

NYE COUNTY ORDINANCE NO. 576

SUMMARY: An Ordinance amending Nye County Code Chapter 17.06 titled “Marijuana Establishments; Zoning Requirements,” by amending Section 17.06.020, titled Definitions, and amending Section 17.06.040, titled Requirement to Obtain a Special Use Permit, to include a requirement to obtain a written letter in support of, or in opposition to, the marijuana establishment by the elected or advisory Town Board prior to submittal of a Special Use Permit application.

TITLE: AN ORDINANCE AMENDING NYE COUNTY CODE CHAPTER 17.06 TITLED “MARIJUANA ESTABLISHMENTS; ZONING REQUIREMENTS,” BY AMENDING SECTION 17.06.020, TITLED DEFINITIONS, AND AMENDING SECTION 17.06.040, TITLED REQUIREMENT TO OBTAIN A SPECIAL USE PERMIT, TO INCLUDE A REQUIREMENT TO OBTAIN A WRITTEN LETTER IN SUPPORT OF, OR IN OPPOSITION TO, THE MARIJUANA ESTABLISHMENT BY THE ELECTED OR ADVISORY TOWN BOARD PRIOR TO SUBMITTAL OF A SPECIAL USE PERMIT APPLICATION, 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 Nye County Code Chapter 17.06, the Board has established the process for applying for Special Use Permits for marijuana establishments; and

WHEREAS, the Board desires to amend the application process to require applicants to obtain the review and input from elected and advisory Town Boards on applications for marijuana establishments;

NOW, THEREFORE, pursuant to NRS 244.110, the Board of County Commissioners of the County of Nye, State of Nevada, does ordain:

Chapter 17.06
Marijuana Establishments; Zoning Requirements

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 Nevada Revised Statutes chapters 453A and 453D and Nevada Administrative Code 453A of Nevada state law for all areas within Nye County, including those areas within the Pahrump regional planning district.

B. In regard to existing approvals for medical marijuana establishments, any establishment approved by the board as a medical marijuana establishment prior to July 1, 2017 hereof is hereby deemed to be approved as a marijuana establishment, provided that the medical marijuana establishment's special use permit was in good standing on July 1, 2017, and subject to the scope, terms and conditions of the original special use permit. The original special use permit shall be amended administratively.

C. The special use permit provides conditional approval for a location and conceptual plan of development for a marijuana establishment. This does not provide any vested right or guarantee that a marijuana establishment will be approved by the State of Nevada or that a privileged marijuana license(s) will be granted by the Nye County Commission under NCC Chapter 5. (Ord. 549, 2019: Ord. 511, 2017)

17.06.020: DEFINITIONS:

The words and phrases used in this chapter shall have the meanings as follows or as defined in NRS 453D.030 or 453A.010 to 453A.170:

BOARD: The board of County Commissioners of the County of Nye, State of Nevada.

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. (Ord. 549, 2019: Ord. 511, 2017)

TOWN: The area within the territorial limits of any unincorporated town within the county.

TOWN BOARD: An advisory or elected town board form of government for the purpose of governing such town in accordance with the powers specified in NRS 269.

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. 549, 2019: Ord. 511, 2017)

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 only for a period of one (1) year from the date of issuance unless the applicant receives a license to operate a marijuana facility from Nye County. If the applicant receives a license to operate a marijuana facility, then the special use permit will 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. The special use permit granted herein is restricted to the building and process as described in the application and approved under site development review described under NCC 17.04.950, any expansion or modifications will require an amendment to the SUP. Failure to maintain a valid marijuana license for the premises shall cause any special use permit issued herein to become void and invalid.

6. **Transferability 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 that is approved by the board through the process as defined in § 5.32 will deem that special use permit to be administratively transferrable to the new marijuana establishment business owner that was approved. The special use permit will be valid for

the same terms as the original special use permit and shall be subject to the same use at the same location. An application for a special use permit shall be made by the new marijuana establishment license holder within forty-five (45) days after the license is approved by the board. Failure to submit the application within the forty-five (45) day timeline will trigger a show-cause hearing.

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 with scale drawing or aerial photo 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. For establishments proposed to be located within the boundaries of the Town of Amargosa Valley, Town of Beatty, or Town of Tonopah: Prior to submittal of an application to the Planning Department, a prospective applicant shall contact the applicable Town Board office and request an agenda item to be placed on the Town Board's agenda and shall make a presentation to the Town Board regarding the proposed marijuana establishment. Any Town Board receiving such request shall not later than forty-five (45) days after receiving such request hear the proposal and provide a written letter to the applicant in support of, or in opposition to, the proposed marijuana establishment. The applicant shall submit a copy of the Town Board's written letter to the Planning Department along with the application for a special use permit.

e. 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

f. 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;

- 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.

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.
- 8. Economic impact and job creation for the surrounding community and Nye County as a whole.
- 9. Any other criteria as identified by the board.

D. Mandatory Conditions Of Approval: The board will adopt standard conditions of approval and minimum security standards for marijuana establishments. The board may impose additional conditions or 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 planning director a copy of the registration certificate issued by the state of Nevada prior to applying for a Nye County medical or recreational license and receive the Nye County license before 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, Nye County Code, or specific requirements of the SUP or license.

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 and Nye County sign ordinances.

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 unless specifically allowed in the permit.

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: Each facility will submit and receive approval for their security plan during the site development approval stage. This security plan will at a minimum require the applicant to 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 thirty (30) 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. Access Control And Burglary Alarm Systems: The establishment must install and maintain in good working condition robbery and burglary alarm systems that are monitored twenty-four (24) hours a day and seven (7) days a week and/or have a security guard on duty at all times consistent with approved security plan.

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 control odors from leaving the establishment. The applicant also acknowledges undesirable pollens from outside sources may exist and it is the responsibility of the establishment to take measures necessary to filter the air intakes to the establishment to prevent contamination at the establishment's expense. The establishment must also hold Nye County harmless should any cross contamination occur within their 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. Security And Transportation Plan: The special use permit grantee shall submit a security and transportation plan as part of Site Development Review compliant with Nevada Revised Statutes 453A, 453D, NAC 453A.

16. Waste Disposal:

a. The proposed method and procedures of marijuana waste disposal shall be described in the security and transportation plan and must conform to the requirements in NRS 453A, NRS 453D and NAC 453A.

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.

17. Closure or Bankruptcy:

a. A plan for the disposal, maintenance or transfer of all plant material, products and usable marijuana due to any of the following conditions:

(1) Closure of the establishment, revocation or nonrenewal of the registration certificate or license issued by the State regulating authority, or revocation or nonrenewal of a license for any reason by any regulating authority; and

(2) The appointment of an administrator, receiver, trustee, or assignee in the event of the receivership, bankruptcy, or assignment for benefit of creditors of any licensee.

b. The plan must include the following elements:

(1) Notification of the County within ten (10) days of any such event set forth above;

(2) The cessation of all sales of marijuana products including wholesale, edible or infused products and dispensary sales until such time as a new certificate or license has been issued by the all necessary regulating authorities and a license has been granted by the County;

(3) An inspection prior to the transfer of any materials to be disposed of or transferred to another licensed medical marijuana establishment or marijuana establishment; and

(4) The plan must be executable within ten (10) days and following notification of the County.

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, NRS 453D and NAC 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 unless an

1. The requirements in Nevada Revised Statutes 453A, NRS 453D and NAC 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 unless an outdoor grow plan is specifically approved for the location. An outdoor grow plan will be approved as part of an SUP and include the specific size and location, setbacks from property lines, fencing, access and special security measures.

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. (Ord. 549, 2019: Ord. 511, 2017)

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 8th day of November, 2021.

Proposed on the 21st day of September 2021.

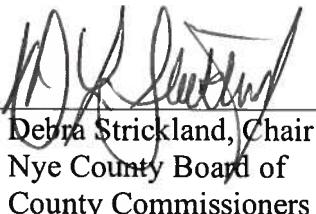
Proposed by: Commissioner Blundo.

Vote: Ayes: Commissioners: Strickland, Carbone, Cox, Jabbour

Nays: Commissioners: Blundo

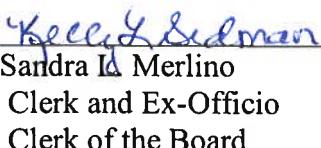
Absent: Commissioners: Ø

BY:



Debra Strickland, Chair
Nye County Board of
County Commissioners

ATTEST:



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