



WASHOE COUNTY

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CM/ACM	<u>JS</u>
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DA	<u>PL</u>
Risk Mgt.	<u>N/A</u>
HR	<u>N/A</u>
Comptroller	<u>CH</u>

STAFF REPORT BOARD MEETING DATE: July 25, 2017

DATE: June 28, 2017

TO: Board of County Commissioners

FROM: Dave Solaro, Community Services Director
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THROUGH: John Slaughter, County Manager
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SUBJECT: Public hearing: Second reading and possible action to adopt an ordinance amending the Washoe County Code at Chapter 25 (Business License Ordinance) to create temporary marijuana establishment business licenses and set terms for such temporary licenses, to include an automatic expiration date for those licenses; to establish restrictions on businesses which can apply for such temporary licenses to include currently certified and licensed medical marijuana establishments; to set forth application requirements for such temporary licenses; to establish the denial process for license applications; to provide for waste disposal and registration card requirements for marijuana establishments; to set forth other terms and conditions for the temporary licenses; to provide approval and issuance standards for the temporary licenses; to provide for definitions related to temporary marijuana establishments; and, to make other changes necessarily connected therewith and pertaining thereto. The Board of County Commissioners introduced and conducted a first reading of the proposed ordinance on July 11, 2017

Bill No. 1784
(All Commission Districts.)

SUMMARY

To conduct the second reading of, and possible adopt, an ordinance amending the Washoe County Code, Chapter 25, Business License Ordinance, to create temporary marijuana establishment business licenses; to establish restrictions and application requirements for such licenses; to provide approval and issuance standards for such licenses; and, to make other changes necessarily connected therewith and pertaining thereto.

Washoe County Strategic Objectives supported by this item: Safe, secure and healthy communities.

PREVIOUS ACTION

The Washoe County Board of County Commissioners (Board) initiated amendments to Washoe County Code (WCC) Chapter 25 on June 13, 2017 to provide for the temporary licensure of marijuana establishments within the unincorporated County.

The Board introduced and held a first reading of the proposed ordinance on July 11, 2017.

BACKGROUND

WCC Chapter 25 was amended in April of 2014 to provide licensing regulations for medical marijuana establishments (MME). The County’s MME regulations closely follow the provisions of NRS Chapter 453A, *Medical Use of Marijuana*. The County’s MME regulations stipulate that an MME must first possess a valid State provisional registration certificate prior to applying for a County MME business license. As with any County business license, applications are thoroughly reviewed by County departments and public agencies for public health, safety, development impacts, and environmental effects on the community. These departments/agencies may provide conditions for inclusion with the license, if approved and issued. After receiving approvals from all reviewing agencies, the Business License Division will issue the MME business license. As of the date of this staff report, the following MMEs are licensed and open for business in unincorporated Washoe County:

Medical Marijuana Dispensaries		
<i>Company Name</i>	<i>Street Address</i>	<i>Community</i>
Kanna (5 Seat Investments, LLC)	5398 Sun Valley Blvd.	Sun Valley
NuLeaf Incline Dispensary, LLC	877 Tahoe Blvd.	Incline Village
Tryke Companies Reno, LLC (Reef Dispensary)	5105 Sun Valley Blvd.	Sun Valley
Medical Marijuana Cultivation Facilities		
<i>Company Name</i>	<i>Street Address</i>	<i>Community</i>
Grow Washoe, LLC	220 Hwy 395 S, Suite 301	Washoe Valley

Initiative Petition No. 1 (Initiative to Regulate and Tax Marijuana) was placed on the 2016 General Election ballot and was passed by the voters of the State. Passage of the initiative petition created NRS Chapter 453D, *Regulation and Taxation of Marijuana*. The Nevada Tax Commission subsequently adopted regulations to create NAC Chapter 453D (LCB Files No. T002-17) and to enable the production and distribution of recreational marijuana through the temporary licensing of recreational marijuana establishments. Recreational marijuana establishments are divided into five categories¹:

¹ Four of the five categories mirror MME categories. The four MME categories are medical marijuana dispensaries, medical marijuana cultivation facilities, medical marijuana independent testing facilities, and facilities for the production of edible marijuana products or marijuana-infused products.

1. *Marijuana cultivation facilities*: A business which cultivates, processes, and packages marijuana for testing by a marijuana testing facility; and, a business that sells marijuana to retail marijuana stores, to marijuana product manufacturing facilities, and to other marijuana cultivation facilities, but not to consumers.
2. *Marijuana distributors*: A business which transports marijuana from a marijuana establishment to another marijuana establishment. (*Note: this is a new category specific to recreational marijuana establishments*)
3. *Marijuana product manufacturing facilities*: A business which purchases marijuana, manufactures, processes, packages marijuana and marijuana products, and sells marijuana and marijuana products to other marijuana product manufacturing facilities and to retail marijuana stores, but not to consumers. (*For example, these facilities produce oils, and food and/or drink based products*)
4. *Marijuana testing facilities*: A business which tests marijuana and marijuana products for potency and contaminants.
5. *Retail marijuana stores*: A business which purchases marijuana from marijuana cultivation facilities, purchases marijuana and marijuana products from marijuana product manufacturing facilities and retail marijuana stores, and sells marijuana and marijuana products to consumers.

Broadly, the State Taxation regulations allow for:

- a. A process to expedite the availability of recreational marijuana and marijuana products to consumers (also known as the “Quick Start” program). This process provides for recreational marijuana to be sold to people over the age of 21.
- b. Only MMEs with an issued State registration certificate which is valid and in good standing may apply for a temporary State marijuana establishment license. Marijuana distributors must follow a different application process. The term “in good standing” means²:
 - 1) All licenses, certificates and fees are current. Staff understands this to include County licenses and fees.
 - 2) No suspensions by the State Health Division of the MME’s registration certificate within six months of the marijuana establishment’s temporary license date.
 - 3) No tax delinquency to State Taxation by the applicant.
 - 4) No criminal conduct or illegal activity citations.
 - 5) Any State mandated correction plans are complete or in progress.
 - 6) MMEs with a provisional State registration certificate are not considered “in good standing”.
 - 7) An MME is considered “operating” if the establishment filed a return and paid taxes imposed by NRS Chapter 372 prior to May 31, 2017.
- c. The temporary marijuana establishment license application period expired on May 31, 2017. However, State Taxation may accept additional applications for not more than a total of 5 business days. The “in good standing” provision concerning “operating” does not apply during this additional application period.
- d. Temporary marijuana establishment licenses must be the same type as the MME.

² As defined in subsections 7 & 8 of section 12 of the State Taxation regulations.

- e. A marijuana establishment may be located at a location different than that of the MME.
- f. The marijuana establishment must be located on a properly zoned property pursuant to NRS Chapter 453D:
 - 1) The property is not located within 1,000 feet of a public or private school or within 300 feet of a community facility.
 - 2) The locality in which the proposed marijuana establishment does not affirm to State Taxation that the location will be violation of land use or zoning rules.
- g. Marijuana distributor applications will be accepted from:
 - 1) Persons holding a liquor wholesale dealer license pursuant to NRS Chapter 369.
 - 2) MMEs with a registration certificate and which are “operating” and “in good standing”.
 - 3) Applicants currently transporting medical marijuana.
- h. After the May 31st application deadline, State Taxation may determine that not enough liquor wholesale dealer applicants have applied for marijuana distributor licenses, thus creating an insufficient number of distributors. This would enable State Taxation to grant marijuana distributor licenses to applicants meeting the criteria of g 2) and 3). This provision of Taxation’s regulations is the subject of the injunction filed in Carson City , in which certain liquor wholesale dealers challenged the determination in the temporary state regulations that there were insufficient liquor wholesale dealers, triggering the need for temporary distributor licenses to be made available to businesses other than liquor wholesale dealers. The district court in Carson City concluded that there is merit to the liquor wholesale dealers’ position in the case and granted an injunction. The case is still pending.
- i. Only a retail marijuana store may deliver marijuana and marijuana products directly to a consumer who is 21 or older. The amount is restricted to no more than 10 ounces and cannot be delivered to any location holding a gaming license.
- j. All temporary marijuana establishment licenses will expire 90 days after January 1, 2018 (on April 1, 2018).

At its June 13, 2017 meeting, the Board directed staff to initiate amendments to WCC Chapter 25 to provide for the temporary licensure of marijuana establishments within the unincorporated County. The Board also directed that staff (i.e., the License Division) issue any temporary marijuana establishment licenses. Those proposed amendments are included as Exhibit A to this staff report.

The proposed temporary regulations were crafted to enable the “Quick Start” program within the unincorporated County and to acknowledge that there are currently only 4 MME facilities in the unincorporated County (as of the date when the application window closed on May 31, 2017) eligible for the “Quick Start” program. Future goals for recreational marijuana regulations include additional policy discussions with the Board through the remainder of 2017, with a goal to have permanent regulations and appropriate fees in place early in the Spring of 2018.

Staff’s challenge in crafting the temporary marijuana establishment regulations was to balance the “Quick Start” program, which are State regulations designed to facilitate the

availability of recreational marijuana to citizens based on the approved voter’s initiative, with the intent and structure of existing County codes regulating MMEs. Current County codes equate the potential impacts of medical marijuana facilities on a neighboring community on par with other medical uses. As such, requirements such as designing medical marijuana dispensaries to appear the same as a pharmacy or medical offices are included in current County Codes. The balancing occurred when evaluating the “Quick Start” program regulations with potentially more retail impacts on a neighboring community against the current intent and structure of County MME regulations.

This same concept shaped the decision to house the temporary regulations in chapter 25 of the Code, rather than to additionally amend the Development Code to add a new use at this time, since the regulations are only temporary. Instead, the amendments have been crafted to place temporary recreational marijuana licenses under the umbrella of medical marijuana uses. There is some ambiguity about the procedural adequacy of this approach and whether a change to the Development Code is needed to recognize a new temporary use. For this reason, there is some risk of a challenge being raised on this point. Nonetheless, in order to keep pace with the aggressive timeframe being established by the state in the adoption of its temporary regulations, and in order to best implement prior direction to staff, this approach was deemed best suited.

The following chart outlines the major assumptions/direction pursued by staff in crafting the proposed temporary marijuana establishment regulations. The assumptions/direction are crossed referenced with the approach to address the assumption/direction and the location of the approach in the draft ordinance, which also serve as a starting point for future discussions on permanent regulations

Assumption or Direction	Approach	Code location
A. A temporary license is not a right to possess.	The license is a revocable privilege, and not a right nor a property right.	26(a)(2)
B. Set a date when the temporary license expires.	Match the provisions of State Taxation regulations.	26(a)(3)
C. Marijuana establishments should only be located at the MME’s location.	Prohibit temporary marijuana establishments at a location other than that of the MME.	26(b)(2)(vi)
D. Do not allow storage of marijuana or marijuana products in the building or business office of a marijuana distributor for security reasons.	Prohibit storage since any distributor location other than an operating MME has not been reviewed and approved for a security plan.	26(b)(3)(i)
E. Marijuana distributors should not be allowed as a home-based business.	Prohibit as a home-based business since the distribution of marijuana does not match the intent of home-based businesses to be within residential neighborhoods.	26(b)(3)(iii)

Assumption or Direction	Approach	Code location
F. Limit the delivery hours for marijuana and marijuana products.	Delivery hours are limited to the approved hours of operation for the marijuana establishment (which must either be the same as the MME, or approved as part of the temporary license application).	26(b)(4)
G. Limit changes to signage.	Any proposed changes must include written permission for name, logo or advertisement changes from State Taxation or State Health.	26(c)(9)
H. Provide for adequate parking.	Retail marijuana stores must provide the same required parking spaces as for a package liquor business.	26(c)(10)
I. Ensure that marijuana distributors are in an appropriate location.	Applicant must provide proof that all distancing restrictions are met, and zoning restrictions based on whether the location is a business office only or also is used to store delivery vehicles.	26(c)(11)
J. Proper County review and approval of security provisions and arrangements.	Requires the submission of a security plan with multiple elements; the security plan is considered confidential and not a public record.	26(c)(12)
K. People working at a marijuana establishment are registered with the Sheriff.	Requires all agents, employees, independent contractors and volunteers to obtain a registration card.	26(f)
L. Temporary marijuana establishment licenses are issued by staff.	The license division will route applications for review and conditions by County departments and agencies. The division will issue the temporary license only after having approval from all reviewing agencies.	26(h)

FISCAL IMPACT

No fiscal impact with these amendments. The Board directed staff to return with proposed amendments to WCC Chapter 25 at a future date to address possible application and/or licensing fees for temporary and/or permanent marijuana establishments.

RECOMMENDATION

It is recommended that the Board conduct a second reading and adopt an ordinance amending the Washoe County Code at Chapter 25 (Business License Ordinance) to create temporary marijuana establishment business licenses and set terms for such temporary licenses, to include an automatic expiration date for those licenses; to establish

restrictions on businesses which can apply for such temporary licenses to include currently certified and licensed medical marijuana establishments; to set forth application requirements for such temporary licenses; to establish the denial process for license applications; to provide for waste disposal and registration card requirements for marijuana establishments; to set forth other terms and conditions for the temporary licenses; to provide approval and issuance standards for the temporary licenses; to provide for definitions related to temporary marijuana establishments; and, to make other changes necessarily connected therewith and pertaining thereto.

POSSIBLE MOTION

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

“Move to adopt Ordinance Number (1784).”

Attachments: A. Working copy, WCC Chapter 25 amendments