

## STAFF REPORT FOR PLANNING COMMISSION MEETING OF DECEMBER 21, 2016

**FILE NO:** MISC-16-184

**AGENDA ITEM:** F-1

**STAFF AUTHOR:** Lee Plemel, Community Development Director

**REQUEST:** Action to make a recommendation to the Board of Supervisors regarding an ordinance declaring a moratorium, for a period of up to 180 days with the ability to extend it by resolution for up to an additional 60 days, on the acceptance and processing of planning or other applications for construction or operation of new marijuana establishments.

**APPLICANT:** Carson City Planning Division

**RECOMMENDED MOTION:** "I move to recommend to the Board of Supervisors approval of an ordinance declaring a moratorium, for a period of up to 180 days with the ability to extend it by resolution for up to an additional 60 days, on the acceptance and processing of planning or other applications for construction or operation of new marijuana establishments, based on the findings contained in the staff report."

**LEGAL REQUIREMENTS:** CCMC 18.02.120 (Moratoriums).

**KEY ISSUES:**

- The proposed moratorium will allow time for the City to evaluate regulations that will be adopted by the Nevada Department of Taxation for recreational marijuana facilities and consider appropriate regulations for Carson City.

**DISCUSSION:**

The Regulation and Taxation of Marijuana Act, the Act to legalize recreational marijuana, was passed by Nevada voters during the general election on November 8, 2016. The deadline for preparation of final regulations by the Nevada Department of Taxation is December 31, 2017. Until the final adoption of such regulations, the Planning Commission and Board of Supervisors will not have a complete picture to facilitate a decision regarding zoning or business license regulations for Marijuana Establishments (also known as Recreational Marijuana Establishments, "RMEs" or "RME") beyond what is currently in place for Medical Marijuana Establishments ("MMEs" or "MME").

A moratorium on any new marijuana establishment would allow City staff, the Planning Commission and the Board of Supervisors time to evaluate the implications of the regulations adopted by the Nevada Department of Taxation and consider other impacts related to the regulation of RMEs. This moratorium would not apply MMEs with valid provisional certificates wishing to operate under the current MME regulations in Carson City as of the date the moratorium is enacted.

The adoption of this moratorium would effectively prohibit Marijuana Establishments for the period established by the moratorium, which would be for up to 180 days or until applicable regulations are adopted, whichever comes first. The moratorium may be extended in accordance with Carson City Municipal Code (CCMC) 18.02.120 through additional public hearings.

Adopting the moratorium will allow a more thorough and complete review of the finalized state regulations pertinent to the Regulation and Taxation of Marijuana Act. It will also allow a more

thorough and complete evaluation of complicated and difficult issues, from both a policy and legal perspective, and facilitate the decision to regulate RMEs and/or prohibit some or all RMEs. Moreover, the moratorium will make it clear that RMEs are not currently contemplated by the Carson City Municipal Code. Refer to the draft ordinance for more information regarding the purpose of implementing the moratorium.

A moratorium is a temporary ban or suspension on the acceptance and processing of planning applications or permits for a specific type of application or a specific geographic area, authorized by the Carson City Municipal Code (CCMC) 18.02.120 (Moratorium). Moratoriums are typically used to allow time for a city or county to address a specific zoning issue without having to process the particular type of application for development or applications for a particular geographic area while regulations are being developed.

The Carson City Municipal Code requires the Board of Supervisors to initiate the moratorium process by adoption of a Resolution. The Board adopted the attached Resolution 2016-R-29 on December 1, 2016. The Planning Commission is required to make a recommendation to the Board of Supervisors to either approve the moratorium, modify the extent and area of the moratorium, or that the moratorium not be imposed. A recommendation to approve a moratorium requires a two-thirds vote of the total membership of the Planning Commission.

If you have questions regarding this item, contact Lee Plemel at [lplemel@carson.org](mailto:lplemel@carson.org) or 283-7075.

#### **PUBLIC COMMENTS:**

Public notice of this proposed moratorium was published in the newspaper and posted on the City's website pursuant to the provisions of NRS and CCMC. As of the writing of this staff report, no public comments were received. Any comments that are received after this report is complete will be submitted prior to or at the Planning Commission meeting, depending on their submittal date to the Planning Division.

#### **FINDINGS:**

CCMC 18.02.120(5) requires the Planning Commission to make specific findings of fact when making a recommendation for approval of a moratorium. Staff recommends that the Planning Commission recommend approval of the moratorium based on the following findings:

- A. *The moratorium is necessary to promote the health, safety and welfare of the area described in the moratorium declaration.*

Staff response: The moratorium is necessary to promote the health, safety, and welfare of Carson City by allowing City staff, the Planning Commission, and the Board of Supervisors time to responsibly consider the policy and legal implications of the Regulation and Taxation of Marijuana Act and the Department of Taxation regulations and to provide amendments to the CCMC to address the policy and legal implications of RMEs in Carson City. Until the State's regulations for RMEs are established and potential regulations for RMEs in Carson City can be evaluated, the effects of such regulations on the health, safety, and welfare of Carson City residents cannot be completely known and, therefore, the moratorium is necessary.

- B. *The moratorium is necessary to permit the staff, commission, board and public to focus on the efficient and effective preparation of an amendment to the master plan.*

Staff response: Ordinances establishing zoning requirements are adopted pursuant to the Master Plan in accordance with the CCMC and NRS. The moratorium is necessary to allow City

staff, the Planning Commission, and the Board of Supervisors time to responsibly consider the policy and legal implications of the Regulation and Taxation of Marijuana Act and the Department of Taxation regulations and to provide amendments to the CCMC to address the policy and legal implications of RMEs in Carson City. No amendment to the Master Plan is expected to be required as a result of any regulations that may be imposed regarding RMEs.

- C. *The moratorium is necessary because continued development during the proposed moratorium period possibly would result in development that may conflict with the plan amendment.*

Staff response: The CCMC, including portions pertinent to zoning, currently does not allow for the development of RMEs as contemplated by the Regulation and Taxation of Marijuana Act, and because these uses and business are not permitted to operate in Carson City, no building permits can be issued specifically for the construction of structures to house any RME. As some potential applicants for State RME certificates might attempt to assert to Carson City that such RME is a use contemplated by the CCMC. The Carson City Board of Supervisors desires to make clear that the current version of the CCMC does not permit RMEs as contemplated by the Regulation and Taxation of Marijuana Act, and the Carson City Board of Supervisors desires that representatives of Carson City not accept any land use applications, business license applications, building permit applications or any other application or request to operate or otherwise license or permit any RME. To allow any applications for RMEs at this time or any time during the moratorium could result in such facilities being in conflict with any regulations that will be developed or additional MMEs without current provisional certificates.

Attachments:

- 1) Draft ordinance to declare the moratorium
- 2) Regulation and Taxation of Marijuana Act complete text
- 3) Board of Supervisors Resolution initiating the moratorium
- 4) Carson City approved MMEs map

Ordinance No. \_\_\_\_

Bill No. \_\_\_\_

AN ORDINANCE DECLARING A MORATORIUM, FOR A PERIOD OF UP TO 180 DAYS WITH THE ABILITY TO EXTEND IT BY RESOLUTION FOR UP TO AN ADDITIONAL 60 DAYS, ON THE ACCEPTANCE AND PROCESSING OF PLANNING OR OTHER APPLICATIONS FOR CONSTRUCTION OR OPERATION OF NEW MARIJUANA ESTABLISHMENTS.

The Carson City Board of Supervisors do ordain:

SECTION 1: A moratorium is hereby declared on all new marijuana establishments, including those contemplated by the Regulation and Taxation of Marijuana Act passed by Nevada voters during the November 8, 2016 general election, as well as any new Medical Marijuana Establishments that do not hold a valid provisional certificate issued by the State of Nevada as of the effective date of the moratorium, prohibiting Carson City acceptance and consideration of any and all land use applications, business license applications, building permit applications and any other applications or requests to operate or otherwise license or permit such marijuana establishments.

SECTION 2: This moratorium excludes the processing of land use applications, business license applications, building permit applications and any other applications or requests to operate or otherwise license or permit any Medical Marijuana Establishment for which the applicant already holds a valid provisional certificate issued by the State of Nevada for such Medical Marijuana Establishment at the time this moratorium becomes effective. These exclusions also allow the transfer of ownership or location of any Medical Marijuana Establishment for which the applicant already holds a valid provisional certificate issued by the State of Nevada at the time this moratorium becomes effective.

SECTION 3: This moratorium shall commence upon the adoption of this ordinance by the Carson City Board of Supervisors, and shall terminate at the close of business 180 calendar days from the date of the effective date of this ordinance and commencement of the moratorium, unless: 1) earlier terminated by the Carson City Board of Supervisors; or 2) an extension of this moratorium is approved by the Carson City Board of Supervisors at a public meeting. One extension, of a period of no greater than 60 days, is contemplated hereby and such an extension may be accomplished by a resolution with a simple majority vote of the Carson City Board of Supervisors, without the need for adopting a new ordinance.

SECTION 4: The Carson City Board of Supervisors declares this moratorium for the following reasons:

A. The "Regulation and Taxation of Marijuana Act," was passed by Nevada voters during the general election on November 8, 2016, becoming effective on January 1, 2017; and

B. Provisions of the Regulation and Taxation of Marijuana Act (Sec. 5) require the Nevada Department of Taxation (“Department”) to adopt regulations for the consideration of applications and the issuance of licenses to allow the operations of “marijuana establishments,” herein also known as “Recreational Marijuana Establishments” (“RMEs” or “RME”), in the State of Nevada, including in Carson City, not later than 12 months after the effective date of the Act; and

C. The Regulation and Taxation of Marijuana Act requires the Department to approve a license for an RME provided that, among other things, “The locality in which the proposed marijuana establishment will be located does not affirm to the Department that the proposed marijuana establishment will be in violation of zoning or land use rules adopted by the locality” (Act, Sec. 10[5][e]); and

D. The Regulation and Taxation of Marijuana Act allows up to four “retail marijuana stores” in a county with a population of more than 55,000 and less than 100,000 (Act, Sec. 10[5][d]), which includes Carson City, and the Act has no limit on the number of marijuana cultivation or marijuana product manufacturing facilities that would be allowed within any given county; and

E. The Regulation and Taxation of Marijuana Act gives applicants holding existing State certificates to operate a Medical Marijuana Establishment (“MME” or “MME’s”) first priority to apply for and obtain a license to operate a RME; and

F. State certificates have already been issued for MMEs in Carson City for two Dispensaries, three Cultivation facilities, one Production facility, and three combination Cultivation and Production facilities; and

G. The Carson City Municipal Code (“CCMC”), including portions pertinent to zoning, currently does not allow for RMEs as contemplated by the Regulation and Taxation of Marijuana Act, nor does the CCMC, as it pertains to business licensing, allow for the issuance of any business license for any RME, and because these uses and business are not permitted to operate in Carson City, no building permits can be issued specifically for the construction of structures for any RME; and

H. As some potential applicants for state RME certificates might attempt to assert to Carson City that such a use is contemplated by the CCMC, the Carson City Board of Supervisors desires to make clear that the current version of the CCMC does not permit any of the RMEs as contemplated by the Regulation and Taxation of Marijuana Act, and the Carson City Board of Supervisors desires that representatives of Carson City not accept any land use applications, business license applications, building permit applications or any other application or request to operate or otherwise license or permit any RME; and

I. The Carson City Board of Supervisors desires that additional applications for MMEs not be approved while regulations for RMEs are being considered so that the City can make a comprehensive evaluation of City regulations for all marijuana facilities; and

J. The Carson City Board of Supervisors understands that there are numerous arguments for and against the use, regulation and taxation of the sale of marijuana; and

K. Because Carson City's Board of Supervisors must either decide to regulate RMEs and/or prohibit some or all RMEs within its jurisdiction, and this challenge presents very complicated and difficult issues from both a policy and legal perspective; and

L. Because the Department currently does not have proposed regulations concerning the certification and operation of RMEs and the products to be produced and sold by these RMEs; and

M. Because the Carson City Board of Supervisors desires to take a responsible amount of time to thoughtfully consider the policy and legal implications of permitting RMEs to exist within the boundaries of Carson City; and

N. The Carson City Board of Supervisors desires to declare this moratorium as provided in Sections 1, 2 and 3 above, to prohibit staff acceptance and consideration of any and all land use applications, business license applications, building permit applications and any other application or request to operate or otherwise license or permit any new marijuana establishments, including those contemplated by the Regulation and Taxation of Marijuana Act passed by Nevada voters during the November 8, 2016 general election, as well as any new Medical Marijuana Establishments that do not hold a valid provisional certificate issued by the State of Nevada as of the effective date of the moratorium, for a period of 180 days, in order to permit the Department to adopt final regulations for RMEs by their December 31, 2017 deadline, and to permit the Carson City Board of Supervisors to responsibly consider the policy and legal implications of the Regulation and Taxation of Marijuana Act and the Department regulations and to provide amendments to the CCMC to address the policy and legal implications of RMEs in Carson City.

SECTION 5: If any section, subsection, subdivision, paragraph, sentence, clause or phrase in this ordinance, or any part hereof, is for any reason determined to be unconstitutional or invalid or ineffective by any court of competent jurisdiction, such decision shall not affect the validity or effectiveness of the remaining portions of this ordinance. The Carson City Board of Supervisors hereby declares that it would have passed each section, subsection, subdivision, paragraph, sentence, clause or phrase hereof irrespective of the fact that any one or more sections, subsections, subdivisions, paragraphs, sentences, clauses or phrases be declared unconstitutional, invalid or ineffective.

SECTION 6: No other provisions of the CCMC are affected hereby, except that all ordinances or parts of ordinances or sections, subsections, phrases, sentences, clauses or paragraphs contained in the CCMC in conflict herewith are hereby repealed.

PROPOSED on \_\_\_\_\_, 2017

PROPOSED by Supervisor \_\_\_\_\_

PASSED on \_\_\_\_\_, 2017

VOTES: AYES: Supervisors

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VOTES: NAYS: Supervisors

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ABSENT: Supervisors

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Robert L. Crowell, Mayor

ATTEST:

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Susan Merriwether, Clerk-Recorder

This ordinance shall be in force and effect from and after the \_\_ day of \_\_\_\_\_, 2017.

APR 23 2014

SECRETARY OF STATE

**INITIATIVE TO REGULATE AND TAX MARIJUANA**

**THE PEOPLE OF THE STATE OF NEVADA DO ENACT AS FOLLOWS:**

**Section 1. Short Title.** Sections 1 to 18, inclusive, of this act may be cited as the Regulation and Taxation of Marijuana Act.

**Sec. 2. Preamble.**

In the interest of the public health and public safety, and in order to better focus state and local law enforcement resources on crimes involving violence and personal property, the People of the State of Nevada find and declare that the use of marijuana should be legal for persons 21 years of age or older, and its cultivation and sale should be regulated similar to other legal businesses.

The People of the State of Nevada declare that the cultivation and sale of marijuana should be taken from the domain of criminals and be regulated under a controlled system, where businesses will be taxed and the revenue will be dedicated to public education and to the enforcement of the regulations in this act.

The People of the State of Nevada proclaim that marijuana should be regulated in a manner similar to alcohol so that:

- (a) Marijuana may only be purchased from a business that is licensed by the State of Nevada;
- (b) Business owners are subject to a review by the State of Nevada to confirm that the business owners and the business location are suitable to produce or sell marijuana;
- (c) Cultivating, manufacturing, testing, transporting, and selling marijuana will be strictly controlled through state licensing and regulation;
- (d) Selling or giving marijuana to persons under 21 years of age shall remain illegal;
- (e) Individuals will have to be 21 years of age or older to purchase marijuana;
- (f) Driving under the influence of marijuana will remain illegal; and
- (g) Marijuana sold in the state will be tested and labeled.

**Sec. 3. Definitions.** As used in sections 1 to 18, inclusive, of this act, unless the context otherwise requires:

1. “Community facility” means a facility licensed to provide day care to children, a public park, a public playground, a public swimming pool, a center or facility the primary purpose of which is to provide recreational opportunities or services to children or adolescents, or a church, synagogue, or other building, structure, or place used for religious worship or other religious purpose.

2. “Concentrated marijuana” means the separated resin, whether crude or purified, obtained from marijuana.

3. “Consumer” means a person who is 21 years of age or older who purchases marijuana or marijuana products for use by persons 21 years of age or older, but not for resale to others.

4. “Department” means the Department of Taxation.

5. “Dual Licensee” means a person or group of persons who possess a current, valid registration certificate to operate a medical marijuana establishment pursuant to Chapter 453A of NRS and a license to operate a marijuana establishment under sections 1 to 18, inclusive, of this act.

6. “Excluded felony offense” means a conviction of an offense that would constitute a category A felony if committed in Nevada or convictions for two or more offenses that would constitute felonies if committed in Nevada. “Excluded felony offense” does not include:

- (a) A criminal offense for which the sentence, including any term of probation, incarceration, or supervised release, was completed more than 10 years ago; or
- (b) An offense involving conduct that would be immune from arrest, prosecution, or penalty pursuant to Chapter 453A of NRS, except that the conduct occurred before the effective date of Chapter 453A of NRS, or was prosecuted by an authority other than the State of Nevada.



7. “Locality” means a city or town, or, in reference to a location outside the boundaries of a city or town, a county.

8. “Marijuana” means all parts of any plant of the genus *Cannabis*, whether growing or not, the seeds thereof, the resin extracted from any part of the plant, and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds, or resin. “Marijuana” does not include:

(a) The mature stems of the plant, fiber produced from the stems, oil, or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture, or preparation of the mature stems (except the resin extracted therefrom), fiber, oil, or cake, the sterilized seed of the plant which is incapable of germination; or

(b) The weight of any other ingredient combined with marijuana to prepare topical or oral administrations, food, drink, or other products.

9. “Marijuana cultivation facility” means an entity licensed to cultivate, process, and package marijuana, to have marijuana tested by a marijuana testing facility, and to sell marijuana to retail marijuana stores, to marijuana product manufacturing facilities, and to other marijuana cultivation facilities, but not to consumers.

10. “Marijuana distributor” means an entity licensed to transport marijuana from a marijuana establishment to another marijuana establishment.

11. “Marijuana establishment” means a marijuana cultivation facility, a marijuana testing facility, a marijuana product manufacturing facility, a marijuana distributor, or a retail marijuana store.

12. “Marijuana product manufacturing facility” means an entity licensed to purchase marijuana, manufacture, process, and package marijuana and marijuana products, and sell marijuana and marijuana products to other marijuana product manufacturing facilities and to retail marijuana stores, but not to consumers.

13. “Marijuana products” means products comprised of marijuana or concentrated marijuana and other ingredients that are intended for use or consumption, such as, but not limited to, edible products, ointments, and tinctures.

14. “Marijuana paraphernalia” means any equipment, products, and materials of any kind which are used, intended for use, or designed for use in planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, preparing, testing, analyzing, packaging, repacking, storing, or containing marijuana, or for ingesting, inhaling, or otherwise introducing marijuana into the human body.

15. “Marijuana testing facility” means an entity licensed to test marijuana and marijuana products, including for potency and contaminants.

16. “Process” means to harvest, dry, cure, trim, and separate parts of the marijuana plant by manual or mechanical means, such as sieving or ice water separation, but not by chemical extraction or chemical synthesis.

17. “Public place” means an area to which the public is invited or in which the public is permitted regardless of age. “Public place” does not include a retail marijuana store.

18. “Retail marijuana store” means an entity licensed to purchase marijuana from marijuana cultivation facilities, to purchase marijuana and marijuana products from marijuana product manufacturing facilities and retail marijuana stores, and to sell marijuana and marijuana products to consumers.

19. “Unreasonably Impracticable” means that the measures necessary to comply with the regulations require such a high investment of risk, money, time, or any other resource or asset that the operation of a marijuana establishment is not worthy of being carried out in practice by a reasonably prudent businessperson.

**Sec. 4. Limitations.** 1. Sections 1 to 18 do not permit any person to engage in and do not prevent the imposition of any civil, criminal, or other penalty for:

(a) Driving, operating, or being in actual physical control of a vehicle, aircraft, or vessel under power or sail while under the influence of marijuana or while impaired by marijuana;

(b) Knowingly delivering, giving, selling, administering, or offering to sell, administer, give, or deliver marijuana to a person under 21 years of age, unless:

(1) The recipient is permitted to possess marijuana pursuant to Chapter 453A of NRS; or

(2) The person demanded and was shown bona fide documentary evidence of the majority and identity of the recipient issued by a federal, state, county, or municipal government, or subdivision or agency thereof;

(c) Possession or use of marijuana or marijuana paraphernalia on the grounds of, or within, any facility or institution under the jurisdiction of the Nevada Department of Corrections;

(d) Possession or use of marijuana on the grounds of, or within, a school providing instruction in preschool, kindergarten, or any grades 1 through 12; or

(e) Undertaking any task under the influence of marijuana that constitutes negligence or professional malpractice.

2. Sections 1 to 18 do not prohibit:

(a) A public or private employer from maintaining, enacting, and enforcing a workplace policy prohibiting or restricting actions or conduct otherwise permitted under sections 1 to 18, inclusive, of this act;

(b) A state or local government agency that occupies, owns, or controls a building from prohibiting or otherwise restricting the consumption, cultivation, processing, manufacture, sale, delivery, or transfer of marijuana in that building;

(c) A person who occupies, owns, or controls a privately owned property from prohibiting or otherwise restricting the smoking, cultivation, processing, manufacture, sale, delivery, or transfer of marijuana on that property; or

(d) A locality from adopting and enforcing local marijuana control measures pertaining to zoning and land use for marijuana establishments.

3. Nothing in the provisions of sections 1 to 18, inclusive, of this act shall be construed as in any manner affecting the provisions of Chapter 453A of NRS relating to the medical use of marijuana.

**Sec. 5. Powers and duties of the Department.** 1. Not later than 12 months after the effective date of this act, the Department shall adopt all regulations necessary or convenient to carry out the provisions of sections 1 to 18, inclusive, of this act. The regulations must not prohibit the operation of marijuana establishments, either expressly or through regulations that make their operation unreasonably impracticable. The regulations shall include:

(a) Procedures for the issuance, renewal, suspension, and revocation of a license to operate a marijuana establishment;

(b) Qualifications for licensure that are directly and demonstrably related to the operation of a marijuana establishment;

(c) Requirements for the security of marijuana establishments;

(d) Requirements to prevent the sale or diversion of marijuana and marijuana products to persons under 21 years of age;

(e) Requirements for the packaging of marijuana and marijuana products, including requirements for child-resistant packaging;

(f) Requirements for the testing and labeling of marijuana and marijuana products sold by marijuana establishments including a numerical indication of potency based on the ratio of THC to the weight of a product intended for oral consumption;

(g) Requirements for record keeping by marijuana establishments;

(h) Reasonable restrictions on signage, marketing, display, and advertising;

(i) Procedures for the collection of taxes, fees, and penalties imposed by sections 1 to 18, inclusive, of this act;

(j) Procedures and requirements to enable the transfer of a license for a marijuana establishment to another qualified person and to enable a licensee to move the location of its establishment to another suitable location;

(k) Procedures and requirements to enable a dual licensee to operate medical marijuana establishments and marijuana establishments at the same location;

(l) Procedures to establish the fair market value at wholesale of marijuana; and

(m) Civil penalties for the failure to comply with any regulation adopted pursuant to this section or for any violation of the provisions of section 13 of this act.

2. The Department shall approve or deny applications for licenses pursuant to section 9 of this act.
3. The Department may by motion or on complaint, after investigation, notice of the specific violation, and an opportunity for a hearing, pursuant to the provisions of Chapter 233B of NRS, suspend, revoke, or fine a licensee for the violation of sections 1 to 18, inclusive, of this act or for a violation of a regulation adopted by the Department pursuant to this section.
4. The Department may immediately suspend the license of any marijuana establishment if the marijuana establishment knowingly sells, delivers, or otherwise transfers marijuana in violation of sections 1 to 18, inclusive, of this act, or knowingly purchases marijuana from any person not licensed pursuant to sections 1 of 18, inclusive, of this act or to Chapter 453A of NRS. The Department must provide an opportunity for a hearing pursuant to the provisions of NRS 233B.121 within a reasonable time from a suspension pursuant to this subsection.
5. To ensure that individual privacy is protected:
  - (a) The Department shall not require a consumer to provide a retail marijuana store with identifying information other than government-issued identification to determine the consumer's age; and
  - (b) A retail marijuana store must not be required to acquire and record personal information about consumers other than information typically acquired in a financial transaction conducted at a retail liquor store.
6. The Department shall conduct a background check of each prospective owner, officer, and board member of a marijuana establishment license applicant.
7. The Department shall inspect marijuana establishments as necessary to enforce sections 1 to 18, inclusive, of this act or the regulations adopted pursuant to this section.

**Sec. 6. Personal Use and Cultivation of Marijuana.** Notwithstanding any other provision of Nevada law and the law of any political subdivision of Nevada, except as otherwise provided in sections 1 to 18, inclusive, of this act, it is lawful, in this State, and must not be used as the basis for prosecution or penalty by this State or a political subdivision of this State, and must not, in this State, be a basis for seizure or forfeiture of assets for persons 21 years of age or older to:

1. Possess, use, consume, purchase, obtain, process, or transport marijuana paraphernalia, one ounce or less of marijuana other than concentrated marijuana, or one-eighth of an ounce or less of concentrated marijuana;
2. Possess, cultivate, process, or transport not more than six marijuana plants for personal use and possess the marijuana produced by the plants on the premises where the plants were grown, provided that:
  - (a) Cultivation takes place within a closet, room, greenhouse, or other enclosed area that is equipped with a lock or other security device that allows access only to persons authorized to access the area; and
  - (b) No more than 12 plants are possessed, cultivated, or processed at a single residence, or upon the grounds of that residence, at one time;
3. Give or otherwise deliver one ounce or less of marijuana, other than concentrated marijuana, or one-eighth of an ounce or less of concentrated marijuana without remuneration to a person provided that the transaction is not advertised or promoted to the public; or
4. Assist another person who is 21 years of age or older in any of the acts described in this section.

**Sec. 7. Marijuana Paraphernalia Authorized.** Notwithstanding any other provision of Nevada law and the law of any political subdivision of Nevada, it is not unlawful and shall not be an offense or be a basis for seizure or forfeiture of assets for persons 21 years of age or older to manufacture, possess, use, transport, or purchase marijuana paraphernalia, or to distribute or sell marijuana paraphernalia to a person who is 21 years of age or older.

**Sec. 8. Lawful operation of marijuana establishments.** Notwithstanding any other provision of Nevada law and the law of any political subdivision of Nevada, except as otherwise provided in sections 1 to 18, inclusive, of this act, or the regulations adopted pursuant to section 5 of this act, it is lawful and must not, in this

State, be used as the basis for prosecution or penalty by this State or a political subdivision of this State, and must not, in this State, be a basis for seizure or forfeiture of assets for persons 21 years of age or older to:

1. Possess marijuana and marijuana products, purchase marijuana from a marijuana cultivation facility, purchase marijuana and marijuana products from a marijuana product manufacturing facility, return marijuana or marijuana products to a facility from which they were purchased, transport marijuana and marijuana products to or from a marijuana testing facility, use the services of a marijuana distributor to transport marijuana or marijuana products to or from marijuana establishments, or sell marijuana and marijuana products to consumers, if the person conducting the activities described in this subsection has a current, valid license to operate a retail marijuana store or is acting in the person's capacity as an agent of a retail marijuana store.
2. Cultivate, harvest, process, package, or possess marijuana, sell marijuana to a marijuana cultivation facility, a marijuana product manufacturing facility, or a retail marijuana store, transport marijuana to or from a marijuana cultivation facility, a marijuana product manufacturing facility, or a marijuana testing facility, use the services of a marijuana distributor to transport marijuana to or from marijuana establishments, or purchase marijuana from a marijuana cultivation facility, if the person conducting the activities described in this paragraph has a current, valid license to operate a marijuana cultivation facility or is acting in his or her capacity as an agent of a marijuana cultivation facility.
3. Package, process, manufacture, or possess marijuana and marijuana products, transport marijuana and marijuana products to or from a marijuana testing facility, a marijuana cultivation facility, or a marijuana product manufacturing facility, use the services of a marijuana distributor to transport marijuana or marijuana products to or from marijuana establishments, sell marijuana and marijuana products to a retail marijuana store or a marijuana product manufacturing facility, purchase marijuana from a marijuana cultivation facility, or purchase marijuana and marijuana products from a marijuana product manufacturing facility, if the person conducting the activities described in this paragraph has a current, valid license to operate a marijuana product manufacturing facility or is acting in his or her capacity as an agent of a marijuana product manufacturing facility.
4. Possess marijuana and marijuana products and transfer and transport marijuana and marijuana products between marijuana establishments, if the person transporting the marijuana and marijuana products has a current, valid license to operate as a marijuana distributor or is acting in his or her capacity as an agent of a marijuana distributor.
5. Possess, process, repackage, transport, or test marijuana and marijuana products if the person has a current, valid license to operate a marijuana testing facility or is acting in his or her capacity as an agent of a marijuana testing facility.
6. Lease or otherwise allow property owned, occupied, or controlled by any person, corporation, or other entity to be used for any of the activities conducted lawfully in accordance with this section.

**Sec. 9. Contracts pertaining to marijuana enforceable.** It is the public policy of the People of the State of Nevada that contracts related to the operation of marijuana establishments under sections 1 to 18, inclusive, of this act should be enforceable, and no contract entered into by a licensee, its employees, or its agents as permitted pursuant to a valid license issued by the Department, or by those who allow property to be used by a licensee, its employees, or its agents as permitted pursuant to a valid license issued by the Department, shall be deemed unenforceable on the basis that the actions or conduct permitted pursuant to the license are prohibited by federal law.

**Sec. 10. Certification of marijuana establishments.** 1. No later than 12 months after the effective date of this act, the Department shall begin receiving applications for marijuana establishments.

2. For 18 months after the Department begins to receive applications for marijuana establishments, the Department shall only accept applications for licenses for retail marijuana stores, marijuana product manufacturing facilities, and marijuana cultivation facilities pursuant to sections 1 to 18, inclusive, of this act,

from persons holding a medical marijuana establishment registration certificate pursuant to Chapter 453A of NRS.

3. For 18 months after the Department begins to receive applications for marijuana establishments, the Department shall issue licenses for marijuana distributors pursuant to sections 1 to 18, inclusive, of this act, only to persons holding a wholesale dealer license pursuant to Chapter 369 of NRS, unless the Department determines that an insufficient number of marijuana distributors will result from this limitation.

4. Upon receipt of a complete marijuana establishment license application, the Department shall, within 90 days:

- (a) Issue the appropriate license if the license application is approved; or
- (b) Send a notice of rejection setting forth the reasons why the Department did not approve the license application.

5. The Department shall approve a license application if:

- (a) The prospective marijuana establishment has submitted an application in compliance with regulations adopted by the Department and the application fee required pursuant to section 12;
- (b) The physical address where the proposed marijuana establishment will operate is owned by the applicant or the applicant has the written permission of the property owner to operate the proposed marijuana establishment on that property;
- (c) The property is not located within:
  - (1) 1,000 feet of a public or private school that provides formal education traditionally associated with preschool or kindergarten through grade 12 and that existed on the date on which the application for the proposed marijuana establishment was submitted to the Department; or
  - (2) 300 feet of a community facility that existed on the date on which the application for the proposed marijuana establishment was submitted to the Department;
- (d) The proposed marijuana establishment is a proposed retail marijuana store and there are not more than:
  - (1) 80 licenses already issued in a county with a population greater than 700,000;
  - (2) 20 licenses already issued in a county with a population that is less than 700,000 but more than 100,000;
  - (3) 4 licenses already issued in a county with a population that is less than 100,000 but more than 55,000;
  - (4) 2 licenses already issued in a county with a population that is less than 55,000;
- (5) Upon request of a county government, the Department may issue retail marijuana store licenses in that county in addition to the number otherwise allowed pursuant to this paragraph;
- (e) The locality in which the proposed marijuana establishment will be located does not affirm to the Department that the proposed marijuana establishment will be in violation of zoning or land use rules adopted by the locality; and
- (f) The persons who are proposed to be owners, officers, or board members of the proposed marijuana establishment:
  - (1) Have not been convicted of an excluded felony offense; and
  - (2) Have not served as an owner, officer, or board member for a medical marijuana establishment or a marijuana establishment that has had its registration certificate or license revoked.

6. Competing applications. When competing applications are submitted for a proposed retail marijuana store within a single county, the Department shall use an impartial and numerically scored competitive bidding process to determine which application or applications among those competing will be approved.

**Sec. 11. Expiration and renewal.** 1. All licenses expire one year after the date of issue.

2. The Department shall issue a renewal license within 10 days of receipt of the prescribed renewal application and renewal fee from a marijuana establishment if its license is not under suspension or has not been revoked.

**Sec. 12. Fee schedule.** 1. The Department shall require each applicant for a marijuana establishment license to pay a one-time application fee of \$5,000.

## 2. The Department may require payment of an annual licensing fee not to exceed:

For the initial issuance of a license for a retail marijuana store.....	\$20,000
For a renewal license for a retail marijuana store.....	\$6,600
For the initial issuance of a license for a marijuana cultivation facility.....	\$30,000
For a renewal license for a marijuana cultivation facility.....	\$10,000
For the initial issuance of a license for a marijuana product manufacturing facility.....	\$10,000
For a renewal license for a marijuana product manufacturing facility.....	\$3,300
For the initial issuance of a license for a marijuana distributor.....	\$15,000
For a renewal license for a marijuana distributor.....	\$5,000
For the initial issuance of a license for a marijuana testing facility.....	\$15,000
For a renewal license for a marijuana testing facility.....	\$5,000

**Sec. 13. Marijuana establishment operating requirements.** In addition to requirements established by rule pursuant to section 5 of this act:

## 1. Marijuana establishments shall:

- (a) Secure every entrance to the establishment so that access to areas containing marijuana is restricted to persons authorized to possess marijuana;
- (b) Secure the inventory and equipment of the marijuana establishment during and after operating hours to deter and prevent theft of marijuana;
- (c) Determine the criminal history of any person before the person works or volunteers at the marijuana establishment and prevent any person who has been convicted of an excluded felony offense or who is not 21 years of age or older from working or volunteering for the marijuana establishment.

2. All cultivation, processing, and manufacture of marijuana must take place at a physical address approved by the Department and within an area that is enclosed and locked in a manner that restricts access only to persons authorized to access the area. The area may be uncovered only if it is enclosed with security fencing that is designed to prevent unauthorized entry and that is at least 8 feet high.

3. All cultivation, processing, and manufacture of marijuana must not be visible from a public place by normal unaided vision.

4. All cultivation, processing, and manufacture of marijuana must take place on property in the marijuana establishment's lawful possession or with the consent of the person in lawful physical possession of the property.

5. A marijuana establishment is subject to reasonable inspection by the Department, and a person who holds a marijuana establishment license must make himself or herself, or an agent thereof, available and present for any inspection required by the Department. The Department shall make reasonable accommodations so that ordinary business is not interrupted and safety and security procedures are not compromised by the inspection.

**Sec. 14. Penalties.** 1. Restrictions on personal cultivation.

(a) Except as otherwise provided in 453A of NRS, any person who:

- (1) Cultivates marijuana plants within 25 miles of a retail marijuana store licensed pursuant to sections 1 to 18, inclusive, of this act, unless the person is a marijuana cultivation facility or a person acting in his or her capacity as an agent of a marijuana cultivation facility;
- (2) Cultivates marijuana plants where they are visible from a public place by normal unaided vision; or
- (3) Cultivates marijuana on property not in the cultivator's lawful possession or without the consent of the person in lawful physical possession of the property;

(b) Is guilty of:

- (1) For a first violation, a misdemeanor punished by a fine of not more than \$600.
- (2) For a second violation, a misdemeanor punished by a fine of not more than \$1,000.
- (3) For a third violation, a gross misdemeanor.
- (4) For a fourth or subsequent violation, a category E felony.

2. A person who smokes or otherwise consumes marijuana in a public place, in a retail marijuana store, or in a moving vehicle is guilty of a misdemeanor punished by a fine of not more than \$600.

3. A person under 21 years of age who falsely represents himself or herself to be 21 years of age or older to obtain marijuana is guilty of a misdemeanor.

4. A person under 21 years of age who knowingly enters, loiters, or remains on the premises of a marijuana establishment shall be punished by a fine of not more than \$500 unless the person is authorized to possess marijuana pursuant to Chapter 453A NRS and the marijuana establishment is a dual licensee.

5. A person who manufactures marijuana by chemical extraction or chemical synthesis, unless done pursuant to a marijuana product manufacturing license issued by the Department or authorized by Chapter 453A of NRS, is guilty of a category E felony.

6. A person who knowingly gives marijuana to any person under 21 years of age, or who knowingly leaves or deposits any marijuana in any place with the intent that it will be procured by any person under 21 years of age is guilty of a misdemeanor.

7. A person who knowingly gives marijuana to any person under 18 years of age, or who knowingly leaves or deposits any marijuana in any place with the intent that it will be procured by any person under 18 years of age is guilty of a gross misdemeanor.

8. Notwithstanding the provisions of sections 1 to 18, inclusive, of this act, after the effective date of this act, the legislature may amend provisions of this act to provide for the conditions in which a locality may permit consumption of marijuana in a retail marijuana store.

**Sec. 15. Marijuana excise tax.** 1. An excise tax is hereby imposed and must be collected by the State respecting wholesale sales of marijuana in this State by a marijuana cultivation facility at a rate of 15 percent of the fair market value at wholesale of the marijuana. The tax imposed pursuant to this subsection:

- (a) Is the obligation of the marijuana cultivation facility; and
- (b) Is separate from and in addition to any general state and local sales and use taxes that apply to retail sales of tangible personal property.

**Sec. 16.** Any tax revenues, fees, or penalties collected pursuant to sections 1 to 18, inclusive, of this act, first must be expended to pay the costs of the Department and of each locality in carrying out sections 1 to 8, inclusive, of this act and the regulations adopted pursuant thereto. The Department shall remit any remaining money to the State Treasurer to be deposited to the credit of the State Distributive School Account in the State General Fund.

**Sec. 17. Severability.** If any provision of this act, or the application thereof to any person, thing, or circumstance is held invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity or constitutionality of this act as a whole or any provision or application of this act which can be given effect without the invalid or unconstitutional provision or application, and to this end the provisions of this act are declared to be severable.

**Sec. 18. Effective Date.** This act shall become effective on October 1, 2015 if approved by the legislature, or on January 1, 2017 if approved by the voters.

[The remainder of this page is blank.]

## DESCRIPTION OF EFFECT

The initiative proposes statutory amendments that would regulate and tax marijuana similar to alcohol. If passed, persons at least 21 years old would be allowed to possess and use a limited amount of marijuana. Giving or selling marijuana to minors, driving under the influence of marijuana, and marijuana use in public would remain prohibited.

The Nevada Department of Taxation would issue licenses to marijuana retailers, suppliers, testing facilities, and distributors. The Department would determine the qualification for licensure, security, packaging, labeling and testing of marijuana. Counties, cities, and towns would control marijuana business locations. Marijuana businesses would not be able to operate near schools, childcare facilities, houses of worship, or certain other community facilities. Retail licenses will be limited in number. The Department would oversee marijuana businesses and licensees. Licensees who engage in certain conduct, including selling marijuana to minors, allowing minors on their premises, or permitting on-site marijuana consumption would be subject to penalties.

An excise tax of 15% would be imposed on wholesale sales of marijuana. The existing sales tax would apply to retail sales of marijuana. Net revenue generated under this proposal would be deposited in the Distributive School Account and used for support of K-12 education.

County of \_\_\_\_\_

(Only registered voters of this county may sign below)

Petition District: \_\_\_\_\_

(Only registered voters of this petition district may sign below)

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**AFFIDAVIT OF CIRCULATOR**

(To be signed by circulator in the presence of a notary public)

STATE OF NEVADA )

)

County of \_\_\_\_\_ )

I, \_\_\_\_\_, (print name), being first duly sworn under penalty of perjury, depose and say: (1) that I reside at \_\_\_\_\_ (print street, city and state); (2) that I am 18 years of age or older; (3) that I personally circulated this document; (4) that all signatures were affixed in my presence; (5) that the number of signatures affixed thereon is \_\_\_\_\_; and (6) that each person who signed had an opportunity before signing to read the full text of the act or resolution on which the initiative or referendum is demanded.

\_\_\_\_\_  
Signature of Circulator

Subscribed and sworn to or affirmed before me this

\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, by \_\_\_\_\_.

\_\_\_\_\_  
Notary Public

RESOLUTION NO. 2016-R-29

A RESOLUTION TO INITIATE THE PROCESS FOR DECLARING A MORATORIUM ON THE ACCEPTANCE AND PROCESSING OF PLANNING OR OTHER APPLICATIONS FOR CONSTRUCTION OR OPERATION OF MARIJUANA ESTABLISHMENTS AS CONTEMPLATED BY THE REGULATION AND TAXATION OF MARIJUANA ACT PASSED BY NEVADA VOTERS DURING THE NOVEMBER 8, 2016 GENERAL ELECTION.

WHEREAS, Carson City Municipal Code Section 18.02.120 (Moratorium) allows the Board of Supervisors by Resolution to initiate the process for declaring a moratorium on the acceptance and processing of planning and zoning applications and permits for specific types of applications; and

WHEREAS, The Regulation and Taxation of Marijuana Act ("Act"), the act to legalize recreational marijuana, was passed by the Nevada voters during the general election on November 8, 2016; and

WHEREAS, provisions of the Act requires the Nevada Department of Taxation, hereafter referred to as "Department," to promulgate regulations for the consideration of applications and the issuance for certificates to allow the operations of "Marijuana Establishments" in the State of Nevada, and specifically in Carson City; and

WHEREAS, the Act mandates that the Department finalize these regulations on or prior to December 31, 2017; and

WHEREAS, the Act requires the Department to approve a Marijuana Establishment license if, among other things, "the locality in which the proposed marijuana establishment will be located does not affirm to the Department that the proposed marijuana establishment will be in violation of zoning or land use rules adopted by the locality" (Regulation and Taxation of Marijuana Act, Section 10(5)(e)); and

WHEREAS, the Act does not prohibit "a locality from adopting and enforcing local marijuana control measures pertaining to zoning and land use for marijuana establishments" (Regulation and Taxation of Marijuana Act, Section 4(2)(d)); and

WHEREAS, the Carson City Municipal Code ("CCMC"), including portions pertinent to zoning, and to Medical Marijuana Establishments ("MMEs") as contemplated by Senate

Bill 374, currently does not address Marijuana Establishments as contemplated by the Act, nor does the CCMC, as it pertains to business licensing, address the issuance of any business license for any Marijuana Establishment as contemplated by the Act; and

WHEREAS, the Act "shall not be construed as in any manner affecting the provisions of Chapter 453A of NRS relating to the medical use of marijuana" (Regulation and Taxation of Marijuana Act, Section 4(3)); and

WHEREAS, as some potential applicants for Marijuana Establishment certificates might attempt to assert to Carson City that such Marijuana Establishment is a use contemplated by the CCMC, the Carson City Board of Supervisors desires to make clear that the current version of the CCMC does not permit any of the Marijuana Establishments as contemplated by the Act, and the Carson City Board of Supervisors desires that representatives of Carson City not accept any land use applications, business license applications, building permit applications or any other application or request to operate or otherwise license or permit any Marijuana Establishment as contemplated by the Act; and

WHEREAS, the Carson City Board of Supervisors understands that there are numerous arguments for and against the use of recreational marijuana; and

WHEREAS, because Carson City's Board of Supervisors must either decide to regulate Marijuana Establishments and/or prohibit some or all Marijuana Establishments within its jurisdiction, and this challenge presents very complicated and difficult issues from both a policy and legal perspective; and

WHEREAS, because the Department currently does not have a final draft of proposed regulations concerning the certification and operation of Marijuana Establishments and the products to be produced and sold by these Marijuana Establishments, nor will the Department have final regulations concerning the certification and operation of Marijuana Establishments and the products to be produced and sold by these Marijuana Establishments until, at most, the statutory deadline of December 31, 2017; and

WHEREAS, because the Carson City Board of Supervisors desires to take a responsible amount of time to thoughtfully consider the policy and legal implications of

permitting Marijuana Establishments to exist within the boundaries of Carson City; and

WHEREAS, the Carson City Board of Supervisors desires to initiate this moratorium process to prohibit staff acceptance and consideration of any and all land use applications, business license applications, building permit applications and any other application or request to operate or otherwise license or permit any of the Marijuana Establishments as contemplated by the Act, in order to permit the Department to draft and submit final regulations for Marijuana Establishments by the December 31, 2017 deadline, and to permit the Carson City Board of Supervisors to responsibly consider the policy and legal implications of the Act and the Department regulations and to provide amendments to the CCMC to address the policy and legal implications of Marijuana Establishments in Carson City.

NOW, THEREFORE, the Board of Supervisors hereby resolves:

The Board of Supervisors hereby initiates the process for declaring a moratorium on the acceptance and processing of planning applications, including land use applications, business license applications, building permit applications or any other application or request for the construction or operation of Marijuana Establishments as contemplated by the Regulation and Taxation of Marijuana Act, excluding Medical Marijuana Establishments (MME) with valid provisional certificates from the State of Nevada to operate in Carson City at the time of adoption of the moratorium to operate under current MME regulations.

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Upon motion by Supervisor Lori Bagwell, seconded by Supervisor Karen Abowd, the foregoing Resolution was passed and adopted this 1<sup>st</sup> day of December, 2016, by the following vote:

AYES: Supervisor Lori Bagwell  
Supervisor Karen Abowd  
Supervisor Brad Bonkowski  
Supervisor Jim Shirk  
Mayor Robert Crowell

NAYS: None

ABSENT: None

ABSTAIN: None

  
ROBERT L. CROWELL, Mayor

ATTEST:

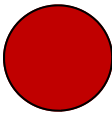
  
SUSAN MERRIWETHER, Clerk - Recorder

RESOLUTION NO. 2016-R-29



# Carson City MMEs

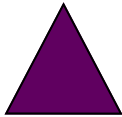
Dispensary (2)



Cultivation (3)



Production (1)



Cultivation & Production (3)

