

STAFF REPORT FOR PLANNING COMMISSION MEETING OF JULY 26, 2017

FILE NO: MISC-17-074

AGENDA ITEM: F-9

STAFF AUTHOR: Lee Plemel, Community Development Director

REQUEST: Action to make a recommendation to the Board of Supervisors regarding an ordinance declaring a second 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, in the event that an ordinance is not adopted regarding recreational marijuana establishment regulations by September 19, 2017, that the Board of Supervisors approve an ordinance declaring a second 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 Carson City Board of Supervisors adopted a moratorium on the submittal of all applications for new Marijuana Establishments on January 19, 2017, which will expire on September 19, 2017. The new moratorium would be necessary should the Board of Supervisors not adopt applicable ordinances before that date either allowing or prohibiting Marijuana Establishments.
- The Planning Commission is considering an ordinance regarding Marijuana Establishments on this same agenda, and the Board of Supervisors is scheduled to review the ordinance on August 3 and 17. Should the Board of Supervisors adopt the proposed ordinance, they would not need to adopt the new moratorium.

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 Nevada Department of Taxation has adopted temporary regulations for existing, operational Medical Marijuana Establishments (MMEs) to submit applications to begin selling recreational or "retail" marijuana as of July 1, 2017.

A second moratorium on any new marijuana establishment ("ME"), should it be needed, 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 MEs. This moratorium would not apply MMEs with valid provisional certificates wishing to operate under the current MME regulations in Carson City, nor to any MEs with valid State and City approvals as of the date the moratorium is enacted.

The adoption of this moratorium would effectively prohibit new MEs 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.

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 2017-R-24 on June 15, 2017, to initiate the moratorium. 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 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 new MEs in Carson City.

- 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 new MEs 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 new MEs.

- 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 new MEs 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 ME. As some potential applicants for State ME certificates might attempt to assert to Carson City that such ME 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 new MEs 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 new ME. To allow any applications for new MEs 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) Board of Supervisors Resolution initiating the moratorium
- 3) Carson City approved MMEs map

BILL No. ____

ORDINANCE NO. 2017-____

AN ORDINANCE DECLARING A SECOND 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 second 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 “Marijuana Establishments” (“MEs” or “ME”), 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 ME 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 ME; 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 new MEs 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 a new ME, 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 new ME; and

H. As some potential applicants for state ME 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 new MEs 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 new ME; and

I. The Carson City Board of Supervisors desires that additional applications for MMEs not be approved while regulations for new MEs 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 MEs and/or prohibit some or all MEs within its jurisdiction, and this challenge presents very complicated and difficult issues from both a policy and legal perspective; 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 new MEs to exist within the boundaries of Carson City; and

N. The Carson City Board of Supervisors desires to declare this second 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 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 MEs 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

VOTES: NAYS: Supervisors

ABSENT: Supervisors

Robert L. Crowell, Mayor

ATTEST:

Susan Merriwether, Clerk-Recorder

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

RESOLUTION NO. 2017-R-24

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.

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 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, the current moratorium enacted by Ordinance No. 2017-3 and extended by Resolution will expire on September 19, 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 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.

Upon motion by Supervisor Karen Abowd, seconded by Supervisor John Barrette, the foregoing Resolution was passed and adopted this 15th day of June, 2017, by the following vote:

AYES: Supervisor Karen Abowd
Supervisor John Barrette
Supervisor Brad Bonkowski
Supervisor Lori Bagwell
Mayor Robert Crowell

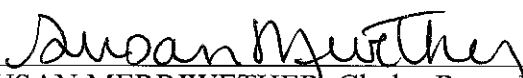
NAYS: None.

ABSENT: None.

ABSTAIN: None.

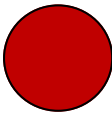

ROBERT L. CROWELL, Mayor

ATTEST:


SUSAN MERRIWETHER, Clerk - Recorder

Carson City MMEs

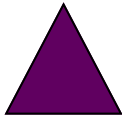
Dispensary (2)



Cultivation (3)



Production (1)



Cultivation & Production (4)

