Provided procedures and requirements for DOH administration;
- Authorized a physician to recommend use of medical cannabis under specified procedures and requirements;
- Required DBPR to regulate licensure of cultivation centers and dispensaries, under related procedures and requirements;
- Established a medical cannabis section within DBPR, including procedures and requirements to authorize a medical cannabis farm to possess, cultivate, and manufacture medical cannabis, medical cannabis-based products, and marijuana plants for wholesale in this state, including permitting and licensing procedures and fees, administrative fines, license suspension, and injunctive relief.
- Required rule adoption by specified dates;
- Provided that use of medical cannabis is a defense to certain offenses, and does not create defense to certain other offenses;
- Made conforming revisions to a variety of criminal provisions, including changes to the Offense Severity Ranking Chart;
- Included a severability clause; and
- Provided an effective date of July 1, 2013.

The bill stipulated that fees established by DOH must offset all expenses of implementing and administering the provisions of the bill, specified fee caps for DBPR permitting purposes, and indicated that fees collected by DOH, DBPR, and DOR be applied first to administering the responsibilities assigned under the provisions. Senate Bill (SB) 1250, introduced by Senator Clemens and one co-sponsor, was referred to four committees of reference. House Bill 1139, introduced by Representative Edwards and five co-sponsors, was referred to four committees of reference. A related public records exemption bill, SB 1214, was also filed by Senator Clemens. When the 2013 session ended, each bill died in its initial committee of reference, having not been heard.

Potential Users of Medical Marijuana

The Florida Legislature’s Office of Economic and Demographic Research (EDR) developed six approaches that estimate the potential number of medical marijuana users in Florida as of April 1, 2015. Approach I draws on the experience of other states. Approaches II – V attempt to capture eligible users with the specified medical conditions in the proposed ballot initiative, except “other conditions.” It is not possible to precisely estimate the number of users that would qualify under “other conditions” as these conditions are currently unknown and to be determined by the physician when he or she believes that the medical use of marijuana would likely outweigh the potential health risks for a patient. Approach VI uses the number of illicit recreational marijuana users as a guide.

Estimates of Potential Florida Medical Marijuana Users

Estimation Approach	April 1, 2015
I. States with medical marijuana laws	452 to 417,252
II. Disease prevalence	1,295,922
III. Disease incidence	116,456
IV. Use by cancer patients	173,671
V. Deaths	46,903
VI. Self-reported marijuana use	1,052,692 to 1,619,217
Range	452 to 1,619,217

The following is a summary of each of these approaches.

Approach I. States with Medical Marijuana Laws

Approach I applies rates of medical marijuana use from other states to Florida’s 2015 projected population. Using the current experience of 16 other states, there may be an estimated 452 to 417,252 Floridians using medical marijuana in 2015. The lower range of the estimate is more likely if the medical marijuana program is rolled out slowly, such as in New Jersey, or faces implementation, administrative, and/ or legal challenges that will limit the number of registrants in the first year. The higher range of the estimate may be more likely at full implementation of a more mature program, such as in Colorado.

Approach II. Disease Prevalence

Approach II uses disease prevalence rates (proportion of people alive diagnosed with a certain disease) for cancer, hepatitis C, and HIV to determine the number of eligible patients with the conditions specified in the proposed ballot initiative. There will be an estimated 1,295,922 patients alive in 2015 that have been diagnosed with cancer, hepatitis C, or HIV during their lifetime. These patients represent the pool of eligible patients for medical use of marijuana. Prevalence data for the remaining conditions specified in the proposed ballot initiative were not available. In addition, there are unspecified “other conditions” in the proposed ballot initiative which cannot be estimated under this approach.

Approach III. Disease Incidence

Approach III uses disease incidence rates (proportion of people newly diagnosed with a certain disease) for cancer, hepatitis C, HIV, and amyotrophic lateral sclerosis (ALS) to determine the number of eligible patients with the conditions specified in the proposed ballot initiative. Disease incidence cases are a subset of disease prevalence cases, so Approach III has a smaller estimate than Approach II. There will be an estimated 116,456 patients newly diagnosed with cancer, hepatitis C, HIV, or ALS in 2015 in Florida. These patients represent the pool of eligible patients for medical use of marijuana. Incidence data for the remaining conditions specified in the proposed ballot initiative were not available. In addition, there are unspecified “other conditions” in the proposed ballot initiative which cannot be estimated under this approach.

Approach IV. Use by Cancer Patients

Approach IV uses medical marijuana penetration rates by disease, specifically cancer, to estimate medical marijuana users in Florida. The number of Florida cancer patients that are likely to use medical marijuana in 2011 is calculated by applying the average penetration rate among cancer patients from seven other states to the Florida number of cancer patients. Assuming Florida will have the same average proportion of cancer patients in the total medical marijuana users as these seven states, the number of medical marijuana users with cancer is grown to represent total medical marijuana users with all conditions in Florida in 2011. The latter is then adjusted to produce 173,671 medical marijuana users with all conditions in 2015.

Approach V. Deaths

Approach V assumes that mostly terminally ill patients will use medical marijuana. Thus, it uses 2012 death rates by disease for the specified diseases, excluding glaucoma and ALS for which no data were available, in the proposed ballot initiative to estimate the number of users. Adjusting these rates to 2015 population projections produces 46,903 potential medical marijuana patients with the specified conditions. In addition, there are unspecified “other conditions” in the proposed ballot initiative which cannot be estimated under this approach.

Approach VI. Self-Reported Marijuana Use (Illicit Recreational Use)

Approach VI presents self-reported illicit marijuana use from the 2011 National Survey on Drug Use and Health. Adjusting 2011 survey results to the 2015 Florida population projections shows that there may be an estimated 1,619,217 self-reported recreational users of marijuana in Florida. If we exclude the population 18 to 24 from this estimate since they would not be as likely to suffer from the debilitating conditions envisioned in the ballot initiative as their older counterparts, it is estimated that there may be 1,052,692 self-reported recreational users of marijuana in Florida. Approach VI was included because some of the current illicit use may be for medical purposes. This estimation approach has been used by other states to estimate recreational marijuana use.

The Conference requested EDR to estimate the extent to which a pill mill scenario and medical marijuana tourism may affect the potential number of users of medical marijuana.

- *Pill Mills:* The potential medical marijuana population was compared to the estimates of the population illicitly using pain relievers for nonmedical reasons to examine

whether “pill mills” can develop for medical marijuana. Applying use rates from the 2011 National Survey on Drug Use and Health, it is estimated that there will be 676,099 pain reliever users for nonmedical reasons in 2015, with higher rates among the 12 to 17 and 18 to 24 age groups compared to the 25 and over age group. The multi-step process consisting of (1) an examination and assessment by a physician in order for a patient to receive a physician certification and (2) the application process through the Department of Health for an identification card may dissuade a pill mill scenario. Further, the amendment allows the Department of Health to issue implementing regulations, and allows the Legislature to enact laws consistent with the amendment that may provide additional regulatory protection.

- *Medical Marijuana Tourism:* The multi-step process described above would discourage shorter-duration visitors from participating in Florida’s medical marijuana program. Snowbirds (visitors staying one month or longer) were used as a potential universe for medical marijuana tourists. An estimated 17,178 to 41,271 snowbirds may apply for ID cards.

For a variety of reasons, the estimates of pill mill and medical tourism were included to “color” the final estimate of the potential number of medical marijuana users and are not meant to be additive to approaches I – VI.

After careful consideration and review of all methods, the Conference determined that the likely number of potential users of medical marijuana upon full implementation of the amendment would be less than 450,000 persons per year.

C. Fiscal Impact of Proposed Amendment

Summary of the Department of Health’s Analysis

The Department’s Planning Assumptions

The analysis from the Department of Health assumes the proposed Constitutional Amendment entitled “Use of Marijuana for Certain Medical Conditions” will be approved by the Florida voters and will have an effective date of January 1, 2015. The analysis further assumes the Florida Department of Health will: (1) promulgate rules by June 30, 2015, (2) issue qualified patient and personal caregiver identification cards prior to October 1, 2015, and (3) register Medical Marijuana Treatment Centers prior to October 1, 2015.

The department analysis provides general planning assumptions, as well as a series of assumptions specific to marijuana, physician authority under state and federal law and regulations, patient and caregiver identification cards, medical marijuana treatment centers, and the department’s responsibilities.

The department estimates that when the program is fully implemented, the number of annual program participants to be: (1) 417,252 qualified patients, (2) 250,351 personal caregivers and (3) 1,789 registered Medical Marijuana Treatment Centers. These estimates were derived based on experience data for the states of Colorado and Oregon.

Program Components

The Florida Department of Health will establish a Florida Medical Marijuana Program which supports: (1) physician issuance of certification, (2) patient and caregiver identification cards, (3)

medical marijuana treatment center registration and regulation, and (4) regulation of the adequate supply of marijuana for a qualifying patient's medical use. For each of these components, the department's analysis cited relevant definitions as provided in the petition initiative language and indicates the department's responsibilities relative to each component.

Program Costs

According to the final analysis provided by the Department of Health, the department will incur an estimated \$1.1 million in costs each year to comply with the regulatory responsibilities assigned to it by the constitutional amendment. Details regarding these costs are in the following table.

Cost Analysis

Cost of Implementation	Year 1 2015	Year 2 2016	Description
Program Staff State Health Office	\$287,654	\$238,181	Year 1 Recurring FTE. Program Manager, \$60,000 salary, fringe (35%) & expense package (\$15,541). One-time contracted positions- Rule making support \$20 hr/2080 hours plus fringe (35%) and contract overhead (4%). Educator \$20.00 hr/1500 hours plus fringe (35%) and contract overhead (4%). Cost to disseminate materials to physicians (\$7,000). Year 2 Program Manager and 2.0 additional recurring FTEs to manage established program. Environmental Consultant (\$82,587) and Senior Clerk (\$37,993). Year 2 includes 750 hours of contracted time to refresh training materials.
Data system implementation and maintenance	\$238,400	\$32,000	Year 1 Business Analysis for program and data system development \$85 per hours for 1040 hours. One-time contractual. Cost to design, develop, test and data system based on business requirements. One-time contractual 1800 hours at \$75.00 per hour (\$135,000) and \$15,000 for hardware. Year 2 Annual cost of help desk and software maintenance 800 hours per year at \$40 per hour. Recurring \$32,000 after Year 1 implementation.
Treatment facility inspections, reinspections, and complaint investigations	\$564,129	\$790,755	Year 1 25% of Year 2 cost for services (\$197,689). One-time cost for 10 state vehicles @ \$35,000 each, 10 pentabets @ \$1,500, and VPN connectivity service \$48 per month for 3 months in year 1- \$1,440. Year 2 Cost for services for 12 months - 9,303 services @ \$85.00 per service = \$790,755. 1,789 treatment centers – 7,156 quarterly inspections, 1,789 reinspections (25% rate) and 358 complaint investigation (20% of centers). Funds 13.25 Environmental Specialist II's to conduct inspections & investigations. (Salary \$37,357, Fringe \$12,451 and Travel \$9,606) for a total of \$787,236. Interagency Agreement with DOACS for inspections of cultivators/processors = \$2,500 per year. Miscellaneous cost of services=\$1,019.
Total	\$1,090,183	\$1,060,936	

Requested Information from State Agencies

The following table reflects a summary of information gleaned from several agencies that were asked to appear before the Conference. Note the information specific to the Department of Revenue is addressed separately under tax discussions that appear subsequently in this document.

State / Local Agency	Date Info Provided	Result
Florida Department of Health	10/21/2013 11/1/2013	Written preliminary and final analyses and testimony showing \$1.1 million in ongoing annual costs, likely to be offset by regulatory fees (see preceding section).
Florida Department of Children and Families Substance Abuse and Mental Health Program	10/28/2013	The department indicated that the budget impact cannot be determined. The budget for these services is set in the General Appropriations Act, which is controlled by the Legislature and these services are not an entitlement.
Florida Agency for Health Care Administration	10/28/2013	Discussed the possible impact regarding “personal care givers”. The activity would fall into current regulatory oversight and would not significantly change regulatory duties. Health care clinics would only be impacted if the clinics accept 3 rd party reimbursement.
Florida Board of Pharmacy	10/28/2013	The dispensaries would be a separate facility or entity and the certificate is not a prescription, so there would be no additional costs.
Florida Department of Business and Professional Regulation (DBPR) Division of Drugs, Devices and Cosmetics	10/28/2013 10/31/2013	Whether medical marijuana is a ‘common household remedy’ is currently unknown. There may be costs associated with making this determination. The form of the substance does not greatly matter, unless it is a food or has been processed. DBPR would have little authority over related supplies or devices.
Florida Department of Agriculture and Consumer Services	10/28/2013	Would not result in a significant regulatory impact to the agency: oversight of the plants; nursery stock dealers’ license; commercial weights; agricultural inspection stations, etc. Fees would cover any additional costs.
Florida Department of Law Enforcement	10/22/2013	Deferred to the Attorney General’s office, as per phone call with staff.
Florida Office of the Attorney General	10/24/2013	Referred the Conference to a letter that was submitted to the Chief Justice and Justices of the Florida Supreme Court detailing several concerns; among them the interaction of the amendment and current federal law.
Florida Department of Highway Safety and Motor Vehicles	10/31/2013	Indicated that there may be some additional costs, but cannot quantify them at this time. The costs may be due to law enforcement training needs and public education and outreach.
Florida Association of Counties	10/29/2013	The Florida Association of Counties is unable to make a determination about the financial impact of the proposed amendment on local governments as per email.
Florida League of Cities	10/30/2013	Responded via phone call to staff that they had no input at this time and referred the Conference to the Police Chiefs Association.
Florida Police Chiefs Association	10/25/2013	Email indicating additional enforcement costs based on the experience from other states that have similar amendments, but they were unable to quantify these costs at this time.
Florida Sheriffs Association	10/21/2013 10/27/2013	Presentation and email indicating additional enforcement costs based on the experience from other states that have similar amendments, but they were unable to quantify these costs at this time.

Florida Sales Tax Treatment of Medical Marijuana

Since medical marijuana is tangible personal property for the purposes of Chapter 212, Florida Statutes, its purchase is subject to Florida sales and use tax unless a specific exemption exists. In this regard, there were three possible areas of current law exemptions considered by the Conference: prescription-based exemptions, the common household remedy exemption, and agricultural-related exemptions.

The Conference has determined that the prescription-based exemptions do not apply to medical marijuana purchases due to technical constraints that include the interaction of state and federal law. The Florida Statutes define a prescription as “any order for drugs or medicinal supplies written or transmitted by any means of communication by a duly licensed practitioner authorized by the laws of the state to prescribe such drugs or medicinal supplies and intended to be dispensed by a pharmacist.” Current federal law prohibits a physician from writing prescriptions for Schedule I controlled substances, which would include marijuana. In addition, the proposed amendment establishes a certification process that allows the end-user to control both the product type and dosage frequency without the need for an authorizing prescription, making the certification process fundamentally different from the typical prescription purchase. Moreover, the proposed amendment requires medical marijuana to be dispensed by a Medical Marijuana Treatment Center that is not required to be a pharmacy. Similarly, the exemption for medical products requires a prescription and would not be applicable to the sales of supplies related to medical marijuana.

The exemption for common household remedies does not require the presence of a prescription. Pursuant to Florida Statutes, the Department of Business and Professional Regulation must approve a list of these items, and that list is then certified to and adopted by the Department of Revenue through the rule-making process. There is also a process for inclusion of additional items. The existing list contains a mixture of specifically named remedies and broad classes of remedies. Based on testimony provided by both departments that they are unclear whether the broad classes of remedies presently on the list encompass medical marijuana, the Conference is left with uncertainty regarding the applicability of the exemption. During the discussion, both agencies identified reasons that the exemption may not apply, emphasizing the restrictive nature of the certification process on potential users and the limitation on sales locations to registered Medical Marijuana Treatment Centers. Because this aspect of the discussion applies equally to a decision regarding the specific inclusion of medical marijuana on a future list, doubt is cast on this action as well. However, it is possible that some supplies related to the use of medical marijuana are already on the list so each item would have to be evaluated on a case-by-case basis even if the sale of medical marijuana itself is determined to be taxable.

The agricultural-related exemptions apply to sales of medical marijuana when the grower or cultivator sells or dispenses the product directly to the end-user or a personal caregiver as defined in the proposed amendment. If the grower or cultivator instead sells the product to a third-party retailer (a non-taxable transaction) who then sells or dispenses the product to the end-user or the caregiver, the agricultural exemption on the final sale is lost and that transaction

becomes taxable.¹² However, the determination of whether medical marijuana is a common household remedy becomes significant at this point. Since it is unclear whether medical marijuana will ultimately be deemed to be a common household remedy, the tax treatment of a sale through a third-party to the end-user is uncertain.

The only form of medical marijuana that appears especially problematic to the direct application of the above findings regarding taxability is its inclusion as a part of a food product. In this regard, if medical marijuana is determined to be transformed from its original form into a distinct food product, then the law and the Department of Revenue's rules regarding food will govern its taxability. The sale of each type of food product would have to be evaluated on a case-by-case basis.

Finally, the sales of items such as grow lights and hydroponic systems that might be used for the indoor cultivation of medical marijuana are generally taxable. However, there is an exemption from sales tax for "power farm equipment." According to the Florida Statutes, "power farm equipment" means "moving or stationary equipment that contains within itself the means for its own propulsion or power and moving or stationary equipment that is dependent upon an external power source to perform its functions." Therefore, grow lights and hydroponic systems that are sold as a component part of power farm equipment would likely be exempt.

In summary, the revenue impact to state and local government from the application of the sales and use tax to the sale of medical marijuana and related supplies would range from zero to positive indeterminate because critical details regarding the specific transactions are currently unknown and key decisions regarding the potential tax exemptions have yet to be made by the affected agencies under their current administration of the law. It is also possible that the Legislature would enact new legislation specific to these questions.

Potential Estimates Related to Sales Tax Impact

In an attempt to quantify the potential magnitude of the sales tax impact, the Conference looked to other states to analyze their results. Of the states that have approved the use of medical marijuana, at least eight states and the District of Columbia have a sales tax structure that could encompass medical marijuana transactions.¹³ Of these, at least three states and the District of Columbia have approved medical marijuana and also have a sales tax provision providing an exemption or partial exemption for over-the-counter health remedies. It appears that the exemption for common household remedies will apply to the sales of medical marijuana in at least Vermont. In New Jersey and Illinois, legislation explicitly made the sale of medical marijuana subject to tax. In the District of Columbia, marijuana's status as a Schedule I drug appears to disqualify it from the exemption. This leaves the experience of five states and the District of Columbia for comparison purposes. Within this grouping, California's collections

¹² According to Jon Mills who spoke via phone conversation on behalf of the initiative's sponsors, the proposed amendment was drafted to allow various levels of industry integration: both vertical integration of the complete supply chain through one owner and a segmented market structure with independent intermediaries at each stage. He also indicated that the Legislature or the Department of Health through its rule-making process would have the ability to further limit or define the permissible market structure arrangements.

¹³ Arizona, California, Colorado, Illinois, Maine, New Jersey, Rhode Island, Vermont and the District of Columbia have sales taxes. Nevada reportedly has a 2% excise tax at the wholesale and retail levels.

were by far the highest with projected revenues from the 7.5% state sales tax rate ranging between \$58 million and \$105 million in 2012.

Temporarily suspending the confusion regarding Florida's final tax treatment of medical marijuana sales, the Legislative Office of Economic and Demographic Research used the information from other states to analyze the potential range of state sales tax revenues *in the extreme case where no sales tax exemptions apply*. The number of users, the consumption per user and the cost of the product are all critical assumptions and cause the projections to change dramatically as they are varied. Using price data from Vermont, allowable usage from Connecticut, survey data on the illegal use of marijuana for recreational purposes, and two of the estimates of projected Florida users discussed earlier, the estimated sales tax collections range from a low of \$8.3 million to a maximum of \$338.0 million. Since the brackets at both ends assume *no exemptions apply*—and the Conference believes that at a minimum the exemption for agricultural products will apply in at least some instances—these numbers do not encompass a probable range and cannot be used for a purpose other than testing significance.

Potential Range of State Sales Tax Revenues from Medical Marijuana End-Users Assuming No Sales Tax Exemptions Apply

The Following Examples Demonstrate a Range that is Generated by Varying Assumptions

Quantity Consumed/ Estimation Approach	April 1, 2015 Users	Sales (\$)		State Sales Tax Revenues (\$)	
		\$225/ oz	\$450/ oz	\$225/ oz	\$450/ oz
Annual use of 3.53 oz (100 g)					
I. States with medical marijuana laws	417,252	331,402,401	662,804,802	19,884,144	39,768,288
IV. Use by cancer patients	173,671	137,938,192	275,876,384	8,276,292	16,552,583
Annual use of 30 oz (850 g)					
I. States with medical marijuana laws	417,252	2,816,451,000	5,632,902,000	168,987,060	337,974,120
IV. Use by cancer patients	173,671	1,172,279,250	2,344,558,500	70,336,755	140,673,510

NOTE: Additional detail can be found at EDR's website:

<http://edr.state.fl.us/Content/constitutional-amendments/2014Ballot/UseofMarijuanaforCertainMedicalConditions/UseofMarijuanaAdditionalInformation.cfm>

Florida Property Tax Treatment of Medical Marijuana

Lands used for growing medical marijuana will likely qualify as agricultural property for property tax purposes. This means that the property would receive a classified use agricultural assessment. Because this treatment may increase or decrease the taxable value relative to its prior value, the impact on property taxes is indeterminate—both in terms of magnitude and direction.

HP1067
LD 1453

First Regular Session - 125th Maine Legislature

LR 131
Item 1

[Bill Tracking, Additional Documents](#)

[Chamber Status](#)

An Act To Legalize and Tax Marijuana

Be it enacted by the People of the State of Maine as follows:

PART A

Sec. A-1. **36 MRSA c. 723** is enacted to read:

CHAPTER 723

MARIJUANA TAX

§ 4921. Rate of tax

A tax at the rate of 7% is imposed on the value of marijuana sold for commercial purposes pursuant to Title 22, chapter 558 or for medical use as defined in Title 22, chapter 558-C, beginning on or after January 1, 2012.

§ 4922. Application of revenues

Revenues derived from the tax imposed by this chapter must be credited to a General Fund suspense account. On or before the last day of each month, the State Controller shall transfer the revenues received by the State Tax Assessor during the preceding month pursuant to the tax imposed by section 4921 in equal amounts to the Land for Maine's Future Fund established under Title 5, section 6203, the Agricultural Marketing Loan Fund established under Title 10, section 1023-J, the Community Policing Grant Program Fund established under Title 25, section 2917, the Heating Fuels Efficiency and Weatherization Fund established under Title 35-A, section 10119, the University of Maine System established under Title 20-A, chapter 411, the Maine Community College System established under Title 20-A, chapter 431 and the Maine Maritime Academy.

§ 4923. Annual report

The bureau shall report annually beginning January 30, 2013 the amount of tax revenue collected pursuant to section 4921 and the amount distributed to each fund pursuant to section 4922 to the joint standing committee of the Legislature having jurisdiction over appropriations and financial affairs and the joint standing committee of the Legislature having jurisdiction over taxation matters.

Sec. A-2. Review and report recommendations. The Department of Administrative and Financial Services, Bureau of Revenue Services shall review methods for ensuring that all marijuana that is sold in the State is assessed. The bureau shall report its findings and recommendations, including any necessary legislation, to the Joint Standing Committee on Taxation by November 1, 2011. The Joint Standing Committee on Taxation is authorized to submit a bill to the Second Regular Session of the 125th Legislature to implement the recommendations.

PART B

Sec. B-1. **22 MRSA §2383, sub-§1**, as repealed and replaced by PL 2009, c. 652, Pt. B, §6, is amended to read:

1. Marijuana. Except as provided in sections 2390 and 2391 and chapter 558-C, a person may not possess marijuana.

A. A person who possesses a usable amount of marijuana commits a civil violation for which a fine of not less than ~~\$350 and not more than \$600~~ must be adjudged for possession of up to 1 1/4 ounces of marijuana and a fine of not less than ~~\$700 and not more than \$1,000~~ \$250 must be adjudged for possession of ~~over 1 1/4 ounces to 2 1/2 ounces~~ up to one pound of marijuana, none of which may be suspended.

[PL 2009, c. 652, Pt. B, § 6 (RPR).]

Sec. B-2. **22 MRSA §2390** is enacted to read:

§ 2390. Personal use of marijuana

Notwithstanding Title 17-A, chapter 45, a person 21 years of age or older may possess, cultivate, store and purchase marijuana for personal use.

1. Definitions. As used in this section, unless the context otherwise indicates, the following terms have the following meanings.

A. "Incidental amount of marijuana" means a minor amount of marijuana plants, seeds, stalks and roots or a residual amount of prepared marijuana or used marijuana that is not included in the amounts of prepared marijuana as defined by rule adopted by the department.

B. "Prepared marijuana" has the same meaning as in section 2422, subsection 14.

2. Possession. A person may possess up to one pound of prepared marijuana, marijuana paraphernalia and an incidental amount of marijuana.

3. Cultivation and storage of marijuana. The following provisions apply to the cultivation and storage of marijuana for personal use.

A. A person may use up to 75 square feet of space for the cultivation and storage of marijuana at that person's place of residence, on property owned by that person or on another person's property with the written permission of the other property owner.

B. Up to 3 people who share a residence may use a common space for the cultivation and storage of marijuana of 75 square feet of space per person at the residence.

C. A person who elects to cultivate and store marijuana shall ensure the plants, paraphernalia and equipment are secure from unauthorized access or access by a person under 21 years of age.

D. Marijuana cultivation for medical use is not considered cultivation for personal use under this section and is governed by chapter 558-C.

4. Purchase. A person may purchase up to 2 1/2 ounces of prepared marijuana, marijuana paraphernalia and marijuana seedlings from a person or an establishment licensed to sell these products under section 2391.

5. Use. A person may smoke or ingest marijuana in a nonpublic place including a private residence. The existing prohibitions and limitations on smoking tobacco products in specified areas pursuant to chapters 262 and 263 apply to marijuana.

6. Limitations. This section does not permit a person to:

A. Undertake a task under the influence of marijuana when doing so would constitute negligence or professional malpractice or would otherwise violate a professional standard;

B. Possess marijuana or otherwise engage in the use of marijuana:

(1) In a school bus;

(2) On the grounds of any preschool or primary or secondary school; or

(3) In a correctional facility;

C. Smoke marijuana:

(1) On any form of public transportation; or

(2) In a public place; or

D. Operate a motor vehicle, aircraft, motorboat, snowmobile or all-terrain vehicle while under the influence

of marijuana.

7. Construction. This section may not be construed to require an employer to accommodate the smoking or ingestion of marijuana in a workplace or an employee working while under the influence of marijuana.

8. Rulemaking. Rules adopted pursuant to this section are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

Sec. B-3. **22 MRSA §2391** is enacted to read:

§ 2391. Commercial marijuana-related activities

Notwithstanding Title 17-A, chapter 45, a person who holds a license under section 2392 may cultivate, harvest, possess, process, package, transport, store and sell marijuana and marijuana paraphernalia for commercial purposes.

Sec. B-4. **22 MRSA §2392** is enacted to read:

§ 2392. Licensing requirements

1. License issued. The department shall issue or renew a license for commercial marijuana-related activities to a person who meets the requirements of the department as set forth in rule and in subsection

2. For purposes of this section, "commercial marijuana-related activities" means cultivating, harvesting, processing, packaging, transporting, storing or selling marijuana for commercial purposes.

A. The department shall limit the number of licenses issued as determined by the department by rule in the first year and may issue no more than 30 additional licenses per year in subsequent years.

B. The department shall grant provisional licenses to dispensaries that on June 30, 2011 are registered pursuant to section 2428 and to persons who on June 30, 2011 are registered as primary caregivers pursuant to section 2422, subsection 11. A dispensary or primary caregiver may decline provisional licensing by notifying the department in writing. The department shall remove the provisional status of the license once the primary caregiver completes the licensing process set forth in rule and meets all licensing requirements.

2. Requirements. This subsection governs the operations of a licensee engaged in commercial marijuana-related activities.

A. A person who has been convicted of a disqualifying drug offense may not be a licensee. For purposes of this section, "a disqualifying drug offense" means a conviction for a violation of a state or federal controlled substance law that is a crime punishable by imprisonment for one year or more. It does not include an offense for which the sentence, including any term of probation, incarceration or supervised release, was completed 10 or more years earlier or an offense that consisted of conduct that is permitted under this chapter.

B. A licensee may use no more than 2,000 square feet of space for commercial marijuana cultivation.

C. A licensee may sell no more than 2 1/2 ounces of marijuana to a given individual within a 7-day period. This restriction does not apply to sales to nonprofit dispensaries registered pursuant to section 2428.

D. Commercial marijuana-related activities may not be located within 500 feet of the property line of a preexisting public or private school.

E. A licensee shall implement appropriate security measures to prevent:

(1) Unauthorized entrance into areas containing marijuana;

(2) The theft of marijuana located on the premises or in transit;

(3) Tampering with or adulteration of the marijuana products;

(4) Unauthorized access to marijuana or marijuana paraphernalia by customers; and

(5) Access to or sales of marijuana to persons under 18 years of age.

E. A licensee shall prepare and maintain documents that include procedures for the oversight of all aspects

of operations and procedures to ensure accurate record keeping.

G. A person must be a resident of this State for a minimum of 1 year prior to applying for a license.

Sec. B-5. **22 MRSA §2393** is enacted to read:

§ 2393. Commercial Marijuana-related Activities Licensing Fund established

1. Fund established. The Commercial Marijuana-related Activities Licensing Fund, referred to in this section as "the fund," is established as an Other Special Revenue Funds account in the department for the purposes specified in this section.

2. Sources of fund. The State Controller shall credit to the fund:

A. All money received as a result of applications and renewal registrations for licensing under section 2392;

B. All penalties and fines assessed for violations of sections 2390 to 2392;

C. All money from any other source, whether public or private, designated for deposit into or credited to the fund; and

D. Interest earned or other investment income on balances in the fund.

3. Uses of the fund. The fund may be used for expenses of the department to regulate commercial marijuana-related activities, as allocated by the Legislature.

Sec. B-6. Rulemaking. By December 1, 2011, the Department of Health and Human Services shall adopt major substantive rules, as defined in the Maine Revised Statutes, Title 5, chapter 375, subchapter 2-A, to implement the provisions of Title 22, sections 2290 to 2293, governing the personal use of marijuana and commercial marijuana-related activities, including rules governing:

1. Provisions for administering and enforcing section 2390 including oversight requirements and penalties for violations;
2. The types of licenses for commercial marijuana-related activities that may be issued pursuant to section 2392, including but not limited to a distinct license for commercial marijuana cultivation and sales;
3. The terms, conditions and duration of each type of license pursuant to section 2392, including the provisional license pursuant to section 2392, subsection 1, paragraph B;
4. The form and content of applications, renewal registration forms and associated licensing and renewal fee schedules;
5. Procedures and timelines for application decisions, background checks and appeals;
6. Minimum standards for employment, including requirements for background checks, restrictions against hiring minors and safeguards to protect against unauthorized employee access to marijuana;
7. Minimum record-keeping requirements, including the recording of the disposal of marijuana that is not sold;
8. Minimum security requirements, including standards to reasonably protect against unauthorized access to marijuana at all stages of the licensee's possession of the marijuana, including receiving, processing, packing, storage, transporting and delivery to licensed sales outlets;
9. Procedures for enforcing section 2393, including penalties for violations, and procedures for suspending or terminating the license of a licensee that violates licensing provisions or the rules adopted pursuant to this section;
10. A streamlined application and approval process for a person named as a primary caregiver pursuant to Title 22, section 2425 and for an entity that is operating as a registered dispensary under Title 22, section 2428; and
11. Any other oversight requirements that the department determines are necessary to administer the laws

relating to licensing commercial marijuana-related activities.

Rules adopted pursuant to this section may not prohibit a political subdivision of this State from limiting the number of licensees that may operate in the political subdivision or from enacting reasonable regulations applicable to licensees.

PART C

Sec. C-1. **25 MRSA §2917** is enacted to read:

§ 2917. Community Policing Grant Program established; fund established

1. Established. The commissioner shall establish the Community Policing Grant Program, referred to in this section as "the program," to assist county and municipal law enforcement with community policing efforts in accordance with this section through grants from the program.

2. Fund. The Community Policing Grant Program Fund, referred to in this section as "the fund," is established within the Department of Public Safety to be used for the program in accordance with rules established by the commissioner. The fund consists of revenues deposited in the fund pursuant to Title 36, section 4922, any other funds appropriated or allocated for inclusion in the fund, from any source, and any other money available for deposit in the fund, including any federal funds or other public funds or any donations made to the fund. The commissioner may apply for federal or other funds that may be available for the purposes of the program. The fund is nonlapsing, and any balance remaining in the fund at the end of any fiscal year must be carried forward to the next fiscal year. The fund may also be used to pay for administrative expenses associated with the program.

3. Relation to other funding. Grants from the program supplement any other sources or levels of funding appropriated or allocated by the Legislature.

4. Annual report. The Department of Public Safety shall report annually, beginning January 30, 2013, the amount of grant funds distributed to each recipient and the projects that were funded pursuant to this section to the joint standing committees of the Legislature having jurisdiction over criminal justice and public safety matters and taxation matters.

Sec. C-2. Rules. The Commissioner of Public Safety shall, by December 1, 2011, adopt routine technical rules, as defined in the Maine Revised Statutes, Title 5, chapter 375, subchapter 2-A, establishing the administration of the Community Policing Grant Program and the Community Policing Grant Program Fund established in Title 25, section 2917, including rules governing:

1. Application procedures, forms, deadlines and eligibility criteria for the grants;
2. Selection criteria and composition of a grant review committee, which must include representatives from groups involved in law enforcement, education, farming, community development and the reform of marijuana policy;
3. Criteria for awarding grants, dates for decisions of grant awards and methods for disbursement of funds;
4. Minimum record-keeping and reporting requirements for grantees; and
5. Any other oversight requirements that the commissioner determines necessary to administer the grants.

PART D

Sec. D-1. **22 MRSA §2422, sub-§1**, as amended by PL 2009, c. 631, §8 and affected by §51, is repealed.

Sec. D-2. **22 MRSA §2422, sub-§3**, as enacted by IB 2009, c. 1, §5, is repealed.

Sec. D-3. **22 MRSA §2422, sub-§5**, as amended by PL 2009, c. 631, §11 and affected by §51, is further

amended to read:

5. Medical use. "Medical use" means the acquisition, possession, cultivation, manufacture, use, delivery, transfer or transportation of marijuana or paraphernalia relating to the administration of marijuana to treat or alleviate a ~~registered~~ qualifying patient's debilitating medical condition or symptoms associated with the patient's debilitating medical condition.

Sec. D-4. **22 MRSA §2422, sub-§6**, as amended by PL 2009, c. 631, §12 and affected by §51, is further amended to read:

6. Registered dispensary. "Registered dispensary" or "dispensary" means a not-for-profit entity registered under section 2428 that acquires, possesses, cultivates, manufactures, delivers, transfers, transports, sells, supplies or dispenses marijuana or related supplies and educational materials to ~~registered~~ qualifying patients who have designated the dispensary to cultivate marijuana for their medical use and the ~~registered~~ primary caregivers of those patients.

Sec. D-5. **22 MRSA §2422, sub-§6-A**, as enacted by PL 2009, c. 631, §13 and affected by §51, is repealed.

Sec. D-6. **22 MRSA §2422, sub-§9**, as enacted by IB 2009, c. 1, §5, is amended to read:

9. Qualifying patient. "Qualifying patient" means a person who has been diagnosed by a physician as having a debilitating medical condition and in the physician's professional opinion is likely to receive therapeutic or palliative benefits from the medical use of marijuana to treat or alleviate the patient's debilitating medical condition or symptoms associated with the condition.

Sec. D-7. **22 MRSA §2422, sub-§11**, as repealed and replaced by PL 2009, c. 631, §16 and affected by §51, is amended to read:

11. Primary caregiver. ~~"Registered primary caregiver" or "primary"~~ "Primary caregiver" means a person, a hospice provider licensed under chapter 1681 or a nursing facility licensed under chapter 405 that provides care for a ~~registered~~ qualifying patient and that has been ~~named~~ designated in writing by the patient as a primary caregiver to assist with a ~~registered~~ qualifying patient's medical use of marijuana. A person who is a primary caregiver must be at least 21 years of age and may not have been convicted of a disqualifying drug offense.

Sec. D-8. **22 MRSA §2422, sub-§12**, as amended by PL 2009, c. 631, §17 and affected by §51, is repealed.

Sec. D-9. **22 MRSA §2422, sub-§13**, as amended by PL 2009, c. 631, §18 and affected by §51, is repealed.

Sec. D-10. **22 MRSA §2422, sub-§15**, as enacted by IB 2009, c. 1, §5, is repealed.

Sec. D-11. **22 MRSA §2422, sub-§16**, as enacted by IB 2009, c. 1, §5, is repealed.

Sec. D-12. **22 MRSA §2423-A**, as enacted by PL 2009, c. 631, §21 and affected by §51, is amended to read:

§ 2423-A. Authorized conduct for the medical use of marijuana

1. Qualifying patient. Except as provided in section 2426, a ~~registered~~ qualifying patient may:

A. Possess up to 2 1/2 ounces of prepared marijuana and an incidental amount of marijuana as provided in subsection 5;

- B. Cultivate up to 6 marijuana plants if the patient elects to cultivate and the patient has not designated a ~~registered~~ primary caregiver or registered dispensary to cultivate marijuana on the patient's behalf;
- C. Possess marijuana paraphernalia;
- D. Furnish or offer to furnish to another ~~registered~~ qualifying patient for that person's medical use of marijuana up to 2 1/2 ounces of prepared marijuana if nothing of value is offered or transferred in return;
- E. Name one person, hospice provider or nursing facility as a primary caregiver. A 2nd person or hospice provider or nursing facility may be named as a 2nd primary caregiver if the patient is under 18 years of age. The primary caregivers for a patient are determined solely by the ~~patient's preference as named on the application under section 2425, subsection 1~~ patient except that a parent, guardian or person having legal custody shall serve as a primary caregiver for a minor child ~~pursuant to section 2425, subsection 2, paragraph B, subparagraph (2);~~
- F. Designate one primary caregiver or a registered dispensary to cultivate marijuana for the medical use of the patient, except that a hospice provider or a nursing facility that is named as a primary caregiver by a ~~registered~~ qualifying patient and the staff of the provider or facility may not be designated to cultivate marijuana for the patient. The primary caregiver or dispensary that may cultivate marijuana for a patient is determined solely by the patient's designation ~~on the application under section 2425, subsection 1 in writing; and~~
- G. Be in the presence or vicinity of the medical use of marijuana and assist any ~~registered~~ qualifying patient with using or administering marijuana.

2. Primary caregiver. Except as provided in section 2426, a ~~registered~~ primary caregiver, for the purpose of assisting a ~~registered~~ qualifying patient who has ~~named~~ designated the primary caregiver as ~~provided in section 2425, subsection 1 in writing,~~ may:

- A. Possess up to 2 1/2 ounces of prepared marijuana and an incidental amount of marijuana as provided in subsection 5 for each patient who has ~~named~~ designated in writing the person as a primary caregiver;
- B. Cultivate up to 6 marijuana plants for each patient who has designated in writing the primary caregiver to cultivate marijuana on the patient's behalf. A primary caregiver may not cultivate marijuana for a patient unless the patient has designated the primary caregiver for that purpose and the patient has not designated a registered dispensary to cultivate marijuana for the patient's medical use;
- C. Assist no more than 5 patients at any one time with their medical use of marijuana;
- D. Receive reasonable monetary compensation for costs associated with assisting a patient ~~who named the primary caregiver through the department's registration process if licensed under chapter 558;~~
- E. Receive reasonable monetary compensation , if licensed under chapter 558, for costs associated with cultivating marijuana for a patient who designated in writing the primary caregiver to cultivate marijuana ~~through the department's registration process;~~
- F. Be in the presence or vicinity of the medical use of marijuana and assist any patient with the medical use or administration of marijuana; and
- G. Prepare food as defined in section 2152, subsection 4 containing marijuana for medical use by a ~~registered~~ qualifying patient if the primary caregiver preparing the food has obtained a license pursuant to section 2167.

3. Cultivation of marijuana. The following provisions apply to the cultivation of marijuana by a ~~registered~~ qualifying patient under subsection 1 or a ~~registered~~ primary caregiver under subsection 2.

- A. A patient who elects to cultivate marijuana plants must keep the plants ~~in an enclosed, locked facility unless the plants are being transported because the patient is moving or taking the plants to the patient's own property in order to cultivate them~~ secure from unauthorized access or from access by a person under 18 years of age.

- B. A primary caregiver who has been designated by a patient to cultivate marijuana for the patient's medical use must keep all plants ~~in an enclosed, locked facility unless the plants are being transported because the primary caregiver is moving or taking the plants to the primary caregiver's own property in order to cultivate them~~ secure from unauthorized access or from access by a person under 18 years of age.

4. Hospice provider or nursing facility. A ~~registered~~ qualifying patient may name a hospice provider licensed under chapter 1681 or a nursing facility licensed under chapter 405 to serve as a ~~registered~~ primary caregiver. If a hospice provider or nursing facility is named as a primary caregiver, the provider or facility ~~shall complete the registration process with the department and obtain a primary caregiver registration card and the staff of the provider or facility shall obtain registry identification cards. To be issued a registry identification card, a~~ A staff person of a hospice provider or nursing facility that has been named as a primary caregiver must be at least 21 years of age and may not have been convicted of a disqualifying drug offense. The hospice provider or nursing facility and the staff of the provider or facility

may not cultivate marijuana for the patient.

5. Incidental amount of marijuana. For purposes of this section, any incidental amount of marijuana plants, seeds, stalks and roots, as defined by rule adopted by the department, is lawful for a registered qualifying patient or a registered primary caregiver to possess and is not included in the amounts of prepared marijuana specified in this section.

~~**6. Onsite assessments by the department.** Prior to making an onsite assessment of a registered primary caregiver who is designated to cultivate marijuana by 3 or more patients at any one time, the department shall provide 24 hours' notice to the registered primary caregiver.~~

Sec. D-13. **22 MRSA §2423-B**, as enacted by PL 2009, c. 631, §22 and affected by §51, is repealed.

Sec. D-14. **22 MRSA §2423-C**, as enacted by PL 2009, c. 631, §23 and affected by §51, is amended to read:

§ 2423-C. Authorized conduct by anyone for the medical use of marijuana

A person may provide a registered qualifying patient or a registered primary caregiver with marijuana paraphernalia for purposes of the registered qualifying patient's medical use of marijuana in accordance with this chapter and be in the presence or vicinity of the medical use of marijuana as allowed under this chapter.

Sec. D-15. **22 MRSA §2423-D**, as enacted by PL 2009, c. 631, §24 and affected by §51, is repealed.

Sec. D-16. **22 MRSA §2423-E, sub-§2**, as enacted by PL 2009, c. 631, §25 and affected by §51, is amended to read:

2. School, employer or landlord may not discriminate. A school, employer or landlord may not refuse to enroll or employ or lease to or otherwise penalize a person solely for that person's status as a registered qualifying patient or a registered primary caregiver unless failing to do so would put the school, employer or landlord in violation of federal law or cause it to lose a federal contract or funding. This subsection does not prohibit a restriction on the administration or cultivation of marijuana on premises when that administration or cultivation would be inconsistent with the general use of the premises. A landlord may prohibit the smoking of marijuana for medical purposes on the premises of the landlord if the landlord prohibits all smoking on the premises and posts notice to that effect on the premises.

Sec. D-17. **22 MRSA §2424, sub-§2**, as repealed and replaced by PL 2009, c. 631, §26 and affected by §51, is amended to read:

2. Adding debilitating medical conditions. The commissioner shall establish, chair and staff an advisory board consisting of at least 11 health care practitioners representing various fields of practice, including but not limited to neurology, gastroenterology, pain management, medical oncology, psychiatry, infectious disease, hospice medicine, family medicine, pediatrics, treatment of addiction and gynecology. The practitioners must be certified by a national board in their areas of specialty and knowledgeable about the medical use of marijuana. The advisory board must also include at least 2 members of the public, at least one of whom is a registered qualifying patient. The members must be chosen for appointment by the commissioner from a list proposed by the Maine Medical Association and the Maine Osteopathic Association or their successor organizations and from a list of individuals who have volunteered to serve on the advisory board. The advisory board shall:

- A. Accept, review and evaluate petitions to add medical conditions, medical treatments or diseases to the list of debilitating medical conditions that qualify for the medical use of marijuana. If a petition contains information that is confidential under section ~~2425, subsection 8, paragraph F~~ 2425-A, the board shall protect the confidentiality of that information;
- B. Convene at least once per year to conduct public hearings regarding adding medical conditions, medical treatments or diseases to the list of debilitating medical conditions that qualify for the medical use of marijuana;

C. Review and recommend to the commissioner for approval additional debilitating medical conditions that would benefit from the medical use of marijuana; and

D. Recommend quantities of marijuana that are necessary to constitute an adequate supply for registered qualifying patients, registered primary caregivers and registered dispensaries.

Sec. D-18. **22 MRSA §2424, sub-§3**, as amended by PL 2009, c. 631, §27 and affected by §51, is repealed.

Sec. D-19. **22 MRSA §2425**, as amended by PL 2009, c. 631, §§28 to 36 and affected by §51, is repealed.

Sec. D-20. **22 MRSA §2425-A** is enacted to read:

§ 2425-A. Confidentiality

1. Dispensary confidentiality. Applications, supporting information and other information regarding a registered dispensary are not confidential, except that dispensary information that identifies a qualifying patient, the patient's physician or the patient's primary caregivers is confidential.

2. Disclosure of records. A record maintained by a registered dispensary or the department pursuant to this section that identifies a qualifying patient, a primary caregiver or a qualifying patient's physician is confidential and may not be disclosed except as provided in this subsection. Records may be disclosed:

A. To department employees who are responsible for carrying out this chapter;

B. Pursuant to court order;

C. With the written permission of the patient or the patient's guardian, if the patient is under guardianship, or a parent, if the patient has not attained 18 years of age;

D. As permitted or required for the disclosure of health care information pursuant to section 1711-C; and

E. To a patient's treating physician and to a patient's primary caregiver for the purpose of carrying out this chapter.

3. Physician communication. This section does not prohibit a physician from notifying the department if the physician acquires information indicating that a qualifying patient is no longer eligible to use marijuana for medical purposes or that a qualifying patient falsified information that was the basis of the physician's determination of eligibility for use.

4. Violations. A person who knowingly violates the confidentiality of information protected under this section commits a civil violation for which a fine of up to \$1,000 may be imposed. This subsection does not apply to a physician or staff of a hospice provider or nursing facility named as a primary caregiver or any other person directly associated with a physician or a hospice provider or nursing facility that provides services to a qualifying patient.

Sec. D-21. **22 MRSA §2425-B** is enacted to read:

§ 2425-B. Reporting

The department shall submit by April 1st each year to the Legislature an annual report that does not disclose any identifying information about qualifying patients or physicians, but does contain, at a minimum:

1. Dispensaries. The number of registered dispensaries;

2. Patients. The number of qualifying patients served by the dispensaries in each county; and

3. Officers. The number of principal officers, board members and employees of each dispensary.

Sec. D-22. **22 MRSA §2428, sub-§1-A**, as enacted by PL 2009, c. 631, §42 and affected by §51, is amended to read:

1-A. Provisions pertaining to registered dispensary. For the purpose of assisting a registered qualifying patient who has designated a registered dispensary to cultivate marijuana for the patient's medical use, a registered dispensary may in accordance with rules adopted by the department:

- A. Possess up to 2 1/2 ounces of prepared marijuana and an incidental amount of marijuana for each patient who has designated the dispensary. For the purposes of this ~~chapter~~ section, any incidental amount of marijuana plants, seeds, stalks and roots, as defined by rule adopted by the department, is lawful for a dispensary to possess and is not included in the amounts of prepared marijuana specified in this paragraph;
- B. Cultivate up to 6 marijuana plants for each patient who has designated the dispensary to cultivate the plants on the patient's behalf;
- C. Receive reasonable monetary compensation for costs associated with assisting or for cultivating marijuana for a patient who designated the dispensary through the department's registration process; ~~and~~
- D. Assist any patient who designated the dispensary through the department's registration process to cultivate marijuana with the medical use or administration of marijuana - ; and
- E. Purchase marijuana from a person who holds a license pursuant to section 2392.

Sec. D-23. **22 MRSA §2428, sub-§2, ¶B**, as amended by PL 2009, c. 631, §42 and affected by §51, is further amended to read:

B. The department shall track the number of ~~registered~~ qualifying patients who designate a dispensary to cultivate marijuana for them and issue to each dispensary a written statement of the number of patients who have designated the dispensary to cultivate marijuana for them. This statement must be updated each time a new ~~registered~~ qualifying patient designates the dispensary or ceases to designate the dispensary. The statement may be transmitted electronically if the department's rules so provide. The department may provide by rule that the updated written statements may not be issued more frequently than once each week.

Sec. D-24. **22 MRSA §2428, sub-§2, ¶C**, as amended by PL 2009, c. 631, §42 and affected by §51, is repealed.

Sec. D-25. **22 MRSA §2428, sub-§2, ¶D**, as amended by PL 2009, c. 631, §42 and affected by §51, is further amended to read:

D. The department may not issue a ~~registry identification card to~~ registration certificate to a dispensary if any principal officer, board member or employee of a the dispensary ~~who~~ has been convicted of a disqualifying drug offense. The department may conduct a background check of each principal officer, board member or employee in order to carry out this provision. The department shall notify the dispensary through its principal officers or board members in writing of the reason for denying the registry ~~identification card~~ registration certificate.

Sec. D-26. **22 MRSA §2428, sub-§3, ¶B**, as amended by PL 2009, c. 631, §42 and affected by §51, is further amended to read:

B. Minimum oversight requirements for dispensaries and the one permitted additional location at which the dispensary cultivates marijuana for medical use by ~~registered~~ qualifying patients who have designated the dispensary to cultivate for them;

Sec. D-27. **22 MRSA §2428, sub-§3, ¶C**, as amended by PL 2009, c. 631, §42 and affected by §51, is further amended to read:

C. Minimum record-keeping requirements for dispensaries, including recording the disposal of marijuana that is not distributed by the dispensary to ~~registered~~ qualifying patients who have designated the dispensary to cultivate for them;

Sec. D-28. **22 MRSA §2428, sub-§3, ¶D**, as amended by PL 2009, c. 631, §42 and affected by §51, is further amended to read:

D. Minimum security requirements for dispensaries and any additional location at which the dispensary cultivates marijuana for medical use by ~~registered~~ qualifying patients who have designated the dispensary

to cultivate for them; and

Sec. D-29. **22 MRSA §2428, sub-§5**, as amended by PL 2009, c. 631, §42 and affected by §51, is further amended to read:

5. Inspection. A dispensary and any additional location at which the dispensary cultivates marijuana for medical use by ~~registered~~ qualifying patients who have designated the dispensary to cultivate for them is subject to reasonable inspection by the department. The department may enter the dispensary and the one permitted additional location at which the dispensary cultivates marijuana at any time, without notice, to carry out an inspection under this subsection.

Sec. D-30. **22 MRSA §2428, sub-§6, ¶A**, as amended by PL 2009, c. 631, §42 and affected by §51, is further amended to read:

A. A dispensary must be operated on a not-for-profit basis for the mutual benefit of ~~registered~~ qualifying patients who have designated the dispensary to cultivate marijuana. The bylaws of a dispensary and its contracts with ~~registered~~ qualifying patients must contain such provisions relative to the disposition of revenues and receipts as may be necessary and appropriate to establish and maintain its not-for-profit status. A dispensary need not be recognized as a tax-exempt organization under 26 United States Code, Section 501(c)(3) but is required to incorporate pursuant to Title 13-B and to maintain the corporation in good standing with the Secretary of State.

Sec. D-31. **22 MRSA §2428, sub-§6, ¶E**, as amended by PL 2009, c. 631, §42 and affected by §51, is further amended to read:

E. A dispensary shall implement appropriate security measures to deter and prevent unauthorized entrance into areas containing marijuana and the theft of marijuana at the dispensary and the one permitted additional location at which the dispensary cultivates marijuana for medical use by ~~registered~~ qualifying patients who have designated the dispensary to cultivate for them.

Sec. D-32. **22 MRSA §2428, sub-§6, ¶G**, as amended by PL 2009, c. 631, §42 and affected by §51, is repealed.

Sec. D-33. **22 MRSA §2428, sub-§6, ¶I**, as amended by PL 2009, c. 631, §42 and affected by §51, is repealed.

Sec. D-34. **22 MRSA §2428, sub-§6, ¶J**, as enacted by PL 2009, c. 631, §42 and affected by §51, is amended to read:

J. A dispensary that is required to obtain a license for the preparation of food pursuant to section 2167 shall obtain the license prior to preparing goods containing marijuana for medical use by a ~~registered~~ qualifying patient.

Sec. D-35. **22 MRSA §2428, sub-§7**, as amended by PL 2009, c. 631, §42 and affected by §51, is further amended to read:

7. Maximum amount of marijuana to be dispensed. A dispensary or a principal officer, board member or employee of a dispensary may not dispense more than 2 1/2 ounces of prepared marijuana to a ~~registered~~ qualifying patient or to a primary caregiver on behalf of a ~~registered~~ qualifying patient during a 15-day period.

Sec. D-36. **22 MRSA §2428, sub-§9**, as amended by PL 2009, c. 631, §42 and affected by §51, is repealed.

Sec. D-37. as amended by PL 2009, c. 631, §§43 and 44 and affected by §51, is

22 MRSA §2429,

repealed and the following enacted in its place:

§ 2429. Enforcement

- 1. Department fails to adopt rules.** If the department fails to adopt rules to implement this chapter by December 1, 2011, a qualifying patient may commence an action in Superior Court to compel the department to perform the actions mandated pursuant to the provisions of this chapter.
- 2. Department fails to respond to application.** If the department fails to issue or deny a registration certificate in response to a valid dispensary application or renewal within 45 days of submission, the registration certificate is deemed granted.

Sec. D-38. **22 MRSA §2430, sub-§2, ¶A,** as enacted by PL 2009, c. 631, §45 and affected by §51, is amended to read:

A. All money received as a result of applications and reapplications for registration as a ~~qualifying patient,~~
~~primary caregiver and dispensary;~~

Sec. D-39. **22 MRSA §2430, sub-§2, ¶B,** as enacted by PL 2009, c. 631, §45 and affected by §51, is repealed.

Sec. D-40. **22 MRSA §2430-A,** as enacted by PL 2009, c. 631, §46 and affected by §51, is amended to read:

§ 2430-A. Compliance

The department may take action necessary to ensure compliance with this chapter, including but not limited to obtaining, possessing and performing laboratory testing on marijuana from ~~registered~~ qualifying patients, ~~registered~~ primary caregivers and registered dispensaries in accordance with this chapter.

PART E

Sec. E-1. **17-A MRSA §1111-A, sub-§1,** as amended by IB 2009, c. 1, §2, is further amended to read:

- 1.** As used in this section the term "drug paraphernalia" means all equipment, products and materials of any kind that are used or intended for use in planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, containing, concealing, injecting, ingesting, inhaling or otherwise introducing into the human body a scheduled drug in violation of this chapter or Title 22, section 2383, except that this section does not apply to a person who is authorized to possess marijuana for medical use pursuant to Title 22, chapter 558-C, to the extent the drug paraphernalia is used for that person's medical use of marijuana or as allowed under Title 22, chapter 558. It includes, but is not limited to:
 - A. Kits used or intended for use in planting, propagating, cultivating, growing or harvesting of any species of plant which is a scheduled drug or from which a scheduled drug can be derived;
 - B. Kits used or intended for use in manufacturing, compounding, converting, producing, processing or preparing scheduled drugs;
 - C. Isomerization devices used or intended for use in increasing the potency of any species of plant that is a scheduled drug;
 - D. Testing equipment used or intended for use in identifying or in analyzing the strength, effectiveness or purity of scheduled drugs;
 - E. Scales and balances used or intended for use in weighing or measuring scheduled drugs;
 - F. Dilutents and adulterants, such as quinine hydrochloride, mannitol, mannite, dextrose and lactose, used or intended for use in cutting scheduled drugs;
 - G. Separation gins and sifters, used or intended for use in removing twigs and seeds from, or in otherwise cleaning or refining, marijuana;
 - H. Blenders, bowls, containers, spoons and mixing devices used or intended for use in compounding

scheduled drugs;

I. Capsules, balloons, envelopes and other containers used or intended for use in packaging small quantities of scheduled drugs;

J. Containers and other objects used or intended for use in storing or concealing scheduled drugs; and

K. Objects used or intended for use in ingesting, inhaling or otherwise introducing marijuana, cocaine, hashish or hashish oil into the human body, such as:

(1) Metal, wooden, acrylic, glass, stone, plastic or ceramic pipes with or without screens, permanent screens, hashish heads or punctured metal bowls;

(2) Water pipes;

(3) Carburetion tubes and devices;

(4) Smoking and carburetion masks;

(5) Roach clips, meaning objects used to hold burning material, such as a marijuana cigarette that has become too small or too short to be held in the hand;

(6) Miniature cocaine spoons and cocaine vials;

(7) Chamber pipes;

(8) Carburetor pipes;

(9) Electric pipes;

(10) Air-driven pipes;

(11) Chillums;

(12) Bongs; or

(13) Ice pipes or chillers.

Sec. E-2. **17-A MRSA §1111-A, sub-§4**, as corrected by RR 2009, c. 2, §39, is amended to read:

4. A person is guilty of the sale and use of drug paraphernalia if:

A. The person uses drug paraphernalia to plant, propagate, cultivate, grow, harvest, manufacture, compound, convert, produce, process, prepare, test, analyze, pack, repack, store, contain, conceal, inject, ingest, inhale or otherwise introduce into the human body a scheduled drug in violation of this chapter or Title 22, section 2383. Violation of this paragraph is a civil violation for which a fine of \$300 must be adjudged, none of which may be suspended;

B. The person possesses with intent to use drug paraphernalia to plant, propagate, cultivate, grow, harvest, manufacture, compound, convert, produce, process, prepare, test, analyze, pack, repack, store, contain, conceal, inject, ingest, inhale or otherwise introduce into the human body a scheduled drug in violation of this chapter or Title 22, section 2383. Violation of this paragraph is a civil violation for which a fine of \$300 must be adjudged, none of which may be suspended;

C. The person trafficks in or furnishes drug paraphernalia knowing, or under circumstances when one reasonably should know, that it will be used to plant, propagate, cultivate, grow, harvest, manufacture, compound, convert, produce, process, prepare, test, analyze, pack, repack, store, contain, conceal, inject, ingest, inhale or otherwise introduce into the human body a scheduled drug in violation of this chapter or Title 22, section 2383, and the person to whom that person is trafficking or furnishing drug paraphernalia is:

(1) At least 16 years of age. Violation of this subparagraph is a Class E crime; or

(2) Less than 16 years of age. Violation of this subparagraph is a Class D crime; or

D. The person places in a newspaper, magazine, handbill or other publication an advertisement knowing, or under circumstances when one reasonably should know, that the purpose of the advertisement, in whole or in part, is to promote the sale of objects intended for use as drug paraphernalia. Violation of this paragraph is a Class E crime.

This subsection does not apply to a person who is authorized to possess marijuana under Title 22, section 2390 or 2391 or who is authorized to possess marijuana for medical use pursuant to Title 22, chapter 558-C to the extent the drug paraphernalia is required for that person's medical use of marijuana.

Sec. E-3. **17-A MRSA §1117, sub-§4**, as enacted by PL 2009, c. 631, §3 and affected by §51, is amended to read:

4. A person is not guilty of cultivating marijuana if the conduct is expressly authorized by Title 22, chapter 558-C or Title 22, section 2390 or 2391.

PART F

Sec. F-1. **7 MRSA §483, first ¶**, as amended by PL 2009, c. 631, §1 and affected by §51, is further amended to read:

For the purpose of this chapter and chapter 103, unless the term is more specifically defined, "adulterated" means made impure or inferior by adding extraneous ingredients. Goods that are prepared in food establishments that are licensed facilities under Title 22, section 2167 and that contain marijuana for medical use by a registered qualifying patient, pursuant to Title 22, chapter 558-C, are not considered to be adulterated under this subchapter.

Sec. F-2. **7 MRSA §2231, sub-§3**, as enacted by PL 2009, c. 320, §1, is amended to read:

3. Application. A person desiring to grow industrial hemp for commercial purposes shall apply to the commissioner for a license on a form prescribed by the commissioner. The application must include the name and address of the applicant, the legal description of the land area to be used for the production of industrial hemp and a map, an aerial photograph or global positioning coordinates sufficient for locating the production fields. ~~Except for employees of the Maine Agricultural Experiment Station and the University of Maine System involved in research and related activities, an applicant for an initial licensure must submit a set of the applicant's fingerprints, taken by a law enforcement officer, and any other information necessary to complete a statewide and nationwide criminal history record check by the Department of Public Safety, State Bureau of Identification and the Federal Bureau of Investigation. All costs associated with the criminal history record check are the responsibility of the applicant and must be submitted with the fingerprints. Criminal history records provided to the commissioner under this section are confidential. The results of criminal records checks received under this subsection may only be used in determining an applicant's eligibility for licensure. A person with a prior criminal conviction is not eligible for licensure.~~

Sec. F-3. **7 MRSA §2231, sub-§4**, as enacted by PL 2009, c. 320, §1, is amended to read:

4. License issued. Upon review and approval of an application, the commissioner shall notify the applicant and request that the application fee determined under subsection 7 be submitted. Upon receipt of the appropriate fee ~~and in accordance with subsection 8~~, the commissioner shall issue a license, which is valid for a period of one year and only for the site or sites specified in the license.

Sec. F-4. **7 MRSA §2231, sub-§5**, as enacted by PL 2009, c. 320, §1, is repealed.

Sec. F-5. **7 MRSA §2231, sub-§8**, as enacted by PL 2009, c. 320, §1, is repealed.

Sec. F-6. **22 MRSA §2152, sub-§4-A**, as amended by PL 2009, c. 631, §4 and affected by §51, is further amended to read:

4-A. Food establishment. "Food establishment" means a factory, plant, warehouse or store in which food and food products are manufactured, processed, packed, held for introduction into commerce or sold. "Food establishment" includes a ~~registered~~ primary caregiver, as defined in section 2422, subsection 11, and a registered dispensary, as defined in section 2422, subsection 6, that prepare food containing marijuana for medical use by a ~~registered~~ qualifying patient pursuant to chapter 558-C. The following establishments are not considered food establishments required to be licensed under section 2167:

A. Eating establishments, as defined in section 2491, subsection 7;

B. Fish and shellfish processing establishments inspected under Title 12, section 6101, 6102 or 6856;

C. Storage facilities for native produce;

D. Establishments such as farm stands and farmers' markets primarily selling fresh produce not including dairy and meat products;

E. Establishments engaged in the washing, cleaning or sorting of whole produce, provided the produce remains in essentially the same condition as when harvested. The whole produce may be packaged for sale, provided that packaging is not by a vacuum packaging process or a modified atmosphere packaging process; and

F. Establishments that are engaged in the drying of single herbs that are generally recognized as safe under 21 Code of Federal Regulations, Sections 182 to 189. The single herbs may be packaged for sale, provided that packaging is not by a vacuum packaging process or a modified atmosphere packaging process.

Sec. F-7. **22 MRSA §2158**, as amended by PL 2009, c. 631, §5 and affected by §51, is further amended to read:

§ 2158. Addition of certain substances limited

Any poisonous or deleterious substance added to any food, except where such substance is required in the production thereof or cannot be avoided by good manufacturing practice, must be deemed to be unsafe for purposes of the application of section 2156, subsection 1, paragraph B; but when such substance is so required or cannot be avoided, the Commissioner of Agriculture, Food and Rural Resources shall adopt rules limiting the quantity therein or thereon to such extent as the commissioner finds necessary for the protection of public health, and any quantity exceeding the limits so fixed must be deemed to be unsafe for purposes of the application of section 2156, subsection 1, paragraph B. While such a rule is in effect limiting the quantity of any such substance in the case of any food, such food may not, by reason of bearing or containing any added amount of such substance, be considered to be adulterated within the meaning of section 2156, subsection 1, paragraph A. In determining the quantity of such added substance to be tolerated in or on different articles of food, the commissioner shall take into account the extent to which the use of such substance is required or cannot be avoided in the production of each such article and the other ways in which the consumer may be affected by the same or other poisonous or deleterious substances.

Goods that are prepared in a food establishment that is a licensed facility under section 2167 and that contain marijuana for medical use by a ~~registered~~ qualifying patient, pursuant to chapter 558-C, are not considered to be adulterated under this subchapter.

SUMMARY

This bill reforms state marijuana laws by establishing a special tax rate for marijuana, legalizing the personal use and cultivation of marijuana, legalizing and licensing certain commercial marijuana-related activities, while providing provisions to protect minors, employers and schools, and removing the registry system from the Maine Medical Use of Marijuana Act.

Part A of the bill establishes a tax rate of 7%, beginning January 1, 2012, for marijuana that is sold for commercial or medical purposes. It directs the State Controller to distribute the revenue generated by the tax equally among specific programs that benefit farmers, preserve land, assist law enforcement, provide aid to a state weatherization program and support higher education. It directs the Department of

Administrative and Financial Services, Bureau of Revenue Services to report annually, beginning January 30, 2013, the amount of tax revenue generated and the amount distributed to each program to the joint standing committees of the Legislature having jurisdiction over appropriations and financial affairs and taxation matters. The bill directs the Bureau of Revenue Services to review methods for ensuring that all marijuana that is sold in the State is assessed and to report its findings and recommendations to the Joint Standing Committee on Taxation. The bureau must submit the report and any necessary legislation by November 1, 2011.

Part B of the bill allows a person 21 years of age or older to possess, purchase and use marijuana within certain limits and to cultivate a limited amount of marijuana for personal use. It allows a person to possess up to one pound of marijuana, possess marijuana paraphernalia and an incidental amount of marijuana. It allows a person to cultivate and store marijuana for personal use within 75 square feet of space and to purchase up to 2 1/2 ounces of marijuana or seedlings from someone who is licensed to sell these products. The bill includes restrictions that impose the same limitations on use that apply to tobacco. It requires those cultivating marijuana to secure it from access by unauthorized persons and access by minors. It also provides protections for schools and employers.

It includes specific requirements for the operations of commercial marijuana-related activities regarding the location of operations, security measures and record keeping as well as requirements for the licensee such as residency for a year prior to applying for a license. It allows a licensee up to 2,000 square feet of space for commercial marijuana cultivation and allows a licensee to sell no more than 2 1/2 ounces to any one individual per week. It limits the number of licenses as determined by department rule in the first year and requires that provisional licenses be automatically granted for dispensaries and persons who are registered as primary caregivers on June 30, 2011. It provides a funding mechanism for regulation of commercial marijuana-related activities. It provides special protections for minors, employers and schools.

Part C of the bill establishes the Community Policing Grant Program within the Department of Public Safety, which is funded by part of the revenue generated from the marijuana tax, to assist county and municipal law enforcement with community policing efforts. The Commissioner of Public Safety shall adopt rules for administering the program by December 1, 2011.

Part D of the bill removes the patient and primary caregiver registry system from the Maine Medical Use of Marijuana Act and repeals the provision requiring written certification from a physician for the medical use of marijuana as part of this registry system. It also repeals the requirement for patients, primary caregivers and dispensaries to keep marijuana in an enclosed, locked facility. Instead, it requires that the marijuana be secured from unauthorized access or from access by a person under 21 years of age. It allows dispensaries to acquire prepared marijuana or marijuana plants from persons licensed to cultivate or sell marijuana commercially. It updates the confidentiality and reporting requirements in the law to reflect the removal of the registry.

Part E of the bill updates the existing exceptions regarding possession of marijuana for medical use in the Maine Criminal Code.

Part F of the bill amends the existing laws on industrial hemp to allow a person to apply to the Department of Agriculture, Food and Rural Resources for a license to grow industrial hemp. It removes provisions in the law that make licensing of industrial hemp farming contingent upon federal action. This Part also updates various provisions of the Maine Revised Statutes, Title 7 and Title 22 that are affected by changes in terminology proposed to the Maine medical marijuana law in this bill.

[Top of Page](#)

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By Teresa Ambord, Correspondent

When state and federal laws collide, something's got to give. Under federal law, income from growing medical marijuana is ill-gotten gain. It is, however, taxable, as is all income. In some states, growing cannabis is legal for medical purposes and in [Colorado](#) ^[1], it's legal – period. That means it can be a source of income and therefore taxable. But that doesn't mean cannabis farmers can claim production costs on their federal return, without admitting to criminal activity.

Somehow, claiming expenses of growing an illegal substance is worse than reporting the income, said *Forbes* magazine. Of course, there are some expenses that are always going to be illegal, added *Forbes*, like the cost of hiring a hit man to bump off the competition. But medical marijuana is subject to an addition to the Tax Code known as [Section 280E](#) ^[2], which goes back to the 1980s. Under that section, there simply are no legitimate expenses that are claimable.

Here's a snippet:

No deduction or credit shall be allowed for any amount paid or incurred during the taxable year in carrying on any trade or business if such trade or business (or the activities which comprise such trade or business) consists of trafficking in controlled substances (within the meaning of schedule I and II of the Controlled Substances Act) which is prohibited by Federal law or the law of any State in which such trade or business is conducted.

One way medical marijuana growers get around the restriction on claiming expenses is to have another business on the same property, says *Forbes*, and push the expenses to that business. The example they cite is a care-giving business which occupies most of the premises. That way the property rent – or most of it – is claimed for that business rather than the cannabis production.

Forbes also says these growers need to keep immaculate records, even more so than other businesses.

They need to be clear and transparent, because if there's any appearance of evading taxes, the proprietors may be found guilty of tax evasion. And that carries a possible five years in prison.

The federal and state laws regarding medical marijuana just don't line up, but this could be easily fixed if there was a motivation. Instead, the industry, which is legal, gets pushed underground, according to *Marijuana Business Daily* ^[3].

Other Opinions on Taxing Criminal Activity

In France, a well-known heroin dealer is currently behind bars for his criminal drug trade. That doesn't stop French authorities from reminding him he also happens to owe 80,000 euros in tax for heroin income. In US currency, that's the equivalent of about \$110,000. While France has no problem jailing a drug dealer and taxing his "ill-gotten gain," they have agreed to lighten his tax burden by crediting him for expenses. His attorney, Samra Boudiba, said they don't seem to know how to handle the taxation of income from illegal trade. "In a sense, one gets the impression that they are acknowledging the legality of this (drug) dealing as they consider it to be a small business."

For example, his major supplier is in Belgium, which means there's significant travel expense ^[4]. For that, French authorities are giving him a credit equal to \$2,750 per year. In addition, they're allowing him credit against his sales for the amount of heroin he may have used himself. *Forbes* quoted French authorities, saying, "Your personal consumption has been evaluated at four grammes per day, which can be deducted from your sales."

Of course, *Forbes* says, France is pretty new at this issue of taxing income, even if it is for illegal activity. While the United States has been doing it for a long time, going back at least to the Al Capone days, France only started taxing criminals in 2009. So far, they're much more lenient than the IRS, but that might change in time as the constant search for new revenue grows even faster than the demand for drugs.

Related article:

- Medical Marijuana Inc. Hires CPA Firm as Auditor ^[5]

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The Rules of Sales Tax Revenue and Marijuana

By [Bonnie Lee](#) / [Taxpertise](#) / Published March 21, 2014 / [FOXBusiness](#)



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The legalizing of medical marijuana in 20 states creates an opportunity for new tax revenue in the form of additional income taxes and also with the levying of sales tax on the product itself.

Colorado and Washington are the only states that allow marijuana sales for both medical and recreational use. According to Jonathan Barsade, CEO of Exactor, a website that offers sales tax preparation services, Colorado's marijuana tax revenue is far exceeding expectations.

“There is currently a 12.9% sales tax on recreational pot and a 2.9% sales tax on medical marijuana, which is exceptionally boosting the state's economic status. Pot sales for the next fiscal year are estimated to be about \$610 million with sales and excise taxes expected to produce roughly \$98 million.”

The Great Recession left many states' balance sheets bleeding, so this is sure to be a welcome revenue source.

“The legalization of the sale of marijuana will have a positive effect

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on the industry as a whole, including the marijuana farming industry,” Barsade said. “Increased state supervision and regulation will provide farmers with security and more confidence that they can engage in growing the crop without negative ramification from the authorities.”

Strong tax revenues coming from marijuana sales will also be a major incentive to states on the fence on the issues. Barsade explained that as more states adopt similar legalization, there will be an increase in demand and supply channels. “It will be in a very similar manner to what was witnessed by the legalization of the gambling industry across the country.”

If you are a marijuana farmer or dispensary owner in a state other than Colorado, you may expect that within the next decade you will be collecting and remitting sales taxes to your state government.

Hopefully, you do not fear the Feds when it comes to declaring your income and expenses for your activity. Whether you are a marijuana farmer, own a marijuana dispensary or sell paraphernalia, you are obligated under federal and state law (if your state levies an income tax) to declare your income from these activities. It would behoove you to treat your enterprise as a bona fide business venture and keep good books and records.

There is a provision in the IRS code that deals with this issue:

IRS CODE SECTION § 280E. EXPENDITURES IN CONNECTION WITH THE ILLEGAL SALE OF DRUGS: “No deduction or credit shall be allowed for any amount paid or incurred during the taxable year in carrying on any trade or business if such trade or business (or the activities which comprise such trade or business) consists of trafficking in controlled substances (within the meaning of schedule I and II of the Controlled Substances Act) which is prohibited by Federal law or the law of any State in which such trade or business is conducted.”

The IRS however, has determined that it will allow deductions for cost of goods sold, and at this point in time will likely consider other administrative expenses as well. This nation is coming close to recognizing marijuana as a lucrative source of tax dollars and will eventually allow these enterprises without threat of prosecution in order to encourage those involved in the industry to file tax returns without fear of reprisal.

The IRS is not interested in the legalities of any enterprise – at least not in the sense of whistle-blowing or calling in prosecutors.

They are more concerned with substantiating income and deductions to determine if the proper amount of tax has been paid. So be sure to file your tax returns. If you do not, it's more likely you will serve jail time for tax evasion than for performing the activity itself.

[Bonnie Lee](#)  is an Enrolled Agent admitted to practice and representing taxpayers in all 50 states at all levels within the [Internal Revenue Service](#). She is the owner of Taxpertise in Sonoma, Calif., and the author of Entrepreneur Press book, "Taxpertise, The Complete Book of Dirty Little Secrets and Hidden Deductions for Small Business that the IRS Doesn't Want You to Know." Her new e-book Taxpertise for the Creative Mind Murder, Mayem, Romance, Comedy and Tax Tips for Artists of all Kinds is available at all major booksellers. Follow Bonnie Lee on [Twitter](#) at BLTaxpertise and at [Facebook](#)  .

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