



# WASHOE COUNTY

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## STAFF REPORT

BOARD MEETING DATE: January 17, 2023

**DATE:** December 16, 2023

**TO:** Board of County Commissioners

**FROM:** Chad Giesinger, AICP, Planning Manager, Community Services Department, 328-3626, [cgiesinger@washoecounty.gov](mailto:cgiesinger@washoecounty.gov)

**THROUGH:** Kelly Mullin, AICP, Division Director, Planning & Building Division, Community Services Department, 328.3619, [kmullin@washoecounty.gov](mailto:kmullin@washoecounty.gov)

**SUBJECT:** Public Hearing: Appeal of the Planning Commission's denial of a proposed amendment to Washoe County Code Chapter 110 (Development Code), Articles 302, 304 and 410 related to cannabis consumption lounges (WDCA22-0003). The Board of County Commissioners (Board) shall consider the appeal based on the record before the Planning Commission as well as testimony and materials submitted at the Board's public hearing. The Board may affirm or reverse the Planning Commission's decision. If the Board reverses the Planning Commission's decision, the Board may:

Introduce and conduct a first reading of two ordinances. The first ordinance is an ordinance amending Washoe County Code Chapter 25 (Business Licenses, Permits, and Regulations) at section 25.013 (Definitions) to update various definitions related to marijuana (cannabis), including adding definitions for retail and independent cannabis consumption lounges; and at sections 25.700 through 25.792 (Marijuana Establishments) to create the necessary code language to facilitate the Board of County Commissioner's policy direction to allow and regulate cannabis consumption lounges as provided during its regular meeting of September 20, 2022. Amendments to these sections incorporate new or revised definitions and add or delete regulations resulting from amendments to Nevada Revised Statutes Chapters 678A-D (Regulation of Cannabis) adopted by the 2021 Nevada legislature, and add cannabis consumption lounges into the County's existing business licensing process by creating new cannabis establishment use types for independent and retail cannabis consumption lounges; and all matters necessarily connected therewith and pertaining thereto.

The second ordinance is an ordinance amending Washoe County Code Chapter 110 (Development Code), at Articles 302 (Allowed Uses), 304 (Use Classification System), and 410 (Parking and Loading) to create the necessary code language to facilitate the Board's policy direction regarding cannabis consumption lounges as provided during its regular meeting of September 20, 2022. The ordinance amends: (1) Article 302

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(Allowed Uses) by adding new uses to Table 110.302.05.3 to allow retail and independent cannabis consumption lounges; (2) Article 304 (Use Classification System) by adding use definitions for retail and independent cannabis consumption lounges; and (3) Article 410 (Parking and Loading) by adding parking standards to Table 110.410.10.3 for retail and independent cannabis consumption lounges; and all matters necessarily connected therewith and pertaining thereto.

If the Board introduces and conducts the first readings, the Board is asked to set the public hearing for second reading and possible adoption of both Ordinances for February 14, 2023. (All Commission Districts.)

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## **SUMMARY**

The Board is asked to consider the appeal of the Planning Commission's denial of a proposed amendment to Washoe County Code Chapter 110 (Development Code), Articles 302, 304 and 410 related to cannabis consumption lounges (WDCA22-0003). The Board may affirm or reverse the Planning Commission's decision. If the Board reverses the Planning Commission's decision, the Board may conduct a first reading of amendments to WCC Chapters 25 and 110 to create the necessary code language to facilitate the Board's policy direction provided during their regular meeting of September 20, 2022 to allow cannabis consumption lounges as a permissible regulated use in unincorporated Washoe County. The proposed code amendments are described in more detail beginning on page 6 of this staff report. Additional analysis can be found in Attachment B, Planning Commission staff report.

**Washoe County Strategic Objective supported by this item:** Economic Impacts – Meet the needs of our growing community.

## **PREVIOUS ACTION**

December 6, 2022. The Planning Commission held a duly noticed public hearing for WDCA22-0003 (please see Attachment G for public comments submitted at the meeting, Attachment I for a link to the video recording, and Attachment J for the minutes). In order to approve a development code amendment, a majority of the commission members present during the public hearing must vote in favor of the amendment and make at least one of the findings required by Washoe County Code ("WCC") Section 110.818.15(e). A vote to deny a development code amendment is also based on the inability to make at least one of the following findings required by WCC 110.818.15(e):

1. Consistency with Master Plan. The proposed Development Code amendment is in substantial compliance with the policies and action programs of the Washoe County Master Plan;
2. Promotes the Purpose of the Development Code. The proposed Development Code amendment will not adversely impact the public health, safety or welfare, and will promote the original purposes for the Development Code as expressed in Article 918, Adoption of Development Code;
3. Response to Changed Conditions. The proposed Development Code amendment responds to changed conditions or further studies that have occurred since the Development Code was adopted by the Board of County Commissioners, and the

requested amendment allow for a more desirable utilization of land within the regulatory zones; and,

4. No Adverse Effects. The proposed Development Code amendment will not adversely affect the implementation of the policies and action programs of the Conservation Element or the Population Element of the Washoe County Master Plan.

After the close of the public hearing, Commissioner Lazzareschi moved to approve WDCA22-0003, which was seconded by Commissioner Nelson. The motion failed with a vote of 3 members in favor and 3 members opposed. Votes by the Planning Commissioners were, as follows:

1. Commissioner Lazzareschi: Voted in favor; was able to make finding 3.
2. Commissioner Nelson: Voted in favor; was able to make finding 3.
3. Commissioner Chvilicek: Voted in favor; was able to make finding 3.
4. Commissioner Flick: Voted against; was not able to make finding 4.
5. Commissioner Phillips: Voted against; was not able to make finding 4.
6. Commissioner Pierce: Voted against; was not able to make findings 1, 2, 3 or 4.

Thus, the Planning Commission denied the proposed development code amendment based on a 3-3 tie vote. Based on previous Board direction, staff has appealed the Planning Commission's denial to enable the Board to consider the introduction of an ordinance that would allow cannabis consumption lounges in the unincorporated area of Washoe County. This appeal is intended to meet the Board's direction to provide a draft ordinance for consideration.

November 7, 2022. Staff held an "all Citizen Advisory Board" workshop to solicit input on the proposed amendments to WCC Chapter 110. Please see Attachment E for the minutes of this workshop.

October 11, 2022. The Board initiated amendments to Washoe County Code Chapter 25 (Business Licenses, Permits and Regulations) and Chapter 110 (Development Code) pursuant to WCC 2.030, instructing staff to work with the district attorney's office to create the necessary code language to facilitate the Board's policy direction at its September 20, 2022 meeting to allow cannabis consumption lounges in unincorporated Washoe County.

September 20, 2022. The Board voted 3 in favor, 2 opposed, to pursue the creation of ordinances that allow cannabis consumption lounges in unincorporated Washoe County, including independent and outdoor lounges.

*In addition to the above actions, the Board has taken previous action on Medical and Recreational Marijuana as follows:*

April 10, 2018, the Board held a second reading and adopted Ordinance No. 1616 to provide for the operation of marijuana establishments which are licensed by the State of Nevada under NRS Chapters 453A (medical marijuana) and 453D (recreational marijuana).

March 27, 2018, the Board adopted the Business Impact Statement for the new quarterly marijuana establishment license fee with a finding that the proposed fee does not impose a direct and significant economic burden on a business; nor does the proposed fee directly restrict the formation, operation, or expansion of a business.

December 19, 2017, the Board initiated an amendment to WCC Chapter 25 (Business Licenses, Permits and Regulations) to provide for the operation of 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.

July 25, 2017, the Board amended WCC Chapter 25 to include new regulations on business licenses for temporary marijuana establishments.

April 8, 2014, the Board adopted Ordinance No. 1527 amending WCC 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 medical marijuana establishments (including dispensaries, cultivation facilities, testing laboratories, and production facilities) which are registered and permitted by the State of Nevada under NRS Chapter 453A.

## **BACKGROUND**

Since passage of state legislation legalizing both the medical and recreational use of cannabis, the topic of how cannabis can be consumed has been debated in each subsequent legislative session. Prior to the 2021 legislative session, public consumption of cannabis was prohibited. Consumption was only allowed in private homes or on private property. This presented a dilemma for out of state visitors or for members of the public who are prohibited from consuming cannabis in their private residence (e.g. restrictive rental/lease agreements).

During the 2021 legislative session, Assembly Bill (AB) 341 was passed and subsequently signed into law. The bill authorized the licensure and regulation of cannabis consumption lounges (BDR 56-583) and directed the Cannabis Compliance Board (“CCB”) to adopt implementing regulations. AB 341 enabled local governments to allow cannabis consumption lounges, subject to the regulations adopted by the CCB, but does not require that local governments allow consumption lounges. After considerable research, outreach to industry representatives and local governments, numerous drafts, and public comment, the CCB approved Nevada Cannabis Compliance Regulation (“NCCR”) 15 on June 28, 2022 at its regularly scheduled and publicly noticed meeting.

The final regulations dictate requirements for the following (please see Attachment D, Nevada Cannabis Compliance Regulation (“NCCR”) 15 for further detail):

- The location of retail lounges;
- Product procurement and storage methods;
- Employee training and consumer education;
- Product types and serving sizes;
- Indoor air quality, ventilation standards, and consumption visibility;
- Health standards for food preparation and service;
- Incident reporting, impaired driving mitigation, and sanitation;
- The criteria for issuing licenses for independent consumption lounges.

AB 341 provides for two types of lounges – retail and independent. Retail lounges must be affiliated with existing adult-use cannabis retail dispensaries, meaning the existing license

holder must apply for and be the consumption lounge licensee. Therefore, the maximum number of retail lounges allowed in a given jurisdiction will automatically be limited to the number of existing licensed adult use cannabis retail dispensaries (and to those that applied to the CCB for a license). Per adopted regulations, retail lounges must be “attached to or immediately adjacent to the cannabis sales facility,” meaning these types of lounges must be physically attached to the retail dispensary building, on the same parcel, or on a property sharing a common border.

Independent lounges are standalone facilities in a location not associated with a retail dispensary. Independent lounges are limited to the number equal to the total number of retail lounges in the state awarded a CCB license; however, only 20 independent lounge licenses will be issued by the State in the first application round (via random number generator). The State will use a complicated ranking and scoring process to determine which applicants will be issued an independent lounge license, including the requirement that at least 50% of the licenses be awarded to “social equity” applicants (basically, historically underprivileged neighborhoods with higher incarceration rates for cannabis offenses and minority applicants).

The CCB opened the first licensing round for consumption lounges this fall from October 14-27, 2022. The CCB reported that 99 applications were received (statewide), 80 of which were for Independent lounges (but only 20 can be issued). On November 30, 2022 the state selected applicants and awarded a total of 40 prospective licenses (20 independent and 20 retail). All 20 of the prospective independent lounge licenses were awarded to southern Nevada. One retail lounge license application was selected and awarded in Washoe County (to the dispensary in Washoe Valley). That application will now undergo further vetting by the CCB to ensure the facility can meet all state requirements before the state will issue a conditional license. As with all other cannabis business licensing, the State must issue their license (i.e. a conditional license) prior to the respective local government issuing final license approval. However, Washoe County Business Licensing cannot begin accepting applications for cannabis consumption lounge licenses until proposed code amendments enabling consumptions lounges as a permissible use in unincorporated Washoe County are adopted and effective.

Staff has worked with the District Attorney’s Office to draft ordinance language amending both Chapter 110 (Development Code) and Chapter 25 (Business Licenses, Permits and Regulations). As required by State law and Washoe County Code (WCC), proposed amendments to Chapter 110 were presented to the Planning Commission for its recommendation prior to being brought to the Board for an introduction and first reading. As noted above, the amendments to Chapter 110 would allow cannabis consumption lounges as a permissible use in unincorporated Washoe County. The Planning Commission denied this proposed development code amendment. Accordingly, this agenda item covers the appeal of the Planning Commission’s decision. If the Board overturns the Planning Commission’s decision, the Board may introduce and conduct the first readings of ordinances amending both Chapter 110 and Chapter 25. (Amendments to Chapter 25 are not required to be heard by the Planning Commission).

Staff is not proposing to create any additional fees to establish a cannabis consumption lounge (at this time). All current and previous cannabis (marijuana) establishment businesses have paid the same business license application fee as any other business, which is \$77.75 (a one-time fee). The Board previously adopted/imposed a 3% tax on all revenue generated by cannabis establishments, as enabled by NRS 244.35253. Any revenue generated by a

cannabis consumption lounge will be subject to the same tax. Should the Board wish to pursue imposing a higher business license application fee for consumption lounge licenses, then staff will return at second reading with proposed fees, a comparison of what other jurisdictions are charging (if anything), and a fee resolution. Should the Board wish to pursue additional fees, it would be helpful if the Board provided as much direction as possible at introduction and first reading of the proposed ordinance. This course of action would likely trigger the need to conduct a Business Impact Statement.

### **PROPOSED AMENDMENTS**

The following is a summary of the specific sections of WCC Chapter 110 (Development Code) proposed for amendment (please see Attachment A-1 for the full ordinance language):

- **Section 110.302.05 (Allowed Uses), Table 110.302.05.3:** Adds new uses to Table 110.302.05.3, commercial uses, to allow retail and independent cannabis consumption lounges, either with or without an outdoor consumption area, in designated regulatory zones.
- **Section 110.304.25 (Use Classification System, Commercial Use Types):** Adds use definitions for retail and independent cannabis consumption lounges.
- **Section 110.410.10 (Parking and Loading), Table 110.410.10.3:** Adds parking standards to Table 110.410.10.3, commercial uses, for retail and independent cannabis consumption lounges.

The following is a summary of the specific sections of WCC Chapter 25 (Business Licenses, Permits, and Regulations) proposed for amendment (please see Attachment A-2 for the full ordinance language):

- **Section 25.013 (Definitions):** Adds a variety of new cannabis-related definitions, to include defining retail and independent cannabis consumption lounges. Incorporates changes in NRS regarding cannabis terminology and corrects NRS chapter references.
- **Section 25.700 through 25.792:** Adds new cannabis establishment use types, to include retail and independent cannabis consumption lounges and how they will be regulated by county code, adds and revises cannabis related definitions and terminology, incorporates changes to NRS regarding licensing and regulation of cannabis establishments. The proposed amendments would also allow each type of cannabis consumption lounge the option to have an outdoor consumption area; however, consumption would be limited to cannabis products (infused or edible) or vaping products. No smoking of cannabis flower would be allowed, and no cannabis related odor is allowed to be detected at the property line of the subject cannabis consumption lounge.

### **POTENTIAL FUTURE AMENDMENTS**

Based on input received to date, there may be a need and/or opportunity to conduct additional future amendments to county code that are not being proposed at this time because they were not initially anticipated by staff, such as amendments to WCC Chapter 30. One such potential amendment would amend WCC Chapter 30 to create a Cabaret license for consumption lounges (similar to Cabaret licenses for liquor/bars) that would allow live entertainment in conjunction with consumption lounges.

## **FISCAL IMPACT**

No fiscal impact.

## **RECOMMENDATION FROM PLANNING COMMISSION**

The Planning Commission's 3:3 tie vote resulted in a technical denial of WDCA22-0003 (proposed amendments to Chapter 110). Based on this Board's previous direction, staff has appealed the Planning Commission's denial to enable the Board to consider whether it would like to introduce and conduct a first reading of the ordinances that would allow cannabis consumption lounges in the unincorporated area of Washoe County. This appeal is intended to meet the Board's direction to provide a draft ordinance for consideration. Should the Board wish to introduce and conduct a first reading of the proposed ordinances, the appeal will first need to be granted and the Planning Commission's technical denial overturned.

## **POSSIBLE MOTIONS**

Should the Board wish to **grant the appeal** of the Planning Commission's decision and overturn the Planning Commission's denial of WDCA22-0003, introduce and conduct the first readings of the two ordinances, and schedule the second readings and possible adoption of the two ordinances, a possible motion would be:

"Move to grant the staff appeal of the Planning Commission's decision and overturn the Planning Commission's denial of WDCA22-003.

Further, move to introduce and conduct a first reading of Bill Number [insert Bill number provided by County Clerk], which is an ordinance amending Washoe County Code Chapter 25 (Business Licenses, Permits, and Regulations) at section 25.013 (Definitions) to update various definitions related to marijuana (cannabis), including adding definitions for retail and independent cannabis consumption lounges; and at sections 25.700 through 25.792 (Marijuana Establishments) to create the necessary code language to facilitate the Board of County Commissioner's policy direction to allow and regulate cannabis consumption lounges as provided during its regular meeting of September 20, 2022. Amendments to these sections incorporate new or revised definitions and add or delete regulations resulting from amendments to Nevada Revised Statutes Chapters 678A-D (Regulation of Cannabis) adopted by the 2021 Nevada legislature, and add cannabis consumption lounges into the County's existing business licensing process by creating new cannabis establishment use types for independent and retail cannabis consumption lounges; and all matters necessarily connected therewith and pertaining thereto.

Further, move to introduce and conduct a first reading of Bill Number [insert Bill number provided by County Clerk], which is an ordinance amending Chapter 110 (Development Code) at Articles 302 (Allowed Uses), 304 (Use Classification System), and 410 (Parking and Loading) to create the necessary code language to facilitate the Board's policy direction regarding cannabis consumption lounges as provided during its regular meeting of September 20, 2022. The ordinance amends: (1) Article 302 (Allowed Uses) by adding new uses to Table 110.302.05.3 to allow retail and independent cannabis consumption lounges; (2) Article 304 (Use Classification System) by adding use definitions for retail and independent cannabis consumption lounges; and (3) Article 410 (Parking and Loading) by adding parking standards to Table 110.410.10.3 for retail and independent cannabis consumption lounges; and all matters necessarily connected therewith and pertaining thereto.

Further, move to set the public hearing for the second readings and possible adoption of the two Ordinances for February 14, 2023.

(Optional) Further, move to provide the following direction to staff related to fees associated with cannabis consumption lounges: [insert Board direction].”

Should the Board wish to **deny the appeal** of the Planning Commission’s decision and affirm the Planning Commission’s denial of WDCA22-0003; and thus, not introduce and conduct first readings of the two ordinances, a possible motion would be:

“Move to deny the appeal of the Planning Commission’s decision in WDCA22-0003.”

All the attachments have been included for the Board’s consideration in accordance with Washoe County Code 110.912.20(b)(4)(i) and constitute the Record on Appeal.

Attachments:

- A. PC Action Order Denying WDCA22-0003, December 6, 2022
- A-1. Proposed Working Copy of Ordinance amending Chapter 110
- A-2. Proposed Working Copy of Ordinance amending Chapter 25
- B. Planning Commission Staff Report, December 6, 2022
- C. AB 341
- D. Nevada Cannabis Compliance Regulation (“NCCR”) 15
- E. CAB meeting minutes, November 7, 2022
- F. Appeal of Planning Commission decision
- G. Public Comment, December 6, 2022 Planning Commission
- H. Staff Presentation, December 6, 2022 Planning Commission
- I. Link to video of December 6, 2022 Planning Commission
- J. Minutes of the December 6, 2022 Planning Commission