



ORDINANCE No. 2450

OF THE BOARD OF SUPERVISORS OF THE COUNTY OF NEVADA

AN URGENCY ORDINANCE AMENDING SUBSECTION G-IV 5.4.E.3 OF, AND ADDING SUBSECTION G-IV 5.4.O TO ARTICLE 5 OF CHAPTER IV OF THE NEVADA COUNTY GENERAL CODE REGARDING TEMPORARY MEDICAL COMMERCIAL CANNABIS PERMITS (4/5ths AFFIRMATIVE VOTE REQUIRED)

THE BOARD OF SUPERVISORS OF THE COUNTY OF NEVADA, STATE OF CALIFORNIA, ORDAINS AS FOLLOWS:

SECTION I:

The Nevada County Board of Supervisors hereby finds and determines as follows:

1. In January of 2016, the Board of Supervisors passed Ordinance No. 2405 amending this Article, including provisions which banned outdoor cultivation. Also in January of 2016, Resolution 16-038 was passed authorizing the placement of Measure W on the June 2016 ballot. Measure W put amendments made to Article V, Sections G-IV 5.4(C) and (E) to the vote of the people. In February of 2016, the Board of Supervisors passed Resolution 16-082 memorializing the intent of the Board to repeal the ban on outdoor cultivation and to consider and adopt other outdoor regulations if Measure W failed to pass at the next available meeting after the results of the June 7, 2016, election were certified. On November 8, 2016, the voters of the State of California enacted Proposition 64, the Control, Regulate and Tax Adult Use of Marijuana Act ("AUMA"). Proposition 64 legalizes the nonmedical use and personal cultivation of up to six living marijuana plants within, or upon the grounds of, a private residence, by persons 21 years of age and older. Proposition 64 provides that a county may not ban personal indoor cultivation of up to six plants within a person's private residence or certain accessory structures, but may reasonably regulate such indoor grows. The County amended their ordinance to reflect this change in the law of the state. (Ord. 2405, 1/12/16; Ord. 2416, 7/26/16; Ord. 2426, 1/10/17)
2. Effective January 1, 2018, the State of California implemented "emergency regulations" pertaining to Commercial Cannabis Activities in the State of California allowing for those seeking to enter the business to obtain temporary licenses for commercial cannabis activities. In connection with the emergency regulations, the State implemented a temporary license program to allow licensees to engage in Commercial Cannabis Activity prior to the development and implementation of permanent state regulations. The State's temporary license program requires local governments to provide "local authorization" for licensees to engage in Commercial Cannabis Activities.

3. The County of Nevada’s current ordinance does not allow for any Commercial Cannabis Activity, and therefore, local authorization cannot be provided to the State, thereby precluding Nevada County cannabis cultivators from engaging as a state licensee in the commercial cannabis market during the upcoming grow season which extends from approximately March to October. If left unregulated for another growing season, it is likely that Nevada County will continue to encounter increasing numbers of cultivation sites which are located and operated in ways that create the public nuisances this ordinance seeks to avoid.

4. In recent weeks, the growing community has expressed concern about the lack certainty and guidance to those who might choose to cultivate medical marijuana commercially during the upcoming growing season. The Board has expressed its concern and support for a regulated cannabis industry and the urgent need to immediately create a path toward compliance for those who wish to enter the regulated market. Due to recent changes in the State’s regulations and implementation of new licensing programs effective this year, and the need for growers to obtain a local authorization in order to obtain a State permit and enter the regulated market, it is necessary that the County act immediately to enact its own appropriate temporary permitting program. Therefore, due to the impending start of the current marijuana growing season there is an immediate need to provide certainty and guidance to those who choose to cultivate marijuana legally in Nevada County and to address the immediate threat to the health, safety and welfare of Nevada County residents if the cultivation of marijuana remains unregulated.

5. The proposed ordinance is an urgency measure which, if adopted by a 4/5ths vote, will become effective immediately. Government Code section 25123(d) authorizes the Board to adopt an urgency ordinance “for the immediate preservation of the public peace, health, or safety.”

SECTION II:

Subsection G-IV 5.4.E.3 of Article 5 of Chapter IV of the Nevada County General Code is hereby amended to read as follows:

“3. Commercial Cannabis Activity in any amount or quantity on property located within the unincorporated territory of Nevada County is hereby prohibited, except as expressly provided in Subsection G-IV 5.4.O below.”

SECTION III:

Subsection G-IV 5.4.O of Article 5 of Chapter IV of the Nevada County General Code is hereby added to read as follows:

“O. Temporary Medical Commercial Cannabis Permits: Notwithstanding any other provision in this Article, persons 21 years or older may temporarily cultivate/transport Commercial Cannabis for medical purposes in accordance with this Subsection.

1. Temporary Medical Commercial Cannabis Cultivation/Transport permit may be issued by the Community Development Agency Director, or his/her designee (permitting authority), at his/her discretion only if the applicant meets all of the following conditions:
 - a. Activity occurs only on parcels located in AG, AE and FR zones, only as allowed in Section G-IV 5.4(2) and only after issuance of a Temporary Medical Commercial Cannabis Permit as approved by the County of Nevada. For purposes of obtaining a

temporary medical commercial cannabis permit, “mixed-light” grows must comply with all provisions related to Outdoor Cultivation.

- b. Transport by a Cultivator only of their own Marijuana off of their own cultivation site with a permit as approved by the local permitting authority and only as allowed under state law.
 - c. Execution of Indemnification and Right of Entry forms as required by the permitting authority.
 - d. Remain in compliance with all terms and conditions of a Temporary Medical Commercial Cannabis Permit issued in accordance with this Subsection.
 - e. Cultivation under this Subsection shall comply with all other requirements for the Cultivation of Marijuana in this Article.
 - f. Cultivation allowances under this subsection are not in addition to the maximum plant counts/square footage set forth in any other section in this Article.
 - g. The validity of all temporary permits issued under this section are conditioned upon the applicant obtaining the appropriate valid license(s) from the State of California prior to commencement of any Commercial Cannabis Activity and maintaining said license at all times. Proof of a valid state license must be submitted to the permitting authority prior to commencement of any Commercial Cannabis Activity, and must be produced immediately upon the request of the Community Development Agency Director, or his/her designee(s), and/or Enforcing Officer.
 - h. All Commercial Cultivation sites shall be inspected by the Community Development Agency Director, or his/her designee(s) within 30 days of the issuance of a temporary medical commercial cannabis permit and any time subsequently as deemed necessary by the Community Development Agency Director, or his/her designee(s), and/or Enforcing Officer to ensure continued compliance. Failure to allow access upon request by the Community Development Agency Director, or his/her designee(s), and/or Enforcing Officer may result in suspension and/or revocation of the temporary permit and reporting to the state licensing authorities as well as state, local and/or federal law enforcement agencies.
 - i. Applicants must apply for permits to correct existing code violations on the Parcel prior to the issuance of a valid temporary permit and prior to the commencement of any Commercial Cannabis Activity. All existing code violations must be fully corrected within 60 days from the conditional issuance of the permits, or as otherwise directed by the Building Director or his/her designee(s). This provision allowing for 60 days to correct existing code violations does not apply to new construction, to code violations which constitute health and safety violations, or to code violations which relate to the Commercial Cannabis Activity. Health and safety code violations and those violations relating to the Commercial Cannabis Activity must be fully corrected prior to the issuance of a valid temporary permit and prior to the commencement of any Commercial Cannabis Activity.
 - j. Payment of all applicable fees. Fees are non-refundable regardless of whether a temporary permit is ultimately issued.
2. The Community Development Agency Director, or his/her designee(s) may set any and all necessary deadlines associated with applications for temporary permits under this section.
 3. In addition to being subject to all other provisions of this Article, including all provisions relating to enforcement, a permittee’s failure to comply with this Article and this

Subsection may result in reports to the state licensing agencies, local, state and federal law enforcement and prosecuting authorities. Failure to comply with the terms of a temporary permit may result in denial of an application for any permanent permit for Commercial Cannabis Activity for a period of two (2) years and/or denial and/or withdrawal of local authorization.

4. All temporary medical commercial cannabis permits will expire automatically as of June 30, 2019, at which time all Commercial Cannabis Activity conducted pursuant to a temporary medical commercial cannabis permit must cease. Failure to cease such activity immediately upon expiration of the temporary permit will constitute a violation of this ordinance.”
5. Issuance of a temporary permit to engage in Medical Commercial Cannabis Activity does not constitute “local authorization” for purposes of obtaining a permanent state license. The issuance of a temporary medical commercial cannabis permit under this Section does not guarantee, and has no bearing on, whether local authorization will be provided for purposes of obtaining a permanent state license to engage in commercial cannabis activities.
6. Temporary Medical Commercial Cannabis Activity permits and local authorization will only be issued for the equivalent state specialty cottage cultivation and distributor/transport only (self-distribution) licenses and only within the limits of this section.
7. Denial, suspension or revocation of permit: **There is no right to appeal the denial, suspension, or revocation of a temporary permit under this Section.**

The Community Development Agency Director, or his/her designee(s), may deny an application for a temporary medical commercial cannabis permit, or suspend or revoke a temporary permit, for any of the following reasons:

- (a) Discovery of untrue statements submitted on a temporary application.
- (b) Denial, revocation or suspension of any State license required to engage in Commercial Cannabis Activities.
- (c) Previous violation by the applicant, or violation by the permittee, of any provision of the Nevada County Code or State law, including any land use permit conditions associated with the permittee’s business operations.
- (d) Conviction for any cannabis-related felony with enhancements or related to trafficking to minors within the past 10 years and/or reflects that the person is currently on parole or probation related to such a felony conviction. Conviction of a Class A felony, or a felony involving fraud, deceit or embezzlement within the past 10 years and/or reflects that the person is currently on parole or probation related to such a felony conviction.
- (e) Failure to meet any of the general eligibility requirements to obtain a permit as set forth by the Community Development Agency Director, or his/her designee.
- (f) Violation of, or the failure or inability to comply with, any of the restrictions or requirements for the issuance of a permit or conducting business operations as set

forth in this Article, including any administrative rules or regulations promulgated by the Community Development Agency Director, or his/her designee(s), or any conditions associated with the issuance of the permit or any associated land use permit.

- (g) Violation of, or failure to comply with, any land use or other permit requirements associated with the permittee's Commercial Cannabis Activities, including but not limited to zoning, building, and agricultural permits as may be required for the activity and the operations site.
- (h) Violation of, or failure to comply with, any State or local law in conducting business operations, including any laws associated with the MAUCRSA.
- (i) Allowing any person under the age of 21 years of age to enter or work at a Cultivation site.
- (j) Failure to contain all irrigation run-off, fertilizer, pesticides, solid waste, and contaminants on-site.
- (k) Failure to allow unannounced or scheduled inspections of the premises and business operations by, or failure to provide business logs and/or records related to the business, to the Community Development Agency Director, or his/her designee(s), Building Official, Fire Marshal, or Enforcing Officer at any time, without notice.
- (l) Failure to timely pay any local, State, or federal taxes associated with or required by the permittee's cannabis business activities, including any taxes required to be paid under the Nevada County Code, as may be amended.
- (m) Creation or maintenance of a public nuisance.
- (n) Conviction of a criminal offense subsequent to the issuance of a temporary medical commercial cannabis permit that would justify denial of a license.
- (o) Failure to post and maintain at the Cultivation site, in a prominent location a copy of the local permit issued pursuant to this section and a copy of any State license(s) required for the activity.
- (p) Intentional or negligent diversion of cannabis to persons under 21 years of age, or failure to secure and safeguard cannabis from minors.
- (q) Must not have any active code cases involving the property on which Commercial Cannabis Activities will occur.

SECTION IV:

The County finds that this Ordinance is not subject to the California Environmental Quality Act (CEQA) pursuant to Sections 15060(c)(2) (the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment) and 15061(b)(3) (there is no possibility the activity in question may have a significant effect on the environment). In addition to the foregoing general exemptions, the following categorical exemptions apply: Sections 15301 (permitting,

leasing and minor alterations to existing facilities), 15303 (construction and location of new, small structures), 15304 (minor alterations to land), 15307 (actions taken as authorized by local ordinance to assure protection of natural resources), 15308 (actions taken as authorized by local ordinance to assure protection of the environment) and 15321 (action by agency for enforcement of a law, general rule, standard or objective administered or adopted by the agency, including by direct referral to the County Counsel as appropriate for judicial enforcement).

SECTION V:

If any provision of the amended Article or the application thereof to any person or circumstance is held invalid, the remainder of this Article, including the application of such part or provision to other circumstances shall not be affected thereby and shall continue in full force and effect. To this end, provisions of this Article are severable. The 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 (1) or more sections, subsections, subdivisions, paragraphs, sentences, clauses or phrases be held unconstitutional, invalid or unenforceable.

SECTION VI:

Pursuant to Government Code section 25123(d), this Ordinance shall take effect and be in force immediately upon the passage hereof, and before the expiration of fifteen (15) days after its passage it shall be published once, with the names of the Supervisors voting for and against same in the Union and Sierra Sun, newspapers of general circulation printed and published in the County of Nevada.

PASSED AND ADOPTED by a four-fifths vote of the Board of Supervisors of the County of Nevada at a regular meeting of said Board held on the 22nd day of May, 2018, by the following vote of said Board:

Ayes: Supervisors Heidi Hall, Edward Scofield, Dan Miller, Hank Weston, and Richard Anderson.
Noes: None.
Absent: None.
Abstain: None.

ATTEST:

JULIE PATTERSON HUNTER
Clerk of the Board of Supervisors

By: 


Edward C. Scofield, Chair

5/22/2017 cc:

GIS*
Union*
Truckee Sun*
COB*
CoCo*
QC*