

BILL NO. 2017-03

NYE COUNTY ORDINANCE NO. 511

SUMMARY: An Ordinance amending Nye County Code Chapter 17.06, relating to Zoning and Special Use Permits for Marijuana Establishments; and providing for the severability, constitutionality and effective date thereof; and other matters properly relating thereto.

TITLE: AN ORDINANCE AMENDING NYE COUNTY CODE CHAPTER 17.06, RELATING TO ZONING AND SPECIAL USE PERMITS FOR MARIJUANA ESTABLISHMENTS; AND PROVIDING FOR THE SEVERABILITY, CONSTITUTIONALITY AND EFFECTIVE DATE THEREOF; AND OTHER MATTERS PROPERLY RELATING THERETO.

WHEREAS, pursuant to NRS 244.119, the Nye County Board of Commissioners (Board) is authorized to amend the Nye County Code; and

WHEREAS, pursuant to the authority vested in counties by Nevada Revised Statutes the adoption of this amendment provides for the licensing and regulation of marijuana establishments;

NOW, THEREFORE, the Board of County Commissioners of the County of Nye, State of Nevada, does hereby adopt, promulgate and order compliance therewith within Nye County, the following amendments and regulations:

NYE COUNTY CODE IS HEREBY AMENDED AS FOLLOWS:

**Chapter 17.06
MARIJUANA ESTABLISHMENTS; ZONING REQUIREMENTS**

17.06.010: INTENT; GENERALLY:

17.06.020: DEFINITIONS:

17.06.030: MARIJUANA ESTABLISHMENT ZONING REQUIREMENTS:

17.06.040: REQUIREMENT TO OBTAIN A SPECIAL USE PERMIT:

17.06.010: INTENT; GENERALLY:

- A. The intent of this chapter is to establish the zoning, land use and development requirements applicable to marijuana establishments, including retail and medical marijuana uses, as authorized under chapter 453A of Nevada state law for all areas within Nye County, including those areas within the Pahrump regional planning district. (Ord. 502, 2016)
- B. In regards to existing approvals for medical marijuana establishments, any establishment approved by the Board as a medical marijuana establishment prior to the effective date of this ordinance is hereby deemed to be approved as a marijuana establishment, provided that the

medical marijuana establishment's special use permit is in good standing, and subject to the scope, terms and conditions of the original special use permit. The original special use permit shall be amended administratively.

17.06.020: DEFINITIONS:

The words and phrases used in this chapter shall have the meanings as follows:

BOARD: The board of Nye County commissioners.

COMMUNITY FACILITY: Any of the following: a facility that provides daycare to children, a public park, a playground, a public swimming pool, a center or facility which provides recreational opportunities or services to children or adolescents, a church, synagogue, or other building, structure or place used for religious worship or other religious purposes.

CULTIVATION FACILITY: Has the meaning ascribed to it in Nevada Revised Statutes 453A.056.

EDIBLE MARIJUANA PRODUCTS: Has the meaning ascribed to it in Nevada Revised Statutes 453A.101.

FACILITY FOR THE PRODUCTION OF EDIBLE MARIJUANA PRODUCTS OR MARIJUANA INFUSED PRODUCTS: Has the meaning ascribed to it in Nevada Revised Statutes 453A.105.

INDEPENDENT TESTING LABORATORY: Has the meaning ascribed to it in Nevada Revised Statutes 453A.107.

MARIJUANA: Has the meaning ascribed to it in Nevada Revised Statutes 453A.110.

MARIJUANA INFUSED PRODUCTS: Has the meaning ascribed to it in Nevada Revised Statutes 453A.112.

MEDICAL MARIJUANA DISPENSARY: Has the meaning ascribed to it in Nevada Revised Statutes 453A.115.

MEDICAL MARIJUANA ESTABLISHMENT: Has the meaning ascribed to it in Nevada Revised Statutes 453A.116. (Ord. 502, 2016)

17.06.030: MARIJUANA ESTABLISHMENT ZONING REQUIREMENTS:

Marijuana establishments, including retail marijuana and medical marijuana, shall be allowed within the light industrial (LI), heavy industrial (HI), general commercial (GC), commercial manufacturing (CM), and business opportunity overlay (BO) zones if located within the Pahrump regional planning district or in any other area outside of the Pahrump regional planning district that permits general commercial, manufacturing, light industrial and/or heavy industrial uses, subject to compliance with the distance separation requirements and other restrictions contained herein and upon the approval of a special use permit as required in this chapter. (Ord. 502, 2016)

17.06.040: REQUIREMENT TO OBTAIN A SPECIAL USE PERMIT:

Any marijuana establishment shall require the approval, and be conducted in compliance with the terms and conditions, of a special use permit.

A. Administration And Enforcement:

1. **Designation Of Planning Authority:** For purposes of the administration of special use permits as provided for in this chapter the board shall be designated as the planning authority for all areas in Nye County, to include those areas located within the Pahrump regional planning district.
2. **Penalties:** Any person violating any provision of this chapter is guilty of a misdemeanor and is subject to a fine of not less than five hundred dollars (\$500.00) and not more than one thousand dollars (\$1,000.00) and/or imprisonment in the county jail for a period not to exceed six (6) months. Any act that is prohibited, or the result from the failure to perform required acts, shall constitute a violation of this chapter. Any person is guilty of a separate offense for each and every day during any portion of which any violation of this chapter is committed or continued.
3. **Abatement Proceedings:** In addition to any penalties that may be imposed, any use of property, or the establishment of any building, structure or use contrary to the provisions of this chapter or in violation of any condition attached to the granting of a special use permit, the county may commence proceedings for the abatement in accordance with this code or state law, or may pursue other remedies as provided by law.
4. **Revocation Of Special Use Permit:** Failure to abide by and faithfully comply with the provisions of this chapter with respect to use, development standards, or maintenance requirements, with any other requirement of this code, with any applicable requirement of the Nevada Revised Statutes or Nevada administrative code, or with any and all conditions attached to the granting of any land use application hereunder is unlawful and a public nuisance, and shall constitute grounds for the revocation of the same, or any permit or license issued in conjunction with the application.
 - a. Upon discovery of such a violation, the county may commence proceedings for the revocation thereof in accordance with applicable provisions of this code or may pursue other remedies as provided by law. If the board determines that there is sufficient cause to revoke the application or permit, a public hearing shall be scheduled before the board, at which time the property owner or other interested party may show cause as to why the permit should or should not be revoked. If the board revokes the permit, it shall specify for the record the reasons for its action.
 - b. The revocation of a business license, or the revocation of permits, which are no longer appealable, to conduct a use or the failure to obtain or maintain a valid certificate of registration issued by the state of Nevada shall cause any special use permit to become invalid without the hearing specified in subsection A4a of this section.
5. **Term Of Special Use Permit:** Any special use permit issued herein shall remain in effect provided the marijuana establishment is in compliance with all conditions of the special use permit and the establishment continues to maintain a valid Nye County marijuana license. Failure to maintain a valid marijuana license for the premises shall cause any special use permit issued herein to become void and invalid.
6. **Nontransferability Of Special Use Permit:** Any special use permit approved by the board shall be specific to the marijuana establishment business owner as specified on the permit. Any change in ownership in the marijuana establishment shall require the submission of an application by the new owner(s) prior to the transfer of ownership. The board shall consider if the change in ownership materially affects the suitability of the operations considered upon issuance of the special use permit to the previous business owner. The issuance of a special use permit to a new

business owner shall be valid until the expiration of the term of the special use permit issued to the previous business owner, which shall be required to be renewed as set forth herein.

7. Cumulative Remedies: All remedies provided herein shall be cumulative and not exclusive.

B. Application Process:

1. Form: Applications for a special use permit shall be submitted to the Nye County planning director ("director") on a form or format as specified by the director. In addition to any other information as may be required by the director, each applicant must submit the following:
 - a. If the application is submitted by an agent for the property owner, the application must include a signed affidavit from the owner that the owner knows that the proposed use of the property is for a marijuana establishment;
 - b. A site plan showing the location of any existing or proposed buildings or structures, vehicular access, parking areas, landscaping, and demonstrating how the proposed facility meets all security requirements;
 - c. A statement that the proposed site is not within one thousand feet (1,000') of a public or private school, and is not within three hundred feet (300') of any other community facility;
 - d. A business plan, including a formal statement of business goals, the reasons the goals are believed attainable, the plan for reaching those goals, and background information about the organization or team attempting to reach those goals; and
 - e. Any other documents the applicant desires to be considered by the board in consideration of the conditions of approval as set forth herein.
2. Public Hearing Notice Requirements: Upon the filing of a complete application for a special use permit, the planning director shall give notice setting forth the time, place and purpose of such hearing. Notice of such hearing must be mailed at least ten (10) calendar days prior to the hearing to:
 - a. The applicant;
 - b. Each owner of real property, as listed on the county assessor's records, located within three hundred feet (300') of the property in question;
 - c. The owner, as listed on the county assessor's records, of each of the thirty (30) separately owned parcels nearest the property in question, to the extent this notice does not duplicate the notice given pursuant to subsection B2b of this section;
 - d. Any advisory board which has been established for the affected area by the governing body;
 - e. If a military installation is located within three thousand feet (3,000') of the property in question, the commander of that military installation;
 - f. If an Indian reservation is located within three thousand feet (3,000') of the property in question, the chief and council of the Indian reservation and the United States department of the interior bureau of indian affairs (BIA); and

g. The Nye County sheriff, EMS, and fire department.

3. **For Dispensaries Only: Competitive Consideration Of Applications:** All applications for issuance of special use permits for marijuana dispensary establishments shall be considered on a competitive basis at a single public hearing to be held by the board. All applications must be submitted by June 20, 2014, and by May 30 of each calendar year thereafter, unless the Board chooses an alternate schedule, if any applicant wishes to obtain a special use permit for any available permits that may become available as determined by the state of Nevada as set forth in chapter 453A of the Nevada Revised Statutes. The public hearing shall be scheduled no sooner than the second scheduled meeting of the board in the month of June but not later than forty five (45) days after the closing of applications as is determined in the discretion of the board.
- C. **Standards For Approval:** The board shall determine which application submits a plan and proposal that meets the needs of the residents of Nye County. The following criteria shall be evaluated by the board:
 1. Sufficiency and viability of the financial plan showing the resources of the applicant and proof the applicant has adequate funds to support the business plan as presented.
 2. Sufficiency and viability of an electronic verification system, inventory control system, adequate building security and fire protection measures.
 3. Adequacy of a conceptual transportation plan that addresses product security during the transport of marijuana from seed to sale.
 4. Capability to provide safe and secure packaging of marijuana products that would assist in reducing the exposure of children to the dangers of marijuana.
 5. Whether the design of the marijuana establishment maintains a professional appearance and is compatible with existing uses or future uses in the proposed area of development.
 6. Whether crime or other factors in the area of a proposed marijuana establishment pose an undue threat to the security of the proposed establishment, its product, employees or prospective patrons and the proposed mitigating strategy incorporated into the physical or other security plan to deter or negate that threat.
 7. Whether dispensaries will provide convenient access to those authorized to use marijuana to a sufficient distribution of marijuana.
- D. **Mandatory Conditions Of Approval:** The board may impose conditions of approval that are more restrictive than those required by this section in the sole discretion of the board. The approval of any special use permit authorizing the operation of a marijuana establishment must contain at a minimum the following conditions:
 1. **Certificate Required Prior To Commencing Operations:** The special use permit grantee must provide to the director a copy of the registration certificate issued by the state of Nevada prior to commencing operations.
 2. **Must Meet State Law Requirements:** The establishment must continue to meet all requirements for a marijuana establishment to qualify for and maintain its certificate of registration as set forth by state law.

3. **Must Comply With Operating Procedures:** The establishment must comply with all operating procedures required by state law.
4. **Prohibit Consumption Of Marijuana:** The establishment must prohibit anyone from consuming marijuana on the premises.
5. **Signage:** For production and cultivation establishments: If the establishment has on site signage, the signage shall be limited to one wall sign not to exceed two (2) square feet in size. On site signs for dispensaries shall not exceed twenty five (25) square feet in size. All signage must obtain approval from the state.
6. **Age Restrictions:** The establishment must prohibit anyone under the age of eighteen (18) years on the premises.
7. **Prohibit Certain Activities:** The establishment must prohibit marijuana activities including, without limitation, cultivating, growing, processing, displaying, selling or storage from being conducted outdoors.
8. **Enclosed Facilities:** All cultivation or production of marijuana that a cultivation facility carries out or causes to be carried out must take place in an enclosed facility.
9. **Display Of Marijuana:** The establishment must prevent marijuana or paraphernalia from being displayed or kept in a manner that is visible from outside the facility.
10. **Security Systems:** The establishment must install security surveillance cameras that monitor all entrances, along with the interior and exterior of the premises. Recordings from these cameras must be maintained in a retrievable manner for at least sixty (60) days from the date recorded. Surveillance systems shall include a lighting system. The system must be available to the Nye County sheriff's office for real time surveillance and response.
11. **Burglary Alarm Systems:** The establishment must install and maintain in good working condition robbery and burglary alarm systems.
12. **Ventilation Systems:** The establishment must install a properly designed, sized, and maintained ventilation and air quality control system appropriate for the square footage of the facility and number of plants to control air quality and odor from the establishment.
13. **Interior Signage:** The establishment must post a legible sign inside the facility stating that:
 - a. The use or distribution of marijuana is a violation of federal law.
 - b. The possession, use, or distribution of marijuana must be in accordance with state law and local regulations.
 - c. Consumption of marijuana on the premises is prohibited.
 - d. No one under the age of eighteen (18) years is permitted on the premises.
14. **Affidavit Acknowledging Violation Of Law:** The special use permit grantee shall record a notarized affidavit in which the grantee acknowledges that the operation of a marijuana establishment is a violation of federal law.

15. **Statement Holding County Harmless:** The special use permit grantee shall record a notarized statement in which the grantee agrees to hold Nye County harmless against any federal law enforcement actions that may result from the activities of the marijuana establishment that is the subject of the special use permit.
16. **Water Impact Plan:** The special use permit grantee shall submit a water impact plan showing the proposed water use and wastewater disposal methods for review and comment by the Nye County water district governing board, for consideration by the board of county commissioners, prior to issuance of the initial marijuana license; and grantee shall submit an annual report to the water district governing board for review and comment. A written summary of the water district governing board comments shall be provided to the board of county commissioners for consideration prior to approval of any annual license renewal.
17. **Security And Transportation Plan:** The special use permit grantee shall submit a security and transportation plan compliant with Nevada Revised Statutes 453A and the Nye County security checklist detailing the proposed security for the site, buildings, and transportation vehicles, including proposed security cameras, fencing, building access and security policies and procedures for review and comment by the Nye County sheriff, for consideration by the board of county commissioners, prior to issuance of the initial marijuana license; and grantee shall provide annually a written security report to the board of county commissioners for consideration prior to approval of any annual license renewal.
18. **Waste Disposal:**
 - a. The proposed method and procedures of marijuana waste disposal shall be described in the security and transportation plan.
 - b. A description and process for separation, storage and disposal of product lots which do not meet the requirements for marijuana (i.e., failed test product) must be developed, monitored and approved. The location of the area where the failed test products will be stored, such as quarantine rooms, shall be specified in the security plan.
- E. **Marijuana Establishment Location Restrictions:** All facilities for marijuana establishments must be located a distance of at least one thousand feet (1,000') from any property line of a parcel that has an established public or private school, and shall not be located within three hundred feet (300') of any property line of a parcel that has any other established community facility at the time of issuance of the special use permit.
- F. **Security And Screening Standards For The Cultivation Of Marijuana:**
 1. The requirements in Nevada Revised Statutes 453A are hereby adopted by reference.
 2. Marijuana may only be cultivated in an indoor area equipped with locks or other security devices that permit access only by those authorized by state law to cultivate marijuana.
 3. Marijuana is not allowed to be cultivated in a location or manner that is visible from any area normally accessible to the general public or from any point off the parcel.
 4. All requirements, standards and conditions for the cultivation of marijuana in state statute and regulations must be met at all times.

G. Extensions Of Time: Any grantee of a special use permit may request an extension of time by submitting the required application form and processing fee to the planning department prior to the expiration date. All applications for an extension of time shall be processed as a public hearing and all decisions shall be made by the board of county commissioners. (Ord. 502, 2016)

SEVERABILITY. If any provision of this ordinance or amendments thereto, or the application to any person, thing or circumstance is held to be invalid, such invalidity shall not affect the validity or provisions or applications of the ordinance or amendments thereto which can be given effect without the invalid provisions or applications, and to this end the provisions of this ordinance and amendments thereto are declared to be severable.

CONSTITUTIONALITY. If any section, clause or phrase of this ordinance shall be declared unconstitutional by a court of competent jurisdiction, the remaining provisions of this ordinance shall continue in full force and effect.

EFFECTIVE DATE. This Ordinance shall be in full force and effect from and after passage, approval, and publication as required by law, to wit, from and after the 13th day of March, 2017.

Proposed on the 17th day of January, 2017

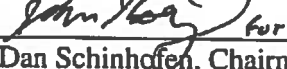
Proposed by: Commissioner Wichman.

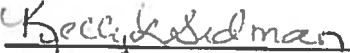
Adopted on the 21st day of February, 2017

Vote: Ayes: Commissioners: Schinhofen, Wichman, Cox, Koenig

Nays: Commissioners: Borasky

Absent: Commissioners: Ø

BY: 
Dan Schinhofen, Chairman
Nye County Board of
County Commissioners

ATTEST: 
Sandra L. Merlino
Clerk and Ex-Officio
Clerk of the Board