ORDINANCE NO. 2011-1723

EXTENSION 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 February 2007, the California State Board of Equalization issued a Special Notice confirming its policy of taxing medical marijuana transactions, as well as its requirement that businesses engaging in such transactions hold a Seller’s Permit.

G. 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.”

H. 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.
I. 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.

J. The Department of Resource Management has a business license application pending for the sale of herbal remedies, potentially including medical marijuana, in the C-N zoning district, which is a non-discretionary permissible use in this district.

K. 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.”

L. There are currently no ordinances in Section 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 and 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.

M. Most 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.

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 and the federal government’s enforcement priorities that will regulate such activity while being consistent with the General Plan, Zoning Regulations, and compatible with surrounding land 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 and distributes medical marijuana within the unincorporated territory of Solano County. The interim urgency ordinance will expire on October 7, 2011 unless extended prior to that date by a four-fifths vote of the Board of Supervisors after notice and hearing.

Q. It is appropriate to extend Ordinance 2011-1722 to provide staff additional time to refine several draft ordinance concepts developed as part of initial efforts to study and develop appropriate regulations in regards to medical marijuana and to provide time for public input and Planning Commission review of any proposed changes in Zoning regulations.

R. The extension of the interim ordinance as an urgency measure is necessary for the immediate protection of the public health, safety and welfare.

SECTION 2. Interim Prohibition

From and after the date of this 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 10 months and 15 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

This interim ordinance shall expire on August 19, 2012 unless rescinded or superseded by subsequent Board of Supervisors action.

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 Section 28 of the Solano County Code shall apply to violations of the provisions of this interim ordinance.
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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 on October 4, 2011 by the following vote:

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

NOES: SUPERVISORS: None

EXCUSED: SUPERVISORS: Kondylis

ATTEST:
Birgitta E. Corsello, Clerk
Board of Supervisors

By: Patricia J. Crittenden, Chief Deputy Clerk

Michael J. Reagan, Chair
Solano County Board of Supervisors