ORDINANCE NO. 2011-1722-E2

SECOND EXTENTION OF AN INTERIM ORDINANCE PROHIBITING
ESTABLISHMENT OF ANY BUSINESS OR FACILITY THAT CULTIVATES,
SELLS, OR DISTRIBUTES MEDICAL MARIJUANA WITHIN THE
UNINCORPORATED TERRITORY OF THE COUNTY OF SOLANO,
ADOPTED AS AN URGENCY MEASURE

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

SECTION 1. Findings

A. The possession, sale, cultivation, or transportation of marijuana is
ordinarily a crime under California law.

B. The manufacture, distribution, or possession of marijuana is a federal
offense under the Controlled Substances Act (CSA), a federal regulatory
system designed to combat recreational drug abuse.

C. In November 1996, California voters approved "The Compassionate Use
Act of 1996" (Proposition 215), an initiative that exempted certain patients
and their primary caregivers from criminal liability under state law for the
possession and cultivation of marijuana.

D. The Courts have held that Proposition 215 does not conflict with the
federal Controlled Substances Act because, in adopting these state laws,
California did not "legalize" marijuana but instead exercised the state's
reserved powers not to punish certain marijuana offenses under state law
when a physician has recommended its use to treat a serious medical
condition.

E. In 2003, the Legislature enacted Senate Bill 420 to clarify the scope of
Proposition 215. Senate Bill 420 required the California Attorney General
to adopt guidelines to ensure the security and non-diversion of marijuana
grown for medical use.

F. In August 2008, the California Attorney General published "Guidelines for
the Security and Non-diversion of Marijuana Grown for Medical Use." Section IV of this document provides guidelines regarding collectives and
cooperatives. In this section, the Attorney General states: "Although
medical marijuana 'dispensaries' have been operating in California for
years, dispensaries, as such, are not recognized under state law."

G. The sale or distribution of legal prescription and non-prescription drugs
and medical remedies is generally an acceptable type of land use in most
commercial zoning districts in the incorporated and unincorporated areas
of Solano County.
H. Pharmacies are a land use allowed by right in the County’s Business and Professional Office (C-O) zoning district, although the structure used for such a business must comply with all applicable zoning standards and building codes, and the operator must obtain a business license.

I. Retail stores of less than 1,500 square feet which provide goods or services primarily to a residential neighborhood or rural community are a land use allowed by right in the County’s Agriculture Tourist Center (ATC and ATC-NC), Residential-Traditional Community Mixed Use (R-TC-MU), and Neighborhood Commercial (C-N) zoning districts, although the structure used for such a business must comply with all applicable zoning standards and building codes, and the operator must obtain a business license.

J. Recently, the United States Attorney for the Eastern District of California [jurisdiction over Solano County] Benjamin B. Wagner clarified the federal government’s focus on the investigation and prosecution of CSA violators in states that authorize medical use of marijuana. He reiterated that the federal enforcement would not expend resources prosecuting seriously ill individuals who use marijuana as part of a medically recommended treatment regimen in compliance with state law, or their individual caregivers. Rather, the federal enforcement would focus on jurisdictions that permitted commercial scale cultivation and distribution. More importantly, U.S. Attorney Wagner indicated that “he believed that public officials and employees could be prosecuted for conspiracy under the theory that public officials acting under a land use ordinance that permitted marijuana cultivation or distribution were knowingly facilitating the activity.” He further clarified that reliance on the State’s AG guidelines to regulate and permit these activities “would not offer any protection because the federal government considers the State AG guidelines as irrelevant in any way to a federal prosecution.”

K. There are currently no provisions in Chapter 28 of the Solano County Code (“Zoning Regulations”) specifically regulating or monitoring the location, zoning standards, or other aspects of the facilities where medical marijuana may be cultivated or dispensed to eligible persons under Proposition 215. The Zoning Regulations do not provide specific development regulations or definitions relative to the cultivation of medical marijuana in residential-based settings or for facilities intended for the distribution of marijuana for medical purposes.

L. Cities within Solano County, including Fairfield and Benicia, have enacted ordinances temporarily or permanently prohibiting the establishment or operation of any business that would distribute marijuana.
M. The California Supreme Court has recently granted review in several cases that present the issue of whether state law preempts a city or county from enacting an ordinance prohibiting the cultivation or distribution of medical marijuana throughout the jurisdiction’s territorial limits.

N. In order to allow time for the County to consider and study possible enactment of the implementing regulations, it is necessary to suspend the approval of all medical marijuana cultivation and distribution that may be in conflict with development standards and implementing regulations the County intends to consider or study within a reasonable time.

O. A moratorium on all forms of medical marijuana cultivation and distribution will provide the County time to draft and adopt regulations consistent with Proposition 215, Senate Bill 420, the federal government’s enforcement priorities, and guidance provided by the California Supreme Court while being consistent with the General Plan, Zoning Regulations, and compatible with surrounding land and neighborhoods.

P. On August 23, 2011, the Board of Supervisors adopted Ordinance 2011-1722, an urgency interim ordinance temporarily prohibiting establishment of any business or facility that cultivates, sells, or distributes medical marijuana within the unincorporated territory of Solano County. On October 4, 2011, the Board adopted Ordinance 2011-1722-E extending the interim ordinance for 10 months and 15 days. The interim ordinance will expire on August 19, 2012, unless further extended prior to that date by a four-fifths vote of the Board of Supervisors after notice and hearing.

Q. It is appropriate to further extend Ordinance 2011-1722 to provide staff time to refine draft ordinances in response to decisions from the California Supreme Court, which are anticipated within the next twelve months.

SECTION 2. Interim Prohibition

From and after the date of enactment of the interim ordinance, no use permit, variance, building permit, business license, or any other entitlement for use shall be approved or issued for the establishment or operation of a business that cultivates, sells or distributes medical marijuana, including but not limited to a “medical marijuana dispensary” for a period of 45 days. For purposes of this ordinance, “medical marijuana dispensary” shall mean any facility or location where marijuana is made available, sold, transmitted, given, or otherwise provided to or between qualified individuals in accordance with the Compassionate Use Act of 1996 (Proposition 215).

The exemption provided in Section 14-17(a) of the Solano County Code, allowing a business to operate after having filed an application for a business license and pending final action on that application, shall not apply to any business that cultivates, sells, or distributes medical marijuana.
SECTION 3. Effective Period

The interim ordinance is extended for one year and shall expire on August 19, 2013, unless rescinded or superseded prior to that date by the Board of Supervisors.

SECTION 4. Authority

California Government Code section 65858 provides that an urgency measure in the form of an initial interim ordinance may be adopted by a four-fifths vote of the board of supervisors, which shall be effective for only 45 days following its date of adoption. Government Code section 65858 further provides that such an urgency measure may be extended following compliance with that section for up to an additional 22 months and 15 days beyond the original 45-day period.

SECTION 5. Penalties

The definitions and penalties for land use violations that are prescribed in Chapter 28 of the Solano County Code shall apply to violations of the provisions of this interim ordinance.

SECTION 6. Severability

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

PASSED AND ADOPTED by the Solano County Board of Supervisors at its regular meeting on August 7, 2012, by the following vote:

AYES: SUPERVISORS: Reagan, Spering, Vasquez, and Chair Seifert.

NOES: SUPERVISORS: None.

EXCUSED: SUPERVISORS: Kondylis.
ATTEST:
Birgitta E. Corsello, Clerk
Board of Supervisors

By: Patricia J. Crittenden, Chief Deputy Clerk