

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

**THURSDAY, DECEMBER 10, 2015
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, December 10, 2015.

Present: Mayor Chris Marley; Vice-Mayor Darryl Croft; Councilmember Mike Best; Councilmember Susie Cuka; Councilmember Jack Miller; Councilmember Corey Mendoza; Councilmember Lon Turner

Staff: Town Manager Robert Smith; Town Attorney Phyllis Smiley; Police Sergeant Mike Pereda;
Present: Development Services Director Ruth Mayday; Associate Planner James Gardner; Town Clerk Assistant Amy Pyeatt-Lansa; Town Clerk Jami Lewis (recorder)

1) CALL TO ORDER; ROLL CALL

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

(Councilmember Lon Turner arrived at 6:01 p.m.)

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.

Mayor Marley reported that this topic related to the Town further restricting medical marijuana (MMJ) establishments as recently requested by a contingent of the public.

Ms. Mayday presented the following:

- *Overview of the Town's actions since Prop 2013—Arizona Medical Marijuana Act (AMMA)—was approved by Arizona voters in 2010:* In 2012, the Town determined to not impose any regulations other than the State's. In 2013, Council adopted Ordinance 13-799, regulating the maner and placement of MMJ uses. In 2015, Council took public comment and the Planning and Zoning Commission ("Commission") held several public hearings regarding further amendments to the Unified Development Ordinance (UDO).
- *Facts about the AMMA in A.R.S. § 36-2801 and State regulations Title 9 Health Services, Chapter 17 Medical Marijuana Program* as they related to separation requirements from schools, voter approval, statutory regulation, administrative rules, and federal government regulations.
- *Comparison of regional regulations* as they related to zoning for dispensaries and cultivation sites.
- *Facts about Town regulations* with regard to how UDO amendments will affect current MMJ operations (legal conforming v. non-conforming uses), possible repercussions from the Private Property Rights Protection Act (Prop 207), and the Town's regulatory authority pertaining to the manner and placement of land uses legal in the state of Arizona.
- *Overview of the Private Property Rights Protection Act (Prop 207).*
- *Citizens' stated objections to MMJ* and whether or not the Town had any authority over them.

- *MMJ cultivation facilities*, including current parcels where growing was allowed, currently permitted cultivation facilities in the Town, and water usage by type of use as regulated by the State and Active Management Area regulations.

Proposed Options by the Commission:

1. Allow cultivation facilities on-site only (attached to a dispensary).
2. Remove cultivation and infusion facilities from Conditional Uses in AR-36, AR-5, and AR-4 zoning districts.
3. Remove cultivation, infusion and dispensary facilities from permitted uses in CL, CH and I zoning districts; require a Conditional Use Permit (CUP).
 - 3A. Require a CUP for any MMJ facility in Industrial districts only.
 - 3B. Require a CUP for any MMJ facility in Commercial Heavy and Industrial districts only.
 - 3C. Require a CUP for any MMJ facility in Commercial Light, Commercial Heavy, and Industrial districts only.
4. Require 500 foot separation from churches (in addition to already specified uses).
5. Measure separation from property line to property line.
6. Exclude public right-of-way from measurement of separation.
7. Limit size of cultivation facilities to 3,000 square feet (or another specific size limit).

Council asked for clarification on the following:

- *Current dispensary and cultivation (grow) sites*: Only one dispensary was permitted per Community Health Assessment Area (CHAA). The dispensary in the Town had a non-profit structure, and the grow facility attached to it was in Prescott Valley. The Town currently had six grow sites.
- *Grow options*: Ordinance 13-779 eliminated outdoor grow facilities; Council could further restrict offsite grows.
- *Legal non-conforming uses and Prop 207*: Should new regulations render current grow facilities as legal non-conforming uses, they would not be able to expand their use, which was where the Town might run into Prop 207 issues.
- *Separation Issues*: The existence of residential within 500 feet disqualified marijuana use, but residential could be established after the fact.

Mr. Paul Conant, attorney for Al Abrams, a local MMJ grower, reported that, in response to previous public comments and concerns, he had asked staff for permission to present a legal overview. Topics covered were:

- *Timeline* as to voter approval, effective date, Rules developed, and dispensaries approved.
- *Federal law* related to the Controlled Substances Act; the Cole Memo, 2016 federal budget Section 538 and MAMM v. USDOJ, all related to federal law enforcement priorities; and Internal Revenue Code taxing regulations.
- *State law and regulations* in A.R.S. 36-2801 et seq relating to user liabilities, possession and property use, and workplace rules; and Arizona Administrative Code (AAC) R9-17-201(F) et seq relating to Arizona Department of Health Services (ADHS) patient rules, not-for-profit officers, and MMJ security measures.
- *MMJ business requirements* related to financial statements, annual audits, and annual renewal; and the three types of business functions: dispensary, cultivation (farm), and infusion (kitchen).
- *Statistics* regarding cardholders' locations, pounds sold, qualifying patients, patients in the

local CHAA, and estimated amounts spent in 2014 in Arizona.

- *Summary*

- *State:* By statute, MMJ was legal in Arizona and regulated by the ADHS.
- *Federal:* Although federal law technically prohibited marijuana growing and sales, (i) MMJ was not a federal law enforcement priority (Cole Memo); (ii) Section 538 defunded any federal enforcement relating to state-legalized programs and could be enforced by a federal judge; (iii) the IRS received enormous tax payments from legal MMJ businesses.
- *Local:* Municipalities could enact "reasonable zoning regulations" under the AMMA.

Council asked about employment and wages at his client's facility. Mr. Conant stated that it had 10 full-time employees and 10 part-timers occasionally during harvest. The temps earned \$13 per hour, while their full-timers made up to \$100,000 with benefits.

Ralph Pew, attorney, suggested the following:

- Rather than make a drastic change or continue with current regulations, find a middle ground. His client was willing to use the two tools described below.
- He could work with staff to draft a development agreement to govern uses and intensity of uses on property that would allow current growers to define expansion that could occur, as well as address potential Prop 207 claims.
- The second tool was to use site plans or development plans as a protected development right plan.

Mayor Marley recessed the meeting at 7:22 p.m. and reconvened it at 7: 36 p.m.

Mayor Marley opened the floor for public comment on zoning, not moral or legal, issues.

Public comments in favor:

Eric Culverson, head of cultivation and consultant, spoke about the scientific process, efficacy research, natural versus synthetic drugs, plant safety, and grow site restrictions being detrimental to youth and economic growth.

John Morgan, Chino Valley educator, spoke about abatement measures that could be taken and his belief that there was no difference between wine and marijuana industries.

Mike O'Connor, resident and farmer who rented his land to an active grow site, spoke in favor, as MMJ facilities were indistinguishable from any other plant growing facility, grow sites were tightly regulated, current sites were small, cannabis used less water than other plants, MMJ plant wages were higher, restrictions will reduce the economic benefit, and after determining that there was no increase in crime, other municipalities had allowed grow sites to expand.

Brian McClaren, sustainable development consultant for Mr. Abrams, spoke about Mr. Abrams bringing a lot of money into the local economy through paying taxes on the property and during development.

Kate O'Connor-Masse, resident, spoke about there being no zoning problem if people knew the science behind the matter, and she presented Council with a binder of scientific facts about cannabis.

Residents David Albus, Laura Flood, Glenda Wells (also speaking for Billy and Betty Wells), Carla Acosta, Cindy Lazzo, Chad Nanke, expressed concern about:

- moral issues;
- youth marijuana abuse;
- development agreements not being solid and not allowing current sites to be expanded;
- challenges being faced in Colorado and Washington;
- product transport security;
- health effects of marijuana use;
- water usage;
- Prop 207 claims;
- the Town's future in general;
- grow operations providing little benefit to the Town;
- problems in Denver.

Residents Lillian Morales, Glenda Wells, Cindy Lazzo, Andy Ericson, and Peggy Trout supported tighter restrictions on and/or limiting grow facilities, and Chad Nanke supported regulations similar to Prescott Valley's.

Residents Jim Runner, John Trout, and Marsha Hilborn asked about the following and staff responded:

- *The impact of marijuana being approved for recreational use:* Town Attorney Smiley stated that current regulations will only apply to MMJ per the AMMA, and if recreational use was approved, the Town might have to consider something new down the road.
- *Potential grow area off Center Street:* Ms. Mayday stated that that area was too close to residential for an allowable grow site. For example, on Road 4 South, only 10 acres could be used for cultivation due to proximity to residential.
- *Why the Town allowed marijuana growing right off the highway:* Mayor Marley stated that the property owner had the zoning and use by right.
- *Water usage:* Mayor Marley stated that, in Arizona water use went with the land.

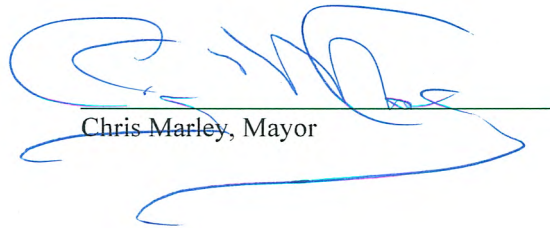
Council comments:

- The Town was attractive to many types of growers, as it had good climate and was historically farm country; this discussion mainly concerned limiting growing.
- One hoped to hear from more farmers and growers about the farming aspect.
- The Council had same concerns and issues and had a responsibility to listen to both sides and make a decision based on the General Plan.
- Council could not represent all the citizens' opinions, as there were too many of them.

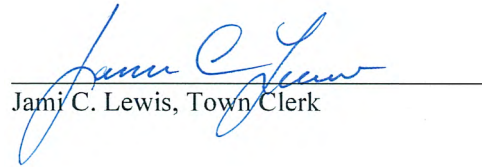
3) ADJOURNMENT

MOVED by Vice-Mayor Darryl Croft, seconded by Councilmember Jack Miller to adjourn the meeting at 8:36 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 10th day of December, 2015. I further certify that the meeting was duly called and held and that a quorum was present.

Dated this 12th day of January, 2016.


Jami C. Lewis, Town Clerk