

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

**TUESDAY, OCTOBER 3, 2013
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 Tuesday, October 3, 2013.

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

Absent: Councilmember Don Wojcik

Staff General Services Director Cecilia Watts; Town Attorney Phyllis Smiley; Police Chief
Present: Chuck Wynn; Police Lieutenant Vince Schaan; Town Engineer/Public Works Director
Ron Grittmann; Planner Ruth Mayday; Town Clerk Jami Lewis (recorder)

1) CALL TO ORDER; ROLL CALL

Mayor Marley called the meeting to order at 6:01 p.m.

2) Discuss possible amendments to the Unified Development Ordinance with regard to regulations for Medical Marijuana. (Ruth Mayday, Planner)

Acronym used in this item:

CUP (Conditional Use Permit)

UDO (Unified Development Ordinance)

Ms. Mayday reported that:

- Proposition 203 was approved by the voters in November 2010. The issue was discussed by the Planning and Zoning Commission and Town Council between March 2011 and April 2012. On April 24, 2012, Council voted unanimously to operate solely under state law with no amendments to the UDO.
- A.R.S. § 36-2801 "Arizona Medical Marijuana Act, and State Regulations Title 9 "Health Services," and Chapter 17 "Medical Marijuana Program" were the regulating authorities for this matter.
- ARS § 36-2804 and R9-17-321 provided that dispensaries or a dispensary's cultivation site be located at least 500 feet from schools.
- Of the Town's neighbors, only Prescott Valley imposed additional separation requirements for dispensaries. Regarding cultivation sites, Chino Valley imposed a minimum lot size of 10 acres and 500 feet from SR 89, and Prescott Valley also

imposed additional restrictions.

- The Town's 10 acre requirement came from the UDO's definition (§ 2.1) of "Greenhouse, Commercial." UDO § 4.3 "Commercial Greenhouse Development Standards," which set the parameters for grow facilities, also included the restrictions for acre size and distance from the highway.
- If Council changed any regulations for medical marijuana, the facilities that already existed would be considered a non-conforming use per UDO § 2.1. UDO § 4.20 provided regulations for such non-conforming uses and structures.
- During the September 10, 2013 regular meeting of Town Council, staff was directed by council to further research regulation of the cultivating of medical marijuana within the corporate boundaries of the Town.
- Based on an analysis of state statute and the Arizona Department of Health Services regulations, and ordinances adopted by similar communities in Arizona, staff drafted language that would amend the UDO to regulate the cultivation, infusion, and dispensing of medical marijuana.
- Staff's suggested language included: (i) adding definitions for marijuana/cannabis, dispensary, cultivation, and infusion to UDO § 2.1; (ii) providing for separation from residential zoning classes; (iii) allowing conditional use permits in Commercial and/or Industrial zoning classes for lot sizes less than 10 acres; and (iv) requiring additional landscaping and/or screening.

Council reviewed the proposed changes and discussed topics as follows:

Infusion facilities in agricultural/residential zones. Some councilmembers did not support infusion facilities in agricultural/residential zones due to potential chemical use in the processes.

Jason Gully with SWBC in Tempe explained the infusion process and advised that no chemicals were dumped into the groundwater. If volatile chemicals were used, hoods would be employed. Infusion also only used low heat up to 180 deg. F and the industry norm for extraction was olive oil.

Open air cultivation. This was only permitted in an enclosed area with a lot of security regulations. Council generally did not support it due to the plant's distinct odor and the Town's winds, and potential effects from runoff if grown in the ground.

Jason Gully spoke about most growers preferring to avoid growing outdoors.

Duke Rodriguez with Ultra Health spoke about his company desiring to grow indoors and outdoors in Town. He described the protection measures included in their site plan and recommended that Council understand the level of protection before enacting regulations on it.

Kate and Mike O'Connor-Masse, local field and greenhouse farmers, spoke about cannabis industry growers being very sensitive to runoff and their intent to use water as efficiently as possible. They did not want to harm the aquifer or overuse the water supply. She invited Council to visit their operation and read reports that addressed runoff with outdoor growing.

Separation requirements from other medical marijuana facilities, certain public buildings, and certain housing facilities in an agricultural/residential zone. Two councilmembers preferred a 200 foot separation. One supported 200 feet for cultivation, but not infusion. One supported the proposed 500 foot requirement.

Drew Melbourne with Emerald City Organics clarified that infusion could only take place in a commercial kitchen in the grow facility or dispensary per state law; and it could only be done in a separate building on the same property if the local codes and regulations allowed it.

Separation requirement from residential uses. Council discussed distances and infusion facilities potentially falling under the same restrictions as commercial bakeries. Ms. Smiley reported that commercial bakeries were closer to manufacturing or light industrial, and due to the sensitivity of medical marijuana, it could be defined differently than a commercial bakery. Council appeared to support different definitions.

Total square footage of cultivation facility. Ms. Mayday clarified that the proposed 3,000 square feet was per greenhouse.

Dennis Gizzy with Emerald City Organics spoke about 3,000 square feet being too small for many operations and recommended just following the UDO's current requirements.

Jason Gully spoke about some operations needing at least 5,000-6,000 square feet and also supporting the UDO's current requirements.

Duke Rodriguez with Ultra Health spoke about 3,000 square feet not being adequate to meet consumers' needs, estimates that Arizona needed 10,000 square feet of growing for every licensed dispensary, and there currently being 60 dispensaries with only a dozen grow facilities.

Kate O'Connor-Masse, Chino Valley farmer and greenhouse operator, spoke about Council taking a broad view of the greenhouse industry and considering medical marijuana like any other plant grown inside a greenhouse. In addition, about 10 years ago, the Council and other greenhouse growers in Town worked together to establish the current greenhouse regulations and definitions; but due to the size difference in a commercial greenhouse versus a warehouse, it did seem appropriate to separate them a bit.

Council recommended deleting this requirement.

Dust, fumes, odor or vapors. Council discussed concerns about new people not familiar with Chino Valley's environment who would push the limit, setting minimum standards for filtration, and owing it to citizens to reduce those things that bothered them as much as possible. Participants did not believe there were any state regulations for this matter.

Kate O'Connor-Masse recommended changing the language to state that all reasonable efforts will be made to control odor, as eliminating all odor might not be technological possible, and that Town officials consult with industry experts before setting standards.

Charles Houghten, public member, stated that during harvest or processing, it was impossible to contain the odor, and while there was no perfect solution, he suggested that it be addressed through the Town's nuisance ordinance.

Council discussed the need for something reasonable to protect neighbors and a need for more research on particular issues with marijuana, and asked staff to bring the topic back for further discussion.

Designated caregivers. Mayor Marley related that any jurisdiction in the state without a dispensary was required to allow caregivers to grow for patients. Police Chief Chuck Wynn added that once a dispensary was open for a full year, people within the 25 miles radius, which included all of Chino Valley, will have to purchase from the dispensary. This was actually easier for law enforcement.

Jeff Tice with Salubrious Wellness Clinic in Tempe clarified that initially, caregivers were allowed to grow until the dispensaries came. The state was sunseting that by allowing certain cultivators to wait until their card expired. Currently 95% of the state was covered in the 25 mile range. As caregivers and cardholders must live outside a dispensary area, the caregiver model will ultimately be eliminated, except in the 5% area not covered.

Council suggested changing the language to simply refer to state law, and possibly researching to see if a caregiver in an assisted living facility might still be allowed to grow.

Definition of cultivation and infusion facilities as "commercial greenhouses."

Kate O'Connor-Masse spoke about cultivation being done three different ways: indoors in a warehouse, indoors in a greenhouse, and outdoors.

Ms. Mayday clarified that regardless of the type of structure for growing, they all met the same requirement for "commercial greenhouse" and under the CUP process a warehouse could request the use of more than 50% of the property. A councilmember objected to a warehouse zoned as industrial having to go through the CUP process to use more than 50% of the property.

Charles Houghton suggested that Council eliminate the 50% restriction in industrial zones only. Council had no objections to that.

Entry into cultivation or infusion facilities.

Jeff Tice reported that all persons entering these facilities must be a dispensary agent, or accompanied by one. He will send these rules to Ms. Mayday.

Separation requirements from other medical marijuana facilities, and certain public and housing facilities on commercial property. The state had no regulations for this. Council preferred to remove the requirement for separation from other medical marijuana facilities, and revise the other separation requirements to 200 feet.

Regulations for dispensaries with cultivation and/or infusion facilities. Ms. Mayday explained that this would only come into play if the state decided to allow more dispensaries.

Mayor Marley called for a recess at 8:03 p.m. and reconvened the meeting at 8:16 p.m.

Council asked what benefit the Town would receive from grow facilities.

Duke Rodriguez spoke about commerce being good for the community and due to Chino Valley's unique environment, there was an opportunity to be a leader in medical marijuana cultivation.

Dennis Gizzy spoke about workers needing housing and shopping in Town.

Jeff Tice spoke about it taking 15-20 workers per half-acre and his company purchasing as many needed products from the Town as possible.

Kate O'Connor-Masse spoke about this business providing a new opportunity in the biotech industry, as people were working to isolate the properties of the plant for medical purposes that did not include the "high" effect.

- 3) Discuss possible amendments to the Unified Development Ordinance to provide parameters for the location of Recovery Homes in the community. (Ruth Mayday, Planner)

Ms. Mayday reported that:

- Recovery Residences provided persons recovering from substance abuse a supportive living environment to better transition them into activities of daily life. However, concentrations of such facilities in neighborhoods undermined the benefits of community living necessary for success; instead, they had a tendency to duplicate the institutionalized setting of a hospital or extended care facility.
- The Fair Housing Act (FHA) set forth regulations that governed how these residences could be regulated by local communities.
- This was a relatively new issue for planning groups and Prescott recently revised its regulations governing these sorts of uses. Staff reviewed regulations from other areas and prepared draft language for guiding the location of sober living/recovery residences in the Town.

Town Attorney Phyllis Smiley added that:

- One basic difference between a recovery residence and a normal rental situation was that in the normal rental, people deciding to live together entered into one lease. In a recovery residence, a company running a business chose the residents, with individual residents having no say.
- There was a strong distinction between developmentally disabled and assisted living residences. Under state and federal Fair Housing Acts, recovering addicts were considered to be disabled and their rights were protected. However, per case law, municipalities could require certain reasonable regulations to protect the character of the neighborhood, such as separation requirements.
- Sex offenders or current illegal drug users were not included in this definition.

Council reviewed the proposed language and discussed the following topics.

Definitions, "Single Housekeeping Unit." Council asked staff to reword this paragraph to make it less confusing as to who determined the residents of a rental unit.

Conditional Uses, separation requirement.

Dennis Gizzy, public member, spoke about his experience with this in another town, which found that allowing such homes close to one another was a disaster. They then enacted a mile separation requirement, placed them near churches, and had much better success. Ms. Mayday added that congregating the recovery homes together duplicated the institution the residents just left and did not achieve the goals of recovery.

Council agreed with the mile separation.

4) ADJOURNMENT

MOVED by Vice-Mayor Darryl Croft, seconded by Councilmember Pat McKee to adjourn the meeting at 8:40 p.m.

Vote: 7 - 0 PASSED - Unanimously


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 October, 2013. I further certify that the meeting was duly called and held and that a quorum was present.

Dated this 22nd day of October, 2013.


Jami C. Lewis, Town Clerk