



Town of Chino Valley

MEETING NOTICE TOWN COUNCIL

STUDY SESSION
Thursday, December 10, 2015
6:00 P.M.

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

AGENDA

- 1) CALL TO ORDER; ROLL CALL
- 2) Consideration and discussion of proposed amendments to the UDO further regulating the manner and placement of Medical Marijuana uses in the Town of Chino Valley.
- 3) ADJOURNMENT

Dated this 7th day of December, 2015.

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 711 (Telecommunications 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/agendacenter>, 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 Study Session

Item No. 2)

Meeting Date: 12/10/2015
Contact Person: Ruth Mayday, Development Services Director
 Phone: 928-636-4427 x-1217
Department: Development Services
Estimated length 30 minutes
of Staff Presentation:
Physical location of item: N/A

Information

AGENDA ITEM TITLE:

Consideration and discussion of proposed amendments to the UDO further regulating the manner and placement of Medical Marijuana uses in the Town of Chino Valley.

SITUATION & ANALYSIS:

The voters in the state of Arizona approved Proposition 203 in November of 2010, effectively legalizing the use of medical marijuana (MMJ) in Arizona. Since then, the Town of Chino Valley has twice considered instituting regulations regarding the manner and placement of MMJ dispensaries, infusion facilities, and cultivation facilities. After a series of public hearings in 2011 and 2012, Town Council decided to abide by only the Arizona Department of Health Services (AzDHS) separation requirement of 500' from any school, public or private.

Shortly thereafter, two (2) properties were acquired for the purpose of cultivating MMJ, and an existing greenhouse was converted from cultivation of vegetables to MMJ, all of which were located within the boundaries of the town and within relatively close proximity to each other. This prompted Town Council to direct staff to again research the means by which the Town could regulate the manner and placement of facilities for the cultivation, infusion, and dispensing of MMJ. Council then directed staff to prepare draft amendments to the UDO for the purpose of regulation the manner and placement of said uses within the community. After a series of meetings and public hearings (noticed in accordance with ARS 9-4620.4 and the UDO) and an affirmative recommendation by the Planning and Zoning Commission, the Town Council approved Ordinance No. 13-779 on December 10, 2013.

Ordinance 13-779 set forth zoning districts in which MMJ could be cultivated, dispensed, or infused. It also banned outdoor cultivation of MMJ, established separations from conflicting uses, and required a Conditional Use Permit in certain circumstances. The purpose of the text amendments was to establish reasonable regulations for MMJ uses without using zoning as a means of banning the use outright, yet limit the impact that the industry could have on the community.

In July of 2015, Az Organics acquired approximately 53 acres located at the Northeast corner of the

intersection of State Route 89 and Road 4 South. Staff met with the developer's agent shortly thereafter; the agent stated that his involvement would be limited and likely end prior to submitting a building permit, and informed staff that approximately 10-12 acres would be used for MMJ cultivation and the balance would be developed as mixed-use Commercial Light and Multi-family residential. After obtaining approval from Public Works, the applicant's agent began earthwork to construct the necessary drainage improvements. This prompted numerous calls from the public to town staff; when they were told that the ultimate use would be MMJ, many citizens objected to the use and requested Council consider additional restrictions on manner and placement of said facilities within Town.

Council took public comment regarding MMJ during the October 27, 2015 regular meeting. After discussion, Council directed staff to research additional regulation of MMJ uses in Chino Valley. Subsequently, the Planning and Zoning Commission took public comment and conducted citizen review during its November 3, 2015 regular meeting. The Commission also took public comment during a special meeting on November 17, 2015 during which a public hearing was held. Staff then synthesized comments into seven (7) proposed text amendments and presented those options to the Commission during the December 1, 2015 regular meeting. After taking public comment and discussing the matter amongst themselves, the Commission voted unanimously to forward the seven (7) options to Town Council for further consideration and possible action with an affirmative recommendation.

During the public hearing on December 1, 2015, attorney Ralph Pew suggested that the Town consider either a development agreement (DA) or a Protected Development Rights Plan (PDR Plan) as a vehicle(s) to ensure the rights of existing growers. The Commission also recommended that Council consider these options separate from the seven (7) options proposed by staff. Because both the DA and PDR Plan are established in ARS; there would be no need to include those in text amendments to the UDO.

Attached is the power point presentation from the December 1, 2015 Planning and Zoning Commission outlining the proposed text amendments.

Attachments

Dec. 1, 2015 P&Z presentation



Medical Marijuana

Development Services

December 1, 2015

Actions by Town of Chino Valley:

Proposition 203 : approved by voters in November of 2010.

- 4/5/11: Public hearing at P & Z to make recommendation to TC
- 5/10/11: TC refers matter back to staff to include 500' separation from churches
- 3/20/12: P & Z holds public hearing; recommends no separation between church and MMJ uses
- 4/24/12 TC decides to abide by state regulations
- 9/10/13 TC directs staff to research and draft MMJ regulations
- 11/19/13: Public Hearing at P & Z; forward amendments to TC with recommendation for approval
- 12/10/13: Town Council adopts Ordinance 13-779, regulating the manner and placement of MMJ uses.
- 3/11/14: Town Council adopts Resolution 14-1025 Opposing the Legalization of Recreational Marijuana
- 4/22/14: Town Council adopts Resolution 14-1030 Supporting a Tax on Marijuana Growing Facilities

Actions by Town of Chino Valley:

- Discussed proposed changes and took public comment at October 27, 2015 Town Council Meeting
- Conducted Citizen Review at Planning & Zoning Commission meeting on November 3, 2015
- Held Public Hearing at Planning & Zoning Commission meeting on November 17, 2015
- Public Hearing and recommendation to Town Council on December 1, 2015
- Town Council Study Session December 10, 2015
- Public Hearing and possible action at Town Council January 12, 2015

FACTS:

Whether we like it or not, the following are *facts*:

As to the use of Medical Marijuana in Arizona:

- 1) The voters of the state of Arizona approved Proposition 203 50.1:49.9 in 2010
- 1) Arizona Revised Statutes Title 36, Public Health and Safety, Chapter 28, Controlled Substances Prescription Monitoring Program, Article 1, General Provisions, Chapter 28.1, Arizona Medical Marijuana Act sets forth statutory regulation of Medical Marijuana in the state of Arizona.
- 2) §§ 2803 directs the Arizona Department of Health Services to adopt rules further regulating Medical Marijuana in Arizona.

MEDICAL MARIJUANA IS A LEGAL USE IN ARIZONA

FACTS:

Whether we like it or not, the following are *facts*:

As to the regulation of manner and placement in Chino Valley:

- 1) The Town Council sitting in 2010 discussed amendments to the UDO and declined to amend the UDO, deciding instead to impose the state's lone separation requirement of 500' from public and/or private schools
- 2) In 2013, Town Council directed staff to research and make recommendations to Council regarding the manner and placement of medical marijuana uses
- 3) In December of 2013, after notification in accordance with ARS 9-462.04, Town Council adopted Ordinance 13-779, regulating the manner and placement of Medical Marijuana uses within the Town of Chino Valley

FACTS:

Whether we like it or not, the following are *facts*:

As to the regulation of Marijuana by the Federal Government:

- 1) Possession and use of marijuana in the US has been illegal since 1937. Marijuana was classified as a Schedule 1 drug (no medical use/high probability of addiction) in the 70's
- 2) The Department of Justice is precluded by the 2014 Appropriations Bill from using its funds to enforce federal laws regarding marijuana in states that have legalized it (Rohrabacher-Farr Amendment; MAMM v. USDOJ)
- 3) The US Attorney General's office has reprioritized enforcement, focusing its efforts on keeping it out of the hands of minors, stopping resulting cash flow to gangs, cartels, etc., among other things, and not on those in compliance with state MMJ programs

THE DEA IS LIMITED IN THEIR ABILITY TO PROSECUTE IN STATES WHERE MMJ IS LEGAL

FACTS:

Whether we like it or not, the following are *facts*:

- 1) Non-conforming use is defined in UDO Chapter 2, Definitions, §§ 2.1 Meanings of Words and Terms as follows: “A structure or land which was lawfully established and maintained prior to the adoption of this Ordinance, *or any amendment thereto* or annexation to the Town which does not conform to the use regulations for the district in which it is located.” (emphasis added)
- 2) A text amendment to the UDO can change the legal status of a structure or property from a legal, conforming use to a legal, non-conforming use.
- 3) UDO Chapter 4, General Regulations, §§ 4.20.4 Expansion of a Non-conforming Use states: “No non-conforming building, use of building or use of land shall be expanded on (sic) in any way that enlarges or reinforces the non-conformity.”

FACTS:

Whether we like it or not, the following are *facts*:

As to the Private Property Rights Protection Act:

- 1) The Private Property Rights Protection Act (Proposition 207) was overwhelmingly approved by the voters in Arizona in 2006.
- 2) Arizona Revised Statute Title 12, Courts and Civil Proceedings, Chapter 8, Special Actions and Proceedings Relating to Private Property sets forth the legal framework for protections under this Act
- 3) The Act requires just compensation for diminution of value resulting from “enactment or applicability of any land use law after the date the property was transferred to the owner...”

**PROP 207 REQUIRES RELIEF TO PROPERTY OWNERS
WHOSE PROPERTY VALUES ARE DIMINISHED BY LAND USE
LAWS ADOPTED AFTER THEY HAVE ACQUIRED REAL
PROPERTY**

FACTS:

Whether we like it or not, the following are *facts*:

MEDICAL MARIJUANA IS A LEGAL USE IN ARIZONA

ARS 9-462.01 ENABLES THE TOWN TO REGULATE LAND USES IN WITHIN THE CORPORATE BOUNDARY OF THE TOWN

PROP 207/ARS §§36-2803 REQUIRES RELIEF TO PROPERTY OWNERS WHOSE PROPERTY VALUES HAVE BEEN DIMINISHED BY LAND USE LAWS ADOPTED AFTER THEY HAVE ACQUIRED REAL PROPERTY

FACTS:

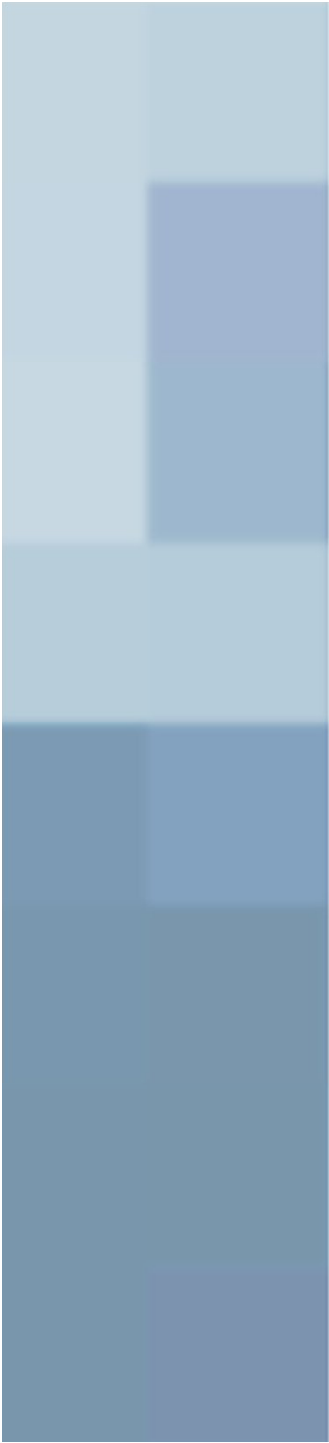
Whether we like it or not, the following are *facts*:

Federal Policy: Regulation of *interstate* commerce, regulation of drugs via FDA, enforcement of federal law

State Policy: Regulation of *intrastate* commerce, enforcement of state laws

Voter Mandates: Private Property Protection Act; Legalization of Medical Marijuana

Local Policy: Manner and placement of land uses deemed legal in the state of Arizona.



**This is what
the Town
can
regulate.**

**Manner and placement of land uses
legal in the state of Arizona.**



**This is what
the Town
can
regulate.**

Objections

- 1) High School kids are getting pot from young adults that have Medical Marijuana Cards/People with cards are selling it on the side.

This is an enforcement issue – notify police

- 2) Violation of Federal Law

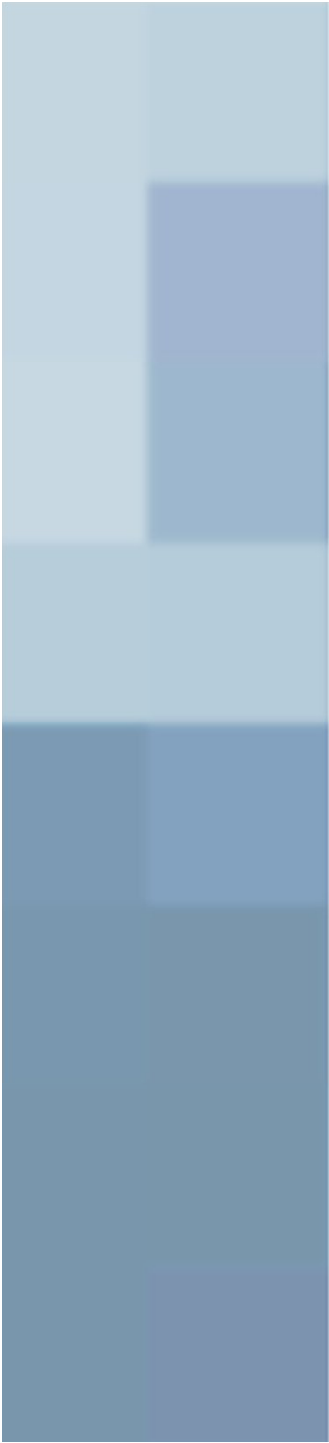
This is a federal enforcement issue – contact Congressman Gosar, Senator Flake, or Senator McCain; Drug Enforcement Agency

- 3) Yavapai County did not vote for this – it was approved by the voters of Maricopa County. Because the majority of voters in this county did not support it, we should not have to abide by it.

The Arizona Medical Marijuana Act was approved as a statewide initiative. Yavapai County (and its political subdivisions) cannot exempt themselves from state law simply because they didn't vote for it/don't like it.

- 4) No evidence of medical efficacy

FDA determines medical efficacy, not the Town



Proposed Options:

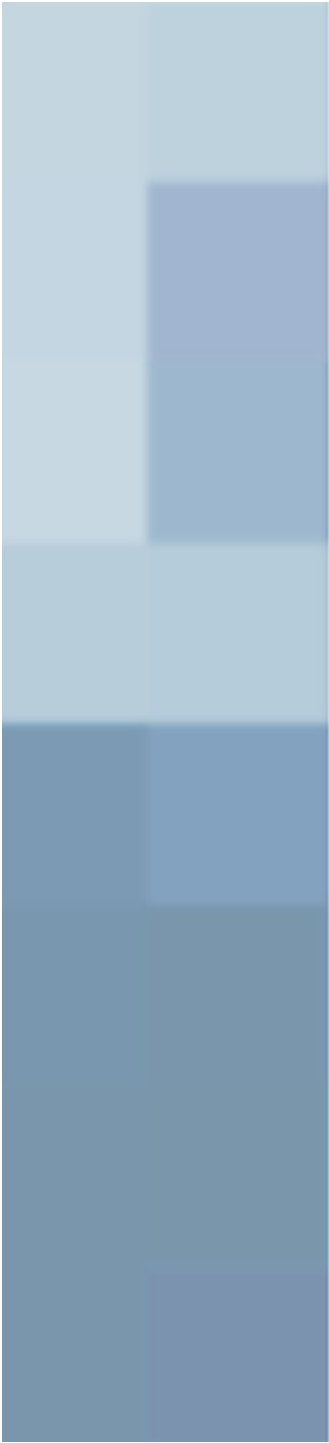
1) Allow cultivation facilities on-site only (attached to a dispensary)

- Current AZDHS regulations restrict distribution of dispensaries to one (1) dispensary per Community Health Assessment Area (CHAA).
- The Town already has one (1) dispensary; unless AZDHS changed the regulations, no additional cultivation facilities could be constructed in the Town.

Proposed Options:

2) Remove cultivation and infusion facilities from Conditional Uses in AR-36, AR-5, and AR-4 zoning districts

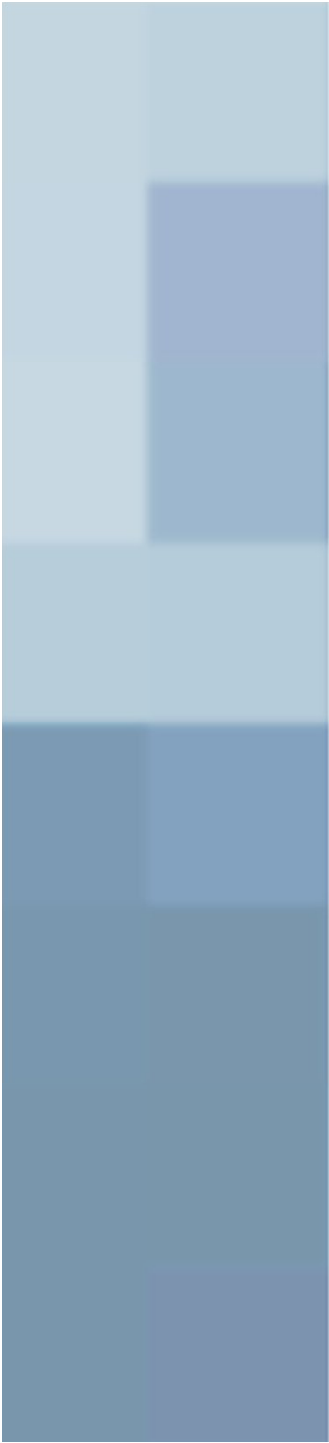
- Larger parcels of land near electrical utilities are generally zoned AR-5 and AR-4
- Medical Marijuana uses are conditional uses in these zoning districts. Conditional Use permits require the same public hearing process as any zoning change.



Proposed Options:

3) Remove cultivation, infusion and dispensary facilities from permitted uses in CL, CH, and I zoning districts; require a Conditional Use Permit

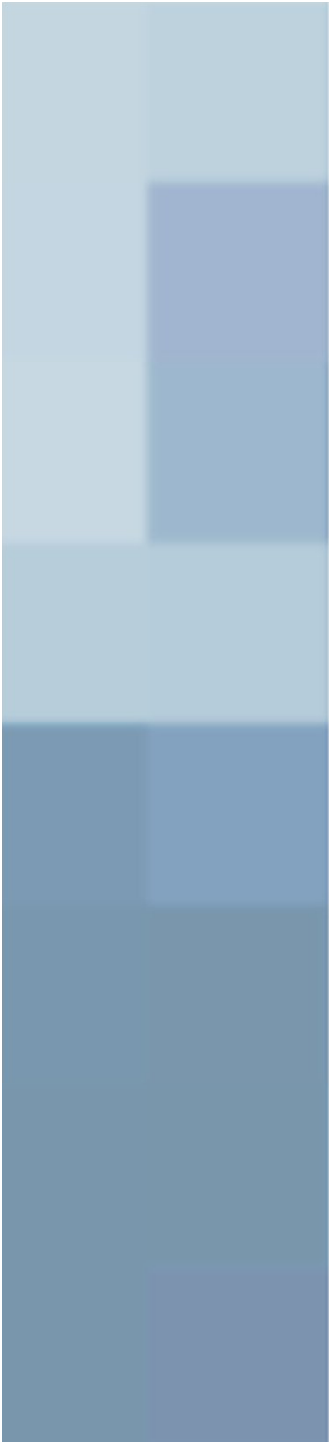
- Permitted uses undergo no additional public review; only building & site plan review for construction and engineering purposes.
- Allowing these uses with the issuance of a Conditional Use Permit will require additional public hearings and review identical to the rezoning process



Proposed Options:

A. Require a Conditional Use Permit for any medical marijuana facility in **Industrial** districts only

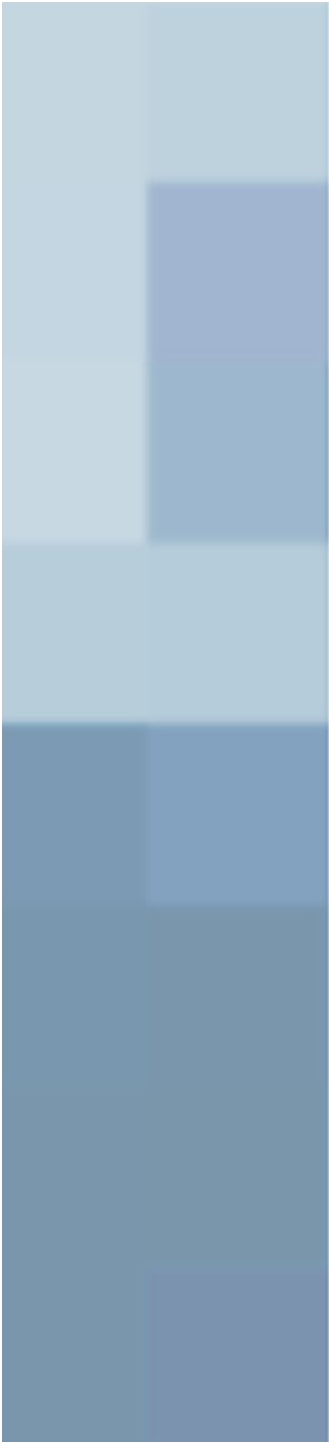
- New facilities can only be constructed in INDUSTRIAL ZONING DISTRICTS *with a Conditional Use Permit*
- Process is identical to rezoning – requires posting, publication, mailing, public hearings



Proposed Options:

B. Require a Conditional Use Permit for any medical marijuana facility in **Commercial Heavy and Industrial** districts only

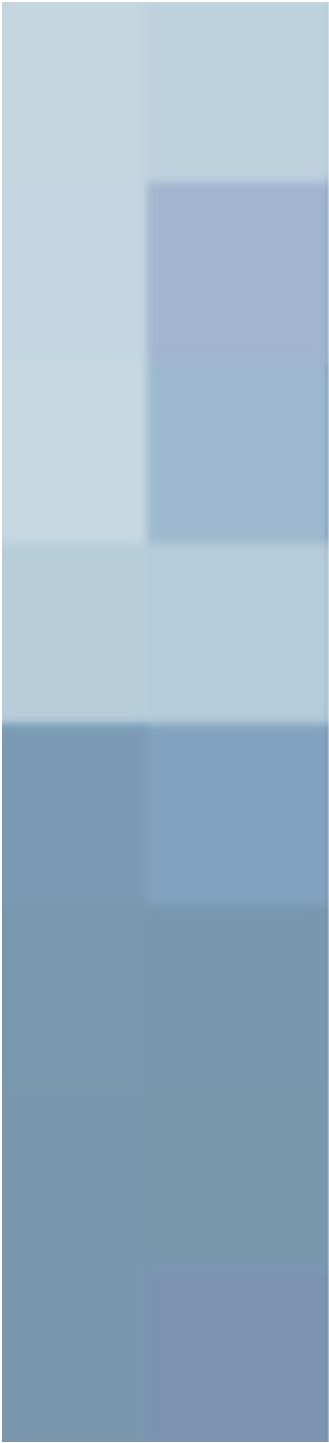
- New facilities can only be constructed in INDUSTRIAL and COMMERCIAL HEAVY ZONING DISTRICTS *with a Conditional Use Permit*
- Process is identical to rezoning – requires posting, publication, mailing, public hearings



Proposed Options:

C. Require a Conditional Use Permit for any medical marijuana facility in **Commercial Light, Commercial Heavy, and Industrial** districts only

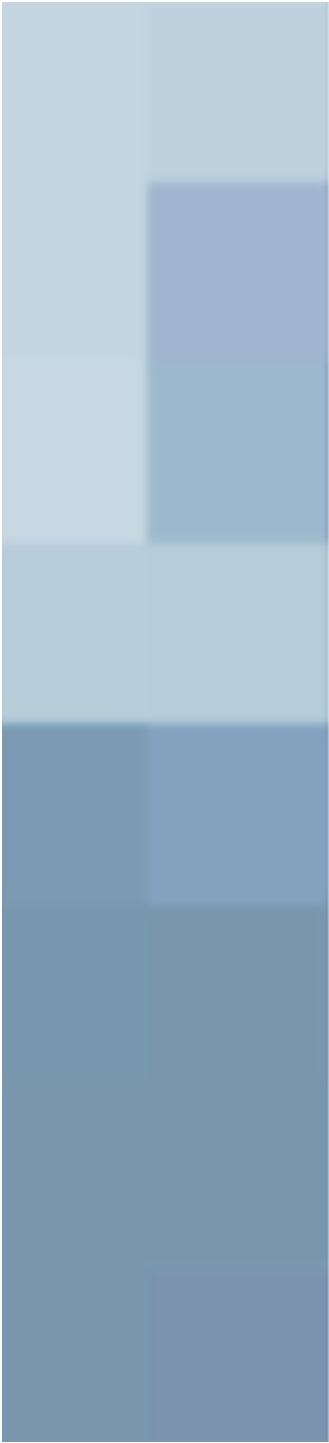
- New facilities can only be constructed in INDUSTRIAL COMMERCIAL HEAVY, AND COMMERCIAL LIGHT ZONING DISTRICTS *with a Conditional Use Permit*
- Process is identical to rezoning – requires posting, publication, mailing, public hearings



Proposed Options:

4) Require 500' separation from churches (in addition to already specified uses)

- Further restricts land available for development as cultivation site.
- Practically speaking, most churches are located in close proximity to residential zoning districts.
- Statutory separation for Liquor Licenses is 300' horizontal feet from churches and K-12



Proposed Options:

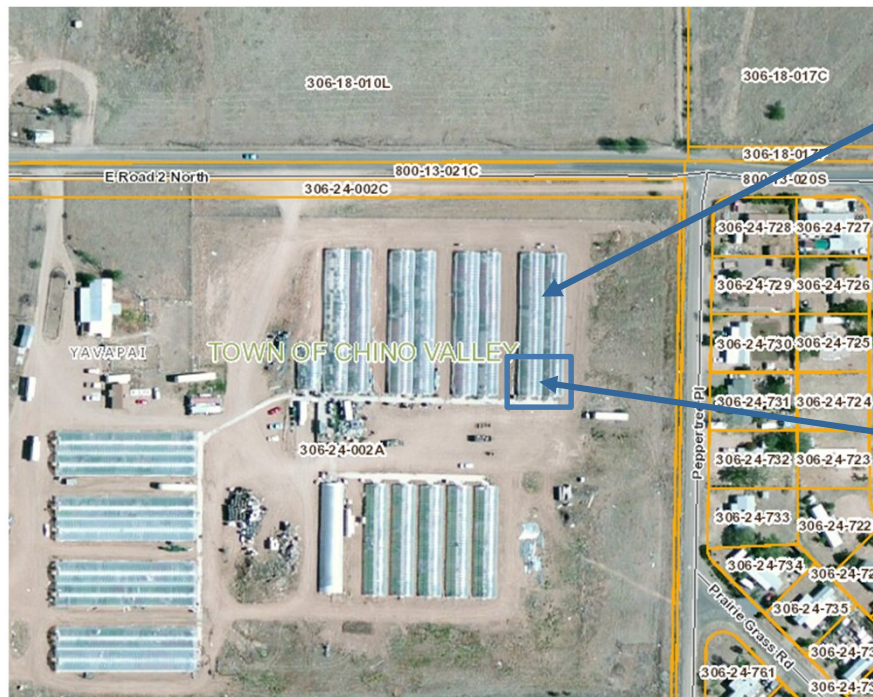
5) Measure separation from property line to property line

6) Exclude public right-of-way from measurement of separation

- If Council decides to eliminate Medical Marijuana uses from AR zoning, language can be truncated
- Excluding public rights-of-way will further increase separation, adding anywhere from 25' to 200+'

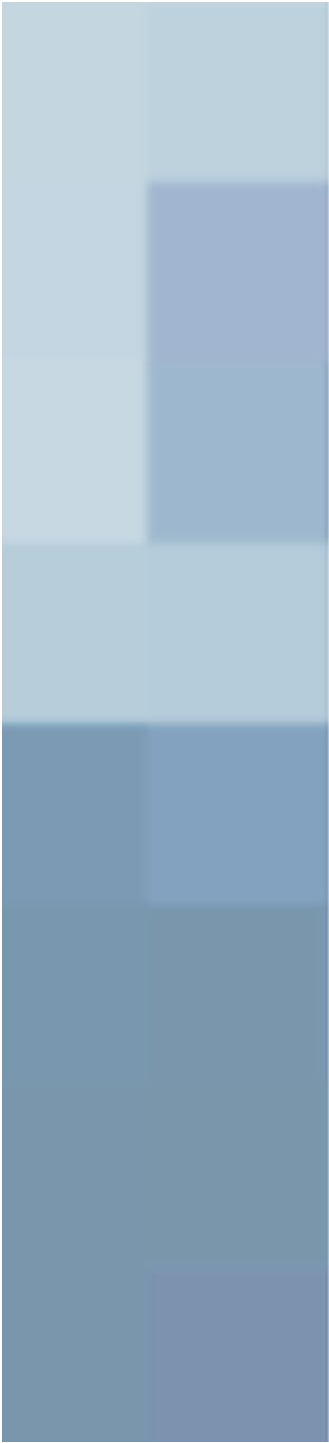
Proposed Options:

7) Limit size of cultivation facilities to 3,000 square feet (or another specific size limit)



Each greenhouse is approximately 12,000 square feet

Approximately 3,000 sf



RECOMMENDATION:

Staff recommends forwarding all seven (7) options, including 3 A, B, and C for consideration and possible action by Town Council.

This will afford Council an opportunity to review all options at the Study Session on December 10, 2015, and hold an additional public hearing at the regular meeting scheduled for January 12, 2016.