

MINUTES OF THE SOLANO COUNTY PLANNING COMMISSION

Meeting of September 21, 2017

The regular meeting of the Solano County Planning Commission was held in the Solano County Administration Center, Board of Supervisors' Chambers (1st floor), 675 Texas Street, Fairfield, California.

PRESENT: Commissioners Rhoads-Poston, Walker, Hollingsworth, Bauer, and Chairperson Cayler

EXCUSED: None

STAFF PRESENT: Bill Emlen, Director; Mike Yankovich, Planning Program Manager; Karen Avery, Senior Planner; Davina Smith, Deputy County Counsel; and Kristine Sowards, Planning Commission Clerk

Chairperson Cayler called the meeting to order at 7:00 p.m. with a salute to the flag. Roll call was taken and a quorum was present.

Approval of the Agenda

The Agenda was approved with no additions or deletions.

Approval of the Minutes

The minutes of the regular meeting of August 3, 2017 were approved as prepared.

Items from the Public

There was no one from the public wishing to speak.

Regular Calendar

Item No 1 -

PUBLIC HEARING to consider specific modifications to the Planning Commission recommended ordinance amending Chapter 28 (Zoning regulations) regulating non-commercial personal and caregiver cannabis cultivation that include a ban on outdoor cannabis cultivation, redefining greenhouse cannabis cultivation as indoor cultivation, and the addition of an exemption process to allow outdoor cannabis cultivation for the needs of medicinal patients. (Project Planner: Karen Avery)

Karen Avery gave a brief overview of staff's written report. The report indicated that after a public hearing on March 16, 2017, the Planning Commission made their formal recommendation to the Board of Supervisors on personal and "caregiver" cannabis cultivation. Since that time there have been changes to state law in regards to cannabis regulation. The commission's approved draft ordinance was amended to reflect these changes and was included in the draft ordinance submitted to the Board of Supervisors for their consideration at a special Board of Supervisors meeting on August 29, 2017. After Board discussion and public comment, the Board requested several modifications to the Planning Commission-recommended ordinance: ban of all outdoor cannabis cultivation (personal and caregiver), redefine greenhouse cannabis cultivation as indoor cultivation; and add an exemption process

to allow limited outdoor cannabis cultivation for medicinal patients. As one or more of these modifications were not previously considered by the Planning Commission, the modifications must now go before the commission for their report and recommendation pursuant to Government Code section 65857. Staff recommended that the Planning Commission consider the modifications to the ordinance and recommend the Board approve the amended draft ordinance.

Commissioner Rhoads-Poston made note for the commission that she recently toured a dispensary and cultivation site located in the City of Sacramento.

Commissioner Rhoads-Poston inquired about application requirements and renewal fees as referenced in staff's report. Karen Avery stated at this point there is no renewal process and an application fee has not yet been established. Mike Yankovich added that the fee would be based on the anticipated number of hours staff would need to devote to processing the application. He commented that this would be something that would be presented to the Board at the appropriate time.

Commissioner Rhoads-Poston inquired about the process for handling complaints in the event objections are raised by neighbors at the time an application is filed. Ms. Avery stated that there would be the option for a public hearing to address nuisance complaints and neighborhood objections.

Commissioner Rhoads-Poston said she understands there is a need for setting up criteria for dealing with the "what-ifs" but said this feels more punitive in nature, as if this is being set for that 1% of bad apples that might go astray, and not for the other 90% that would follow the guidelines.

Commissioner Hollingsworth asked for clarification on what action specifically is being asked of the commission. He said the recommendation states that the commission is limited to the modifications as was described in staff's presentation and he wanted to know if the commission is limited to accepting or rejecting those modifications without making any changes.

Mr. Yankovich explained that before the commission is what the Board feels are adequate modifications or revisions to the Planning Commission's original recommendation, and what the commission is being asked is whether or not they agree with those changes.

Bill Emlen commented that the commission also has the option of endorsing their original recommendation or some variation of it. He said it is within these areas that have been highlighted in the report that the Board developed a different set of recommendations than what was recommended by the commission. Mr. Emlen noted that it is at the Board's discretion in the end in terms of what goes into the ordinance.

Commissioner Walker asked the reason the Board sent this back to the commission if they have specific recommendations they want to employ over what the commission has already heard. He wanted to know why they did not just adopt those changes.

Davina Smith explained that within the government code regulations the Board can adopt a land use or zoning ordinance once the Planning Commission has reviewed and recommended it. She said in bringing so many options to the commission to explore and discuss those were things that the Board then could envision. Some of the changes the Board made such as the request for an exemption process to grow some plants outdoors, was an entirely new item that the commission had never talked about or considered. So for that reason it has been sent

back for the commission to weigh in on. Ms. Smith noted that the commission does have the ability to make changes.

Since there were no further questions, Chairperson Cayler opened the public hearing.

William Dally who lives in Elmira stated that he was disappointed with the staff recommendation. He said the county is basically treating marijuana as if it is illegal. He said the county also does not seem to have the understanding about the plants themselves such as how much marijuana is yielded from a plant and how many plants a recreational user needs to grow in order to have enough to satisfy over the course of a year. Mr. Dally commented that the growing season is during summertime so a person would not grow year round unless they wanted to spend a lot of money on electricity. He stated that most recreational users who smoke 1 or 2 joints a day could possibly suffice their needs with 2 plants that produce an average amount of growth. Mr. Dally commented that in the 1990's before medical marijuana was approved it cost \$300 an ounce which is down in current time to \$150. He said it could be reduced even further if it is treated as a legal substance and allowed to be grown outside under the sun. With regard to crime, Mr. Dally commented that farmers are allowed to grow hay or almonds without having to hide it from sight even though it is a prized object for theft. He stated that the installation of a greenhouse is not a simple one, citing the need for an air flow system or expensive air conditioning equipment. He stated that greenhouses capture and contain a lot of moisture which fosters mold. Mr. Dally stated that by adding rules and regulations for this activity at a cost only facilitates the need for a black market.

John Benjamin appeared before the commission. He stated that this ordinance seems to be attempting to remove a right that was given to all; the right to grow outdoors using sunlight. He commented that SB420 already creates reasonable regulations for cultivating, processing, transportation and administering needed cannabis, as well as the voluntary card program. He said it is his understanding that the Compassionate Use Act still stands as state law. He said reasonable regulations should not include the removal of a patient's rights. Mr. Benjamin commented that this proposed ordinance states that cannabis in the unincorporated area of the county is going to affect the health, safety and well-being of its citizens and he did not believe this to be true. He said Indoors or outdoors should be a choice of the individual grower. Mr. Benjamin said that he has grown his own marijuana outdoors every year since 1999 when he became a patient under Proposition 215 and he is unaware of any complaints ever made by anyone concerning his cannabis. Mr. Benjamin stated that staff's document also contains misleading and incomplete information. He stated that Solano County has had 21 years to author an ordinance but they did not, and by remaining silent this county has accepted, in his opinion, the terms and conditions of Prop. 215 and SB420, and for this reason alone he said Prop 215 and the patients it protects must be completely severed from this ordinance.

Rosie Enriquez, who lives in Dixon, spoke of her concern with the enforcement of growing outdoors and how the restriction on the number of plants would be maintained. She commented that there is currently very little enforcement in the county because the county has only one code enforcement officer. Ms. Enriquez voiced concern about devaluation of property and odor. She commented that there is a reason why marijuana is called skunk weed. She said there is also a reason why commercial cultivation sites need professional ventilation and filter systems and why workers wear gloves and masks. She said it is because there are hazards in dealing with marijuana. Ms. Enriquez referred to her experience as a law enforcement officer with Sacramento County and said she has been involved in eradicating countless numbers of marijuana grows and spoke of the instances relating to the destruction of the environment, the use of rat poison and the misuse of fertilizers. She urged the

commission to support indoor vs outdoor grows.

Laura Peters who resides in Vacaville said that as a home inspector she has seen the detriment these plants have created such as mold and mildew. She said properties that have been grow houses are very dangerous and she highly recommended that the county not allow in-home cultivation. Ms. Peters felt that greenhouse cultivation is better than outdoor cultivation and related a story about someone in her neighborhood with an outdoor grow who was burglarized. She stated that as a real estate investor she has had a great deal of conversation with folks from other counties who are dealing with this particular issue and are experiencing negative impacts including the decrease in property values. She encouraged the commission to keep the reins as tight as possible and as time and rules develop in other counties, follow the lead of what works.

Deanna Garcia who resides in Sacramento stated that she is a City of Sacramento registered cultivator and they are moving forward with regulations to be able to cultivate indoors. She welcomed the commission to come and visit to observe what a regulated cultivation site looks and smells like. She said she is proud of the county for giving patients good, safe access to medicine and for realizing that greenhouses, with proper ventilation could be just as clean as an indoor warehouse. Ms. Garcia commented that the less electricity that can be used to grow medicine the better the whole earth will be.

Since there were no further speakers, Chairperson Cayler closed the public hearing.

Commissioner Bauer stated that she did not think that the regulations the Board rejected in August were broad enough and so consequently excluding outdoor cultivation altogether is not acceptable. She stated that the problems that would be created in terms of the cost of cultivating indoors, of the electricity, and the instance of mold, she could not vote in favor of this proposed ordinance.

Commissioner Walker stated that when the commission first started hearing about this subject matter there was a proposed ordinance that was really restrictive. He commented that the commission pulled it apart, and in many cases made 180 degree changes. He said from testimony the commission has heard from the public at that time and the two public hearings since, it seemed to him that outdoor cultivation in the small scale made a lot more sense than the potential environmental issues that could arise with those growers that may not be experts in trying to grow these kinds of plants; especially in a secured locked room with perhaps improper electricity or wiring, improper ventilation, and as one speaker mentioned and he himself has experienced as a realtor, mold definitely grows faster than in any other circumstance. Commissioner Walker stated that he appreciated the Board's consideration in changing the definition that a greenhouse is now considered indoor even though it is detached from the property. Mr. Walker stated that he would be okay with that definition in addition to some of the other items, but he could not support the elimination of outdoor cultivation for personal or medicinal use.

Chairperson Cayler spoke about her sister who added a greenhouse to her home in New York. She noted that she never heard her sister comment negatively about the bad influence of the humidity on the greenhouse. Commissioner Cayler believed that a greenhouse can be safe and secure and not be a detriment to the residence.

Commissioner Rhoads-Poston said that while she understands the need for enforcement because there are definitely wrongdoers, at the same time she said the many things that she has learned during the tours she has taken is that there is a lot of science that goes into growing these plants. She said to require the person who may not be able to travel and who

may want to grow a few plants to have a greenhouse and go through the steps it takes to get to that point, she believed might be hurting more people than it is helping. She recommended developing some kind of a compromise that can be enforced.

Commissioner Rhoads-Poston noted that what really stood out to her during the tour was that right next door in a residential neighborhood was someone who had an outdoor grow and there was no odor. She said the grow was completely screened by cypress trees. Ms. Rhoads-Poston stated that it is important to her to protect the person who is the average consumer. She said she would not like having to impose all of these restrictions upon someone who is just trying to gain some relief.

Chairperson Cayler stated that there was an article recently in the Sacramento Bee about how this type of business affects property values in a negative way. She noted that the realtors that were interviewed for the article estimated it would decrease the value of the seller's home next door to a grow by 8% to 10%. She noted that while this article focused on commercial sites, she felt that outdoor residential grows could also impact the sale of a home. She believed that this information would need to be disclosed to a buyer.

Commissioner Walker stated that if an agent believed that it would impact a decision that a willing buyer or seller might make, then that agent would have a duty to disclose the information regardless of legality. Commissioner Walker commented that the parcels in question are at a minimum of 2½ acres in size with most being 40 and 160 acre lots. He commented that he could not imagine what six small plants would look like with this type of depth and finds it hard to believe that six plants would impact someone's property values.

Chairperson Cayler stated that she believed there is a smell associated with this activity.

Commissioner Rhoads-Poston reiterated that when she took the tour of the cultivation site there was no smell, adding that it was over 100 degrees outside that day.

Commissioner Walker mentioned that he and Commissioner Bauer took a Solano County sponsored tour of a Yolo County cultivation site which was a combination of indoor cultivation and a hybrid indoor/outdoor with screening material on some plants and other plants out in the open. He said it was an expansive operation and the most surprising aspect is that there was no odor outside. He noted that he could definitely smell it when inside the warehouse but walking out in the field it was not noticeable until getting extremely close to the plants.

Commissioner Bauer stated that it is her understanding that the plant only smells when it is flowering. She commented that the Yolo County tour was fascinating. She said Yolo County has 64 one-acre commercial grows and the one her and Commissioner Walker visited was out in the middle of a corn field. She said you would not know it was there unless you knew it was there. Commissioner Bauer stated that an odor was not present because it was not that time of year. She said this is the type of information she has learned from going on these types of tours and from listening to the speakers that have come before the Commission.

Chairperson Cayler spoke of a conversation she had with a veterinarian who travels in a nearby county who told her that at certain times of the year he can spot the marijuana grows by the odor as he is travels down the road making his medical visits. Chairperson Cayler stated that she felt the Board had presented a good compromise.

Commissioner Hollingsworth asked staff if maybe the Board should come up with an alternate resolution for the commission to review. Mr. Yankovich said that the commission would need to decide what they feel is the best recommendation to send to the Board. Mr. Emlen added

that the commission could go back to their original recommendation they made at their March meeting where they recommended outdoor cultivation with certain standards. He said the commission can send that to the Board with the message that the commission still believes it is the right option.

Davina Smith stated if that is the direction the commission would like to go it would follow along the lines of a motion being made to recommend the Board not adopt the currently proposed draft ordinance as amended and instead recommend they adopt the Commission's previous recommendation. Ms. Smith recommended that those be made as two separate motions.

Ms. Smith further stated that it depends on where the commission wants to go; whether they want to reach a compromise position where they propose different language that the Board could consider, if the commission is looking to go back to where they were before because they were satisfied with their decision, or if they would like the minutes to speak for themselves and recommend either denial or passing of the draft ordinance.

Commissioner Walker made a motion which was seconded by Commissioner Rhoads-Poston to deny staff's recommendation of the modifications to the Planning Commission-recommended ordinance. The motion passed 3-2 with Commissioners Hollingsworth and Cayler dissenting. (Resolution No. 4650)

Commissioner Rhoads-Poston stated that there has been concern expressed by the public about the location of the crop being too far from the property residence which would make it difficult to discourage criminal activity. She suggested language to allow the product to be located within a certain yardage on the parcel bringing it closer to the structures but still having it completely screened from public view.

Commissioner Hollingsworth questioned the ability to change this verbiage since it was not one of the items recommended by the Board.

Commissioner Walker stated that this topic is part of the conditions that are listed under the outdoor cultivation requirements and if the commission is going to bring back outdoor cultivation, then an adjustment can be made to the particulars of allowing what that outdoor cultivation would look like.

Mr. Yankovich pointed out the language that was stricken from the General Requirements and Definitions, under Outdoors which states "Outdoors allowed with 10' setbacks on rear 50% of property and screened from public view" along with "Cannabis cultivation drying, curing, and trimming must be in fenced and secured area not accessible to minors".

Commissioner Rhoads-Poston said that she would still agree with that definition but noted one of the concerns expressed was that the rear 50% was too far and having it closer would be more desirable in order for it to be monitored. Commissioner Walker agreed. Mr. Yankovich stated that the commission could add language that states "no more than 150 feet from the residence". Karen Avery pointed out that 150 feet was added to the exception rule.

Commissioner Walker commented that with everything the commission has already accomplished plus what has taken place tonight is more than enough to inform the decision of the Board.

Commissioner Walker made a motion which was seconded by Commissioner Bauer to recommend to the Board of Supervisors the Planning Commission's original ordinance as

presented on March 16, 2017 with one modification to Condition No. D.1.b. to delete the existing language and replace it with: Outdoor personal cultivation must occur within 150 feet of a residence on the parcel. The motion passed 3-2 with Commissioners Hollingsworth and Cayler dissenting. (Resolution No. 4651)

ANNOUNCEMENTS and REPORTS

Mr. Yankovich informed the Commission that the Caymus Suisun Winery project they approved at their last meeting was appealed to the Board of Supervisors and would be heard at the Board's September 26th meeting.

Mr. Yankovich also informed the Commission that there are no items scheduled for the October 5, 2017 regular meeting and therefore it would be cancelled.

Since there was no further business, the meeting was **adjourned**.