

BILL NO. 2017-12

NYE COUNTY ORDINANCE NO. 519

SUMMARY: An Ordinance amending Nye County Code Chapter 5.32 pertaining to Licensing of Marijuana and Medical 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 5.32 PERTAINING TO LICENSING OF MARIJUANA AND MEDICAL 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 of marijuana and medical 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 5.32
MARIJUANA AND MEDICAL MARIJUANA ESTABLISHMENTS**

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5.32.000: MARIJUANA AND MEDICAL MARIJUANA LICENSING:

- A. Any license required by this chapter is a separate and distinct license from all other county licenses, and is in addition to any other license required for conducting or carrying on any other business in connection with or separate from the activities licensed by this chapter.
- B. It is unlawful within the county, outside an incorporated city, for a marijuana establishment or medical marijuana establishment to acquire, possess, cultivate, manufacture, process, package, deliver, transfer, transport, supply, dispense or sell marijuana for any purpose without first making application and securing a marijuana license or medical marijuana license to do so. (Ord. 502, 2016)

5.32.005: DEFINITIONS:

For the purposes of this chapter, the following words shall have the meanings set out in this section, unless the context otherwise clearly indicates:

AGENT: A person authorized by the applicant or licensee to act and speak for him or her.

BOARD: The Nye County board of county commissioners.

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

DUAL LICENSEE: Means a person or group of persons who possess a current, valid registration certificate issued by the State of Nevada Division of Public & Behavioral Health to operate a medical marijuana establishment pursuant to chapter 453A of NRS and a license issued by the Department of Taxation to operate a marijuana establishment under chapter 453D of NRS.

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 by Nevada Revised Statutes 453.096.

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.

MARIJUANA DISTRIBUTOR: Means an entity licensed to transport marijuana from a marijuana establishment to another marijuana establishment.

MARIJUANA ESTABLISHMENT: Means a marijuana cultivation facility, a marijuana testing facility, a marijuana product manufacturing facility, a marijuana distributor, or a retail marijuana store. This term may also be referred to and known as a “RECREATIONAL MARIJUANA ESTABLISHMENT.”

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.

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.

MARIJUANA TESTING FACILITY: Means an entity licensed to test marijuana and marijuana products, including for potency and contaminants.

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

MEDICAL MARIJUANA COOPERATIVE: An association of persons who voluntarily cooperate to cultivate or distribute medical marijuana to its members, including any nonprofit community organization or collective owned and managed by the people who use its services to facilitate or coordinate transactions between members.

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

MEDICAL MARIJUANA ESTABLISHMENT: Has the meaning ascribed to it by Nevada Revised Statutes 453A.116.

MEDICAL USE OF MARIJUANA: Has the meaning ascribed to it in Nevada Revised Statutes 453A.120.

PHYSICIAN: Has the meaning ascribed to it in Nevada Revised Statutes 0.040. (Ord. 502, 2016)

RECREATIONAL MARIJUANA ESTABLISHMENT: See “MARIJUANA ESTABLISHMENT.”

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.

5.32.010: APPLICATION:

A. Application for a license provided by this chapter shall be made to the board of county commissioners in writing, on the forms provided by the Nye County planning department.

B. Each application shall:

1. Be filed with the planning department;
2. Be accompanied by the present annual license fee;
3. Include the name and address of the applicant, and of any other person having an interest in the business to be licensed. If the applicant is a partnership, the application shall include the names and addresses of all partners and any other person(s) having a financial interest in the business. If the applicant is a corporation, the application shall include the names and addresses of all officers, directors and stockholders having more than three percent (3%) of the issued stock, the designated agent or resident manager, and the principal place of business of the corporation. If it is a corporation whose stock is sold to the general public, the stockholders need not be listed;
4. Include the name, address and telephone number of all individual(s) who will actively manage the business for which the license is sought. At least one such manager must be on site when business is being conducted;
5. Specify the location of the premises for which the license is sought, and the name of the owner(s), agents, lessee or assignee of the premises where the business is to be operated;
6. Specify which type of marijuana or medical marijuana establishment license is being requested. The board may issue licenses for the following types of establishments:

MARIJUANA ESTABLISHMENTS (Recreational Marijuana Establishments):

- a. Marijuana cultivation facility;
- b. Marijuana testing facility;
- c. Marijuana product manufacturing facility;
- d. Marijuana distributor; or
- e. Retail marijuana store.

MEDICAL MARIJUANA ESTABLISHMENTS:

- a. Medical Marijuana Cultivation facility;
 - b. Medical Marijuana Production facility for edible marijuana products or marijuana infused products;
 - c. Medical Marijuana Dispensary; or
 - d. Medical Marijuana Independent testing laboratory.
7. Include a copy of the special use permit granted by the board of county commissioners for the marijuana or medical marijuana establishment as applicable;

8. Include a copy of the medical marijuana establishment registration certificate, or provisional certificate issued by the state of Nevada division of public and behavioral health, or license issued by the Department of Taxation;
 9. Be signed by all persons who shall conduct or have an interest in the business activities for which a marijuana or medical marijuana license is required. In the case of corporations, clubs or organizations with members, the application shall be verified by the president or secretary or the person who shall actively manage or conduct the business or activity for which a marijuana or medical marijuana license is required;
 10. Include an attestation regarding excluded felony offenses, signed by each owner, officer and board member of the proposed marijuana or medical marijuana establishment affirming that each person has not been convicted of any excluded felony offenses as defined in Nevada Revised Statutes 453A.104, and affirming that each person understands that any falsification, omission or concealment of a material fact may be cause for disqualification from consideration for the proposed marijuana or medical marijuana establishment;
 11. Be sworn to as to the truthfulness of the information contained therein.
- C. There shall be a maximum processing time of thirty (30) working days for any application for a marijuana or medical marijuana license from the date of a complete application submittal.
 - D. In the case of a corporate licensee, any and all changes in the officers, directors or stockholders, or stockholders owning in the aggregate more than three percent (3%) of the stock of such corporation, shall be reported to the planning department within thirty (30) days of the appointment or election of such officers and directors, or acquisition by such stockholder(s), as the case may be, and such officers, directors and stockholder(s) shall be required to qualify for a license as required in this chapter. A list of all shareholders shall be submitted to Nye County on an annual basis.
 - E. In the case of a partnership licensee, the partnership contract must be submitted with the application. Any change in the partners or other persons with a financial interest in the business shall be reported to the planning department within fourteen (14) working days of the change, and if the change involves the addition of a person not previously investigated, that person shall be required to qualify for a license as required by this chapter.
 - F. A financial compilation shall be submitted annually to Nye County along with a list of any persons receiving more than three percent (3%) of the disbursements from the entity.
 - G. An approved marijuana or medical marijuana license shall expire and become void one calendar year following the date of issuance of the license by the board of county commissioners unless revoked or renewed in accordance with the provisions described in this chapter. (Ord. 502, 2016)
 - H. One-Time Exemption for Marijuana (Recreational) Establishment License applicants: In order to support the State of Nevada's fast-start marijuana establishment program, any applicant who submits an application and applicable fees to the Nye County Planning Department for an initial Nye County marijuana (recreational) license between May 25, 2017 and May 31, 2017 shall be deemed approved by the Board of County Commissioners for the license. In order to qualify for the exemption, applicants must have an operational medical marijuana establishment in good

standing with the State of Nevada and Nye County, and the application for the marijuana (recreational) license must be for the same physical location as the medical marijuana establishment. After May 31, 2017, all applications for Nye County marijuana (recreational) licenses shall be processed in the manner and subject to the provisions of this chapter.

5.32.020: DENIAL CONDITIONS:

- A. In conformity with the policies of this chapter, the following persons are declared not to be qualified to hold a marijuana or medical marijuana establishment license under the provisions of this chapter:
1. A person who does not possess, or who does not have a reputation for possessing a good moral character;
 2. A person under the age of twenty-one (21) years;
 3. A person who has ever been convicted of a felony involving a crime of a sexual nature involving children or a heinous crime; has made any intentional false statement or omission in the registration form or any crime involving unlawful possession, use or sale of a controlled substance, sexual abuse or assault, violence, or who has been convicted within the past ten (10) years of any other felony, unless the board finds, upon examination of the circumstances of the crime and the applicant's criminal history, that the applicant does not present, and is not likely to present in the future, a threat to county safety, morals and welfare, and will likely operate a lawful marijuana or medical marijuana establishment in compliance with the letter and intent of all county ordinances;
 4. A person who the board determines is not a suitable person to receive or hold a license, after due consideration for the protection of the public health, safety, morals, good order and general welfare of the inhabitants of the county, outside an incorporated city; has ever been convicted of a felony involving a crime of a sexual nature involving children or a heinous crime; has made any intentional false statement or omission in the registration form;
 5. A person whose license issued under this chapter has been revoked for cause;
 6. A person who, at the time of application for renewal of any license issued under this chapter, would not be eligible for such license upon a first application;
 7. A copartnership, unless all of the members of such copartnership, and any other person having a financial interest in the business, are qualified to obtain a license;
 8. A publicly held corporation, if the designated agent or resident manager would not be eligible to receive a license under this chapter; and a nonpublicly held corporation, if any of its officers would not be eligible to receive a license under this chapter, for any reason other than citizenship and residence or its designated resident manager would not be eligible to receive a license under this chapter;
 9. A corporation, unless it is incorporated in the state, or unless it is a foreign corporation which is qualified under the state laws to transact business in the state;

10. A person whose place of business is conducted by a manager or agent, unless the manager or agent possesses the same qualifications required of an individual licensee;
11. A person who does not beneficially own the premises for which a license is sought, or who does not have a lease thereof for the full period for which the license is to be used; the manager or his/her agent must be on site when business is being conducted;
12. A person who, in the previous year, has failed to comply with any applicable local ordinance, including, but not limited to, a town or city's business license ordinance; or
13. A person who has not obtained a special use permit, if required, for the operation of a marijuana or medical marijuana establishment or has had a special use permit or state license revoked. (Ord. 502, 2016)

5.32.030: BOARD DETERMINATION PROCEDURE:

- A. After submittal of the application, the planning director shall cause the application to be placed upon the agenda for consideration by the board.
- B. The applicant or applicants or their agent(s) shall appear before the board at the appointed time.
- C. The board may act upon the application or defer action until the next meeting of the board. (Ord. 502, 2016)

5.32.040: BOARD DETERMINATION; DENIAL:

- A. In conformity with the policy of this chapter, the following persons are declared not to be qualified to hold a license under the provisions of this chapter:
 1. A person who is under the age of twenty-one (21) years;
 2. A person who has been convicted within the past ten (10) years of:
 - a. A felony crime involving the sale of or furnishing or possession of with intent to sell or to furnish any narcotic, hallucinogenic or dangerous drug, or conspiracy to so sell, furnish or possess;
 - b. A felony or gross misdemeanor crime involving the use of any deadly or dangerous weapon;
 - c. A felony or gross misdemeanor crime involving theft, embezzlement or misappropriation of funds, or possession of stolen property;
 - d. A felony crime involving perjury, bribery or fraud;
 - e. A felony crime involving assault, battery, sexual assault, stalking or harassment, or other physical violence;

3. A person who is presently on probation for any of the crimes listed in subsection A2 of this section; or
 4. A person who, at the time of application for renewal of a marijuana or medical marijuana establishment agent card would not be eligible for the license upon a first application.
 5. For any other good and sufficient reason.
- B. An applicant otherwise barred by the provisions of subsection A of this section may be found suitable, if on review of the denial of a license, the board finds upon examination of the circumstances of the crime or the revocation, as the case may be, and upon examination of the applicant's criminal history, that the applicant does not present, and is not likely to present in the future, a threat to public safety, morals and welfare, and will likely abide by all applicable regulations.
- C. The board of county commissioners will consider the recommendations and input from the particular town advisory board, sheriff, water district governing board, or other applicable advisory board or committee. (Ord. 502, 2016)

5.32.050: MEDICAL MARIJUANA LICENSE FEES:

- A. The license fees required to be paid to obtain or renew a medical marijuana establishment license shall be as follows:
1. Fifteen thousand dollars (\$15,000.00) for initial issuance and a seven thousand five hundred dollar (\$7,500.00) annual renewal fee for a medical marijuana dispensary establishment with five thousand dollars (\$5,000.00) nonrefundable for the initial application and two thousand five hundred dollars (\$2,500.00) nonrefundable each year thereafter.
 2. Five thousand dollars (\$5,000.00) for initial issuance and a two thousand five hundred dollar (\$2,500.00) annual renewal fee for a medical marijuana cultivation establishment with two thousand dollars (\$2,000.00) nonrefundable for the initial application and one thousand dollars (\$1,000.00) nonrefundable each year thereafter.
 3. Five thousand dollars (\$5,000.00) for initial issuance and a two thousand five hundred dollar (\$2,500.00) annual renewal fee for a medical marijuana production facility with two thousand dollars (\$2,000.00) nonrefundable for the initial application and one thousand dollars (\$1,000.00) nonrefundable each year thereafter.
 4. Two thousand five hundred dollars (\$2,500.00) for initial issuance and a one thousand two hundred fifty dollar (\$1,250.00) annual renewal fee for a medical marijuana independent testing laboratory with one thousand two hundred fifty dollars (\$1,250.00) nonrefundable for the initial application and seven hundred fifty dollars (\$750.00) nonrefundable each year thereafter.
- B. The license fees specified in subsection A of this section shall be payable in advance for at least one year. Failure to pay the medical marijuana license fee within ten (10) working days of the due date shall result in the mandatory assessment of a late fee of twenty five percent (25%) of the annual fee within thirty (30) days of the due date, or shall be grounds for revocation of the license.

- C. In addition to the fees specified in subsection A of this section, every medical marijuana establishment, as a condition of the granting of a medical marijuana establishment license or renewal, shall pay no later than ten (10) working days following the first day of each month, a monthly business license fee to Nye County, equivalent to two percent (2%) of the total value of all medical marijuana or medical marijuana products that were produced, manufactured, sold or distributed by the medical marijuana establishment for the previous month. (Ord. 502, 2016)

5.32.055: MARIJUANA LICENSE FEES (RECREATIONAL MARIJUANA ESTABLISHMENTS):

- A. The license fees required to be paid to obtain or renew a marijuana establishment license (recreational marijuana) shall be as follows:
1. Fifteen thousand dollars (\$15,000.00) for initial issuance and a seven thousand five hundred dollar (\$7,500.00) annual renewal fee for a retail marijuana store, with five thousand dollars (\$5,000.00) nonrefundable for the initial application and two thousand five hundred dollars (\$2,500.00) nonrefundable each year thereafter.
 2. Five thousand dollars (\$5,000.00) for initial issuance and a two thousand five hundred dollar (\$2,500.00) annual renewal fee for a marijuana cultivation facility, with two thousand dollars (\$2,000.00) nonrefundable for the initial application and one thousand dollars (\$1,000.00) nonrefundable each year thereafter.
 3. Five thousand dollars (\$5,000.00) for initial issuance and a two thousand five hundred dollar (\$2,500.00) annual renewal fee for a marijuana product manufacturing facility, with two thousand dollars (\$2,000.00) nonrefundable for the initial application and one thousand dollars (\$1,000.00) nonrefundable each year thereafter.
 4. Two thousand five hundred dollars (\$2,500.00) for initial issuance and a one thousand two hundred fifty dollar (\$1,250.00) annual renewal fee for a marijuana testing laboratory, with one thousand two hundred fifty dollars (\$1,250.00) nonrefundable for the initial application and seven hundred fifty dollars (\$750.00) nonrefundable each year thereafter.
 5. Two thousand five hundred dollars (\$2,500.00) for initial issuance and a one thousand two hundred fifty dollar (\$1,250.00) annual renewal fee for a marijuana distributor, with one thousand two hundred fifty dollars (\$1,250.00) nonrefundable for the initial application and seven hundred fifty dollars (\$750.00) nonrefundable each year thereafter. This fee is waived if the applicant for the marijuana distributor license possesses a valid Nye County license for a Marijuana or Medical Marijuana Establishment or a Nye County wholesale delivery liquor license.
- B. The license fees specified in subsection A of this section shall be payable in advance for at least one year. Failure to pay the marijuana license fee within ten (10) working days of the due date shall result in the mandatory assessment of a late fee of twenty five percent (25%) of the annual fee within thirty (30) days of the due date, or shall be grounds for revocation of the license.
- C. In addition to the fees specified in subsection A of this section, every marijuana establishment, as a condition of the granting of a marijuana establishment license or renewal, shall pay no later than ten (10) working days following the first day of each month, a monthly business license fee to Nye

County, equivalent to two percent (2%) of the total value of all marijuana or marijuana products that were produced, manufactured, sold or distributed by the marijuana establishment for the previous month.

5.32.060: FEES; DISBURSEMENT:

The two percent (2%) monthly business license fees collected by virtue of this chapter shall be delivered by the licensee or authorized agent to the county treasurer, and shall be kept by the treasurer in the general fund for the sole use and benefit of the county, and shall be paid out by order of and under the direction of the board of county commissioners in the same manner as other general fund disbursements are made. The county treasurer shall transmit a copy of the payment receipt along with a copy of each return form for each payment to the planning department and Nye County sheriff's office on a monthly basis. (Ord. 502, 2016)

5.32.070: PUBLIC DISPLAY REQUIRED:

During all of the period of time for which a license has been issued authorizing the operation of a marijuana or medical marijuana establishment, the license shall be posted and at all times displayed in a conspicuous place in the facility where such business is carried on so that all persons visiting such place may readily see and read the same. (Ord. 502, 2016)

5.32.080: RENEWAL PROCEDURE:

- A. Application for renewal of licenses shall be made by petition to the planning department by filing the same with the planning department, together with all fees. Applications for renewal shall be made at least ten (10) working days before the annual license expiration date. County staff shall work with applicants to pro-rate annual license fees in order to achieve a common annual renewal date for all licenses of July 1st of each year.
- B. A financial compilation shall be provided with all renewal applications.
- C. Notwithstanding any other provisions of this chapter, the procedures set forth in this chapter for the initial application and issuance of marijuana or medical marijuana licenses shall not apply to the renewal of licenses previously issued to the same applicant. With respect to such renewal of licenses, the planning department shall cause the reissuance or cancellation of such license renewals in the manner following:
 - 1. Upon receipt of a completed request for renewal of a license along with the applicable renewal fees, the planning director or his designee shall schedule the renewal request for the next available board meeting, and present his recommendations for or against the renewal of each such license. No existing license required under this chapter shall lapse or be revoked when presentation to the board of the request for renewal is delayed solely due to administrative reasons.
 - 2. Any licensee whose license renewal has been disapproved by the board shall be notified of such in writing, in the manner provided in this chapter. The licensee may avail himself of the procedures set forth in this chapter.
 - 3. Renewal of licenses under this chapter must be for a minimum of one calendar year.

4. Notwithstanding any other provision of this chapter, no existing license required under this chapter shall lapse or be revoked when renewal is delayed solely due to the notice and agenda requirements of Nevada's open meetings law, or due to administrative delay. (Ord. 502, 2016)

5.32.090: PROHIBITED ACTS:

It is unlawful for any licensed operation, licensee or employee, agent and/or contractor of any licensee to:

- A. Acquire, possess, deliver, transfer, transport, supply, sell, or dispense any marijuana to any person, unless in compliance with all requirements of this Chapter and state law.
- B. Acquire, possess, deliver, transfer, transport, supply, sell, or dispense any marijuana to or from any person or source located outside the state of Nevada.
- C. Do any act that violates any licensing requirement established pursuant to chapter 453A or 453D of the Nevada Revised Statutes.
- D. Fail to comply with all requirements of the conditions of the special use permit. (Ord. 502, 2016)

5.32.100: PENALTY FOR VIOLATION:

- A. Persons found guilty of violating any of the provisions of this chapter are guilty of a misdemeanor and subject to a fine of not less than five hundred dollars (\$500.00) nor more than one thousand dollars (\$1,000.00), or by imprisonment in the county jail for not more than six (6) months, or by both such fine and imprisonment. Nothing herein contained shall be construed as limiting any prosecution for acts related to a violation of the uniform controlled substances act as set forth in chapter 453 of the Nevada Revised Statutes.
- B. In addition to any criminal punishment as may be imposed, any violation of this chapter may result in the revocation of any license issued pursuant to this chapter and result in the forfeiture of any and all property as described in Nevada Revised Statutes 453.301. The civil penalties provided for hereunder are intended to be cumulative and in addition to any criminal fines or punishments imposed. (Ord. 502, 2016)

5.32.110: TRANSFERABILITY:

Licenses shall not be in any manner transferable or assignable, nor shall any person other than as named in the license be authorized to conduct the business, unless such transfer is approved by the State of Nevada and Nye County Board of 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 25th day of May, 2017.

Proposed on the 16th day of May, 2017

Proposed by: Commissioner Koenig.

Adopted on the 16th day of May, 2017.

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

Nays: Commissioner: 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