



# WASHOE COUNTY

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## STAFF REPORT

BOARD MEETING DATE: April 10, 2018

**DATE:** March 1, 2018

**TO:** Board of County Commissioners

**FROM:** Bob Webb, Planning Manager, Planning and Building Division  
Community Services Department, 328-3623, [bwebb@washoecounty.us](mailto:bwebb@washoecounty.us)

**THROUGH:** Dave Solaro, Arch., P.E., Assistant County Manager  
Community Services Department, 328-3600, [dsolaro@washoecounty.us](mailto:dsolaro@washoecounty.us)

**SUBJECT:** Public hearing: Second reading and adoption of an ordinance amending the Washoe County Code at Chapter 25 (Business License Ordinance), Chapter 53 (Miscellaneous Crimes), and Chapter 110 (Development Code) to provide for limited exemption of certain acts from criminal prosecution and for the licensing and land use authorization required to operate marijuana establishments (including cultivation facilities, distributors, product manufacturing facilities, testing facilities, and retail marijuana stores/medical dispensaries) which are licensed by the State of Nevada under NRS Chapter 453A and/or NRS Chapter 453D; to allow for all marijuana establishments in general commercial and industrial regulatory zones; to allow for retail marijuana stores/medical dispensaries in neighborhood commercial and tourist commercial regulatory zones as well; and, to address other matters necessarily connected therewith and pertaining thereto. The Board of County Commissioners introduced and conducted a first reading of the proposed ordinance on March 27, 2018. (All Commission Districts.)

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### SUMMARY

To conduct the second reading of, and possibly adopt, an ordinance amending Washoe County Code Chapters 25, 53 and 110 to provide for limited exemption of certain acts from criminal prosecution and for the licensing and land use authorization required to operate marijuana establishments.

Washoe County Strategic Objective supported by this item: Proactive Economic Development and Diversification

### PREVIOUS ACTION

On March 27, 2018 the Board of County Commissioners (Board) introduced and held a first reading of the proposed ordinance.

On December 19, 2017, the Board initiated an amendment to Washoe County Code (WCC) Chapter 25 (Business License Ordinance) to provide for the operation of

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marijuana establishments which are licensed by the State of Nevada under NRS Chapters 453A (medical marijuana) and 453D (recreational marijuana). During the meeting, the Board further directed staff to provide for single licensure for marijuana establishments.

On July 25, 2017, the Board amended WCC Chapter 25 to include new regulations on temporary marijuana establishment business licenses. These licenses expire on July 1, 2018, or on a later date if the State Department of Taxation extends its license expiration date for the quick start program.

On April 8, 2014, the Board amended WCC Chapter 25 to include new regulations on medical marijuana establishments.

## **BACKGROUND**

The Board heard a presentation on the background for medical and legalized marijuana in the State and the County prior during their March 27, 2018 meeting. The background section of this staff report will not duplicate the information provided in that update.

The update provided information on the roles of the State and of the County in regulating both medical and legalized marijuana. Specific to County Code amendments, the County's role is limited to:

- Regulatory zoning, where a business can be located considering State Laws on zoning and distance separation from schools and community facilities.
- Business licensing, including fees, hours of operation, and the look and feel of retail businesses.
- Public safety, focusing on security requirements and local law enforcement.

As noted in the update, the Board approved three key components of the draft regulations on marijuana establishments to return to the Board. These three components will be referenced in this staff report and are:

1. Single licensure of medical and recreational facilities.
2. Institute a 3% license fee on marijuana establishments, recoup all costs for compliance inspections and licensing, and consider a separate application fee for marijuana during the review of fees for all businesses.
3. Prohibit public use lounges or other similar public facilities until more robust conversations occur at the state legislature and/or with local jurisdictions.

## **PROPOSED MARIJUANA ESTABLISHMENT REGULATIONS**

Reflecting the County's regional leadership in regulating both medical and legalized marijuana, the Manager's Office formed a marijuana code working group in late 2017 to assist in the formulation and crafting of new marijuana establishment regulations. The working group is comprised of the following staff:

Manager's Office	Dave Solaro	Building	Steve LeCam
	Kate Thomas	Licensing	Bob Webb
	Sarah Tone	Planning	Chad Giesinger
	Jamie Rodriguez	TMFPD	Denise Reynolds
District Attorney	Leslie Admirand	NLTFPD	Mark Regan
	Nate Edwards		Jennifer Donahue
Treasurer's Office	Tammi Davis	Health District	Charlene Albee
Comptroller	Cathy Hill		Mike Wolf
Sheriff's Office	Corey Solferino		Chad Westom

The working group referenced the following areas in its work to craft the new regulations:

- Current marijuana establishment regulations as contained within WCC Chapter 25 (Business License Ordinance) and WCC Chapter 110 (Development Code);
- Current regulations on liquor establishments as found in WCC Chapter 30 (Liquor and Gaming License Ordinance) as a model for marijuana establishment regulations, following direction from the Board in December of 2017;
- NRS changes resulting from the 2016 legislative session (principally NRS Chapters 244, 453A and 453D), Nevada Administrative Code (NAC) for 453A and 453D (the latter in draft form); and,
- The Board's 2017 Marijuana Policy Areas (see attachment A).

The working group met every other week for the past five months and determined that three County Codes require amendment to conform to 2016 State Law changes and to regulate marijuana establishments within the unincorporated County:

1. *Business License Ordinance.* Marijuana establishments are principally regulated through business licensure, since the license is a revocable privilege and not a right. The bulk of medical and temporary marijuana establishment regulations are currently within WCC Chapter 25 and the recommendation is to retain the new single marijuana establishment regulations within this Chapter.
2. *WCC Chapter 53, Miscellaneous Crimes.* The 2016 voter approved initiative made the use of marijuana and marijuana products for adults over the age of 21 legal in the State of Nevada. WCC Chapter 53 requires amendments to reflect the voter initiative (and subsequent inclusion of the initiative into NRS Chapter 453D).
3. *Development Code.* WCC Chapter 110 currently regulates the regulatory zones within which medical marijuana establishments are allowed. Parking standards are also contained for these establishments within the Development Code. This Chapter will require updates to include the new single marijuana establishment terminology and to update parking requirements for retail marijuana stores.

The working group prepared the draft ordinance which includes the proposed amendments to all three Code chapters (see Attachment B). Highlights of the proposed amendments for each Chapter, with an emphasis on the Board's policy areas (shown in *text*), are outlined below. Section references in parenthesis are to the section number in the ordinance.

### **WCC Chapter 25, Business License Ordinance**

As noted earlier, WCC Chapter 25 contains the bulk of current medical and temporary marijuana establishment regulations. The proposed ordinance deletes the current Code section in its entirety (Section 25.700) and replaces it with a series of Code sections to regulate marijuana establishments. The following are the highlights of the proposed amendments:

- A. **Single licensure.** The ordinance establishes a single license structure for marijuana establishments. The single license enables a marijuana establishment to operate as a medical establishment and/or as a recreational establishment. The only exception is for a retail marijuana store/medical dispensary. In order to operate as a retail marijuana store, the establishment must retain State licensure as a medical marijuana dispensary. In other words, the ordinance will prohibit stand-alone retail marijuana stores in unincorporated Washoe County. (section 7)
- B. **Maximize revenue.** The ordinance provides for a quarterly marijuana establishment license fee.
  - 1) The amount of that fee will be 3% of an establishment's reported quarterly gross revenue. The fee amount will be established in a resolution adopted by the Board on April 10, 2018 provided the Board adopts the proposed ordinance.
  - 2) **Ensure accuracy with reporting.** The ordinance requires the license fee to be paid not later than 15 calendar days after the start of each calendar quarter. Paying the fee after the start of the quarter enables a marijuana establishment to report actual (and not estimated) quarterly gross revenue. (section 12)
  - 3) The ordinance also sets penalties for late fee payment (25% of the license fee after 15 calendar days) and for an additional reinstatement fee (15% of the license fee after 60 calendar days and before 90 calendar days). Marijuana establishment licenses cannot be renewed if payment is not received within 90 calendar days from the start of the quarter. This penalty and reinstatement section mirrors regulations for liquor establishments within unincorporated Washoe County. (section 13)
  - 4) All marijuana establishment license fees (and penalties) will be deposited into a separate marijuana establishment account. Revenue from that account will be allocated first to Washoe County agencies to offset unbudgeted expenditures by the agency to address direct and indirect costs associated with the advent of legalized consumption and possession of marijuana in Washoe County. Any funds remaining within the marijuana establishment account will be secondarily distributed as a component of the General Fund and the adopted Washoe County budget.
- C. **Maximize revenue.** The ordinance will enable any County agency to cover costs associated with compliance inspections, review and other tasks directly from a marijuana establishment. Cost recovery must adhere to provisions established in NRS 453A.330. (section 23)
- D. **Prohibit public use lounges.** State Law makes public use of marijuana or marijuana products unlawful (specifically, NRS 453D.400 makes smoking or consumption of marijuana in a public place a misdemeanor criminal violation). The ordinance will make it unlawful for any licensed business, special event, or outdoor entertainment event to allow any public use or consumption of marijuana or marijuana products. . (section 6)

- E. ***Allow home delivery.*** The ordinance will allow delivery of marijuana and marijuana products by a retail marijuana store/medical dispensary directly to a consumer. This provision mirrors regulations in NRS and NAC Chapter 453D. (section 10)
- F. ***Regional parity.*** The ordinance sets the hours of operation for a retail marijuana store/medical dispensary from 8:00 a.m. to midnight<sup>1</sup>. Current hours of operation for a medical marijuana dispensary are from 6:00 a.m. to 8:00 p.m. Discussions with marijuana industry representatives indicated support for the new hours of operation. The representatives also stated that the later hours of operation (until midnight) would most likely occur on weekend nights (i.e., Friday and Saturday) and not throughout the week. However, the ordinance will provide the time frame for each retail marijuana store/medical dispensary to set its own hours of operation (with prior approval by the County's license division). (section 20)
- G. ***Retain current distance restrictions.*** The ordinance retains the current distance restrictions for medical marijuana establishments (which are set forth in NRS 453A). NRS 453D retains these distance restrictions, and the ordinance mirrors State Law.
- 1) The distance restrictions are 1,000 feet from any public or private school and 300 feet from a community facility. (section 10) Community facility is defined within section 1 of the ordinance.
  - 2) Measurement of the distance conforms to the measurements set forth in NRS and NAC Chapters 453A and 453D.
  - 3) Currently licensed medical and temporary marijuana establishments are "grandfathered" (the school or community facility must have been in place prior to the establishment receiving its first County marijuana license). This "grandfathering" provision extends to currently licensed temporary marijuana establishments when they apply for a new marijuana establishment license under the provisions of this ordinance. If a school or community facility is opened after a currently licensed marijuana establishment received its County license, then the distance restrictions do not apply. (section 9)
- H. ***Efficiency of operations.*** The ordinance sets forth an expedited application process for currently licensed medical and/or temporary marijuana establishments to obtain a "new" marijuana establishment following the provisions of this ordinance. The application requirements will focus on any changes which have occurred since either the medical or temporary license was issued (e.g., changes or modifications to the interior of the building, changes of ownership, etc.). (section 9)
- I. ***Eliminate outdoor cultivation facilities.*** The ordinance prohibits outdoor cultivation by a marijuana cultivation facility. (section 10)

### ***WCC Chapter 53, Miscellaneous Crimes***

The only proposed amendment is to add text that prohibits the possession of one ounce or less of marijuana unlawful by persons under the age of 21. (section 1)

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<sup>1</sup> Staff has been meeting monthly with Reno and Sparks staff to discuss marijuana establishment regulations in the context of striving for regional parity when possible. Reno is currently in the process of adopting its codes, and its hours of operation will likely be from 10 am to 11 pm. Sparks has adopted its codes, and hours of operation are from 8 am to 10 pm.

### ***WCC Chapter 110, Development Code***

Staff recommends that the current regulatory zone restrictions for medical marijuana establishments be retained for marijuana establishments (*single licensure*). This will mean that all marijuana establishments will be allowed in the General Commercial and Industrial regulatory zones, and retail marijuana stores/medical dispensaries will be allowed in the Neighborhood Commercial and Tourist Commercial regulatory zones. (section 1)

There are two areas of proposed amendments within the Development Code:

1. Modify the current definitions for medical marijuana establishments to match the definitions for marijuana establishments as proposed in the amendments to WCC Chapter 25. Add a definition for a marijuana distributor (new marijuana establishment within NRS Chapter 453D). (section 2)
2. Expand the parking requirements for a retail marijuana store/medical dispensary to capture increased customer traffic associated with a retail marijuana store as compared to a stand-alone dispensary. The parking requirements will only apply to new retail marijuana stores/medical dispensaries. (section 3)

### **PUBLIC REVIEW OF THE PROPOSED REGULATIONS**

Public participation in the formation of the proposed ordinance was discussed during the update on medical and legalized marijuana provided on the March 27, 2018 Board agenda. This section of the staff report will highlight topics from that update.

The stakeholders meeting on February 1, 2018 was attended by 10 licensees and industry representatives. The public workshop on February 7, 2018 was attended by 13 public members. Commissioner Jung attended the workshop and participated in the discussion period. The workshop was also attended by representatives from the Cities of Reno and Sparks, and members of the working group. Both the stakeholders meeting and the workshop were structured to principally discuss the four areas identified by the Board for marijuana establishment regulations:

- Hours of operation;
- Public consumption lounges;
- Home delivery services; and,
- Business distance from school and facilities.

The working group evaluated input from both the stakeholders meeting and the public workshop and updated the draft ordinance and associated business license fee schedule to reflect discussions at the meeting and the workshop. Two examples are modifying the hours of operation (to extend to midnight) and allowing pre-payment of quarterly marijuana establishment license fees. The updated draft ordinance and fee schedule were posted on-line at [www.washoecounty.us/mme](http://www.washoecounty.us/mme) on February 9, 2018.

### **FISCAL IMPACT**

There are no fiscal impacts directly attributable to the proposed code amendments for WCC Chapters 25, 53, or 110. However, the amendments to WCC Chapter 25 enable a marijuana establishment license fee, the amount which is to be set by a resolution adopted by the Board. As noted earlier, that proposed fee is a 3% quarterly fee based on a marijuana establishment's reported quarterly gross revenue.

The NRS required Business Impact Statement for the proposed 3% quarterly marijuana establishment license fee was a separate agenda item for the Board at the March 27, 2018 meeting. The resolution for the new fee is a separate agenda for the Board at this meeting to consider after the second reading and possible adoption of this ordinance.

### **RECOMMENDATION**

It is recommended that the Board conduct a second reading and adopt an ordinance amending Washoe County Code Chapters 25 (Business License Ordinance), 53 (Miscellaneous Crimes), and 110 (Development Code) to provide for limited exemption of certain acts from criminal prosecution and for the licensing and land use authorization required to operate marijuana establishments (including cultivation facilities, distributors, product manufacturing facilities, testing facilities, and retail marijuana stores/medical dispensaries) which are licensed by the State of Nevada under NRS Chapter 453A and/or NRS Chapter 453D; to allow for all marijuana establishments in general commercial and industrial regulatory zones; and, to allow for retail marijuana stores/medical dispensaries in neighborhood commercial and tourist commercial regulatory zones as well.

If adopted, the Ordinance will be effective on April 20, 2018.

### **POSSIBLE MOTION**

Should the Board agree with the recommendation, a possible motion would be:

“Move to introduce Ordinance Number [insert ordinance number as provided by the County Clerk].”

- Attachment:   A. Board's 2017 Marijuana Policy Areas  
                  B. Proposed Ordinance, WCC Chapters 25, 53, and 110