

# NYE COUNTY AGENDA INFORMATION FORM

☒ Action
 ☐ Presentation
 ☐ Presentation & Action

<b>Department: Planning</b>		<b>Agenda Date:</b>	
<b>Category: Timed Agenda Item – 10:00 a.m.</b>		<b>July 16, 2019</b>	
<b>Contact: Brett Waggoner</b>		Phone: 775-751-4249	Continued from meeting of:
<b>Return to: Brett Waggoner</b>	<b>Location: Pahrump</b>		Phone:
<b>Action requested:</b> (Include what, with whom, when, where, why, how much (\$) and terms)			
Public Hearing, discussion and deliberation to: 1) Adopt, amend and adopt, or reject Nye County Bill No. 2019-04: A Bill proposing to amend Nye County Code 17.06 relating to the Zoning and Special Use Permit requirements for Marijuana Establishments; and providing for the severability, constitutionality and effective date thereof; and other matters properly relating thereto; and 2) Set an effective date.			
<b>Complete description of requested action:</b> (Include, if applicable, background, impact, long-term commitment, existing county policy, future goals, obtained by competitive bid, accountability measures)			
Staff recommends the Board reject this bill and instead, adopt Bill 2019-11. Bill 2019-11 is the District Attorney's proposed Bill on the same matter.			
Any information provided after the agenda is published or during the meeting of the Commissioners will require you to provide 20 copies: one for each Commissioner, one for the Clerk, one for the District Attorney, one for the Public and two for the County Manager. Contracts or documents requiring signature must be submitted with three original copies.			
<b>Expenditure Impact by FY(s):</b> (Provide detail on Financial Form)			
<input checked="" type="checkbox"/> No financial impact			

## Routing & Approval (Sign & Date)

1. Dept	Date	6.	Date
2.	Date	7. HR	Date
3.	Date	8. Legal	Date CK 01-17-19
4.	Date	9. Finance	Date NK
5.	Date	10. County Manager	Date Place on Agenda

ITEM # 14

**DRAFT**

**BILL NO. 2019-04**

**NYE COUNTY ORDINANCE NO. \_\_\_\_\_**

**SUMMARY:** A Bill proposing to amend Nye County Code Section 17.06 relating to the Zoning and Special Use Permit requirements for Marijuana Establishments; and providing for the severability, constitutionality and effective date thereof; and other matters properly relating thereto.

**TITLE:** A BILL PROPOSING TO AMEND NYE COUNTY CODE SECTION 17.06 RELATING TO THE ZONING AND SPECIAL USE PERMIT REQUIREMENTS 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 County Commissioners ("Board") is authorized to amend the Nye County Code; and

**WHEREAS,** pursuant to NRS 278.020, for the purpose of promoting the health, safety, morals and the general welfare of the residents of Nye County, the Board is authorized and empowered to regulate and restrict the improvement of land and to control the location and soundness of structures; and

**WHEREAS,** any such regulation, restriction and control must take into account the potential impairment of natural resources and the total population which the available natural resources will support without unreasonable impairment; and

**WHEREAS,** the Board finds these changes to be appropriate and an improvement to the regulations;

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

**NYE COUNTY CODE IS HEREBY AMENDED AS FOLLOWS,** with ~~Deletions~~ shown in strike-through red font, and additions and modification shown in underscored blue font:

## **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 Nevada Revised

Statutes (NRS) chapter(s) 453A and 453D and Nevada Administrative Code (NAC) 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 ~~the effective date~~ 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~~ is 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. (Ord. 511, 2017)

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.

## **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 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. 511, 2017)~~

## **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. 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 (SUP):** Any special use permit issued herein shall remain in effect only for the term specified in the Special Use Permit 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. **Non 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 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 conceptual site plan consistent with NCC 17.04.970 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. 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 or Town 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. Competitive Consideration Of Applications For Dispensaries and Retail Marijuana Stores Only: 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 on an alternate schedule as defined by the BOCC, 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 or 453 D 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 after the application period closes 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.

~~8. Economic impact and job creation for the surrounding community and Nye County as a whole.~~

~~9. Any other criteria as identified by the Nye County Board of County Commissioners~~

D. Mandatory Conditions Of Approval: ~~The Nye County Board of County Commissioners 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. Outdoor facilities must be specifically approved in the SUP with location specific conditions for size, fencing, security and screening from the neighbors as well as distance to Industrial Hemp farms.
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. 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. **Access Control and Burglary Alarm Systems:** The establishment must install and maintain in good working condition access control robbery and burglary alarm systems that are monitored 24 hours a day and 7 days a week 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 odor from the establishment. 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 pollutants 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 establishments 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. **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 with the license renewal application to planning for 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 as part of Site Development Review compliant with Nevada Revised Statutes 453A, 453D, NAC 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 with the license renewal application a written security report to the board of county commissioners for consideration prior to approval of any annual license renewal. The approved Security and Transportation Plan becomes part of the approved operating procedures and any change must be submitted for review and approval by the Nye County Planning department.
18. **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.
- 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 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 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 ~~of county commissioners.~~ (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 \_\_\_\_ day of \_\_\_\_\_, 2019.

Proposed on the 5<sup>th</sup> day of February, 2019.

Proposed by: Commissioner \_\_\_\_\_.

Adopted on the \_\_\_\_ day of \_\_\_\_\_, 2019.

Vote: Ayes: Commissioners:

Nays: Commissioners:

Absent: Commissioners:

BY: \_\_\_\_\_

John Koenig, Chairman  
Nye County Board of  
County Commissioners

ATTEST: \_\_\_\_\_

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

**DRAFT**

**BILL NO. 2019-04**

**NYE COUNTY ORDINANCE NO. \_\_\_\_\_**

**SUMMARY:** A Bill proposing to amend Nye County Code Section 17.06 relating to the Zoning and Special Use Permit requirements for Marijuana Establishments; and providing for the severability, constitutionality and effective date thereof; and other matters properly relating thereto.

**TITLE:** A BILL PROPOSING TO AMEND NYE COUNTY CODE SECTION 17.06 RELATING TO THE ZONING AND SPECIAL USE PERMIT REQUIREMENTS 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 County Commissioners ("Board") is authorized to amend the Nye County Code; and

**WHEREAS,** pursuant to NRS 278.020, for the purpose of promoting the health, safety, morals and the general welfare of the residents of Nye County, the Board is authorized and empowered to regulate and restrict the improvement of land and to control the location and soundness of structures; and

**WHEREAS,** any such regulation, restriction and control must take into account the potential impairment of natural resources and the total population which the available natural resources will support without unreasonable impairment; and

**WHEREAS,** the Board finds these changes to be appropriate and an improvement to the regulations;

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

**NYE COUNTY CODE IS HEREBY AMENDED AS FOLLOWS,** with ~~Deletions~~ shown in strike-through red font, and additions and modifications shown in underscored blue font:

## **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 Nevada Revised

Statutes (NRS) chapter(s) 453A and 453D and Nevada Administrative Code (NAC) 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. (Ord. 511, 2017)
- 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.

### **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 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.

### **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. 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 (SUP):** Any special use permit issued herein shall remain in effect only for the term specified in the Special Use Permit 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. **Non-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 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 conceptual site plan consistent with NCC 17.04.970 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. 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 or Town 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.
- 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. Outdoor facilities must be specifically approved in the SUP with location specific conditions for size, fencing, security and screening from the neighbors as well as distance to Industrial Hemp farms.



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 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. **Access Control and Burglary Alarm Systems:** The establishment must install and maintain in good working condition access control robbery and burglary alarm systems that are monitored 24 hours a day and 7 days a week 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 establishments 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. **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 with the license renewal application to planning for the water district governing board to 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 as part of Site Development Review compliant with Nevada Revised Statutes 453A , 453D, NAC 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, prior to issuance of the initial marijuana license; and grantee shall provide annually with the

license renewal application a written security report to the board for consideration prior to approval of any annual license renewal. The approved Security and Transportation Plan becomes part of the approved operating procedures and any change must be submitted for review and approval by the Nye County Planning department.

**18. 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.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 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. 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 \_\_\_\_ day of \_\_\_\_\_, 2019.

Proposed on the 5<sup>th</sup> day of February, 2019.

Proposed by: Commissioner \_\_\_\_\_.

Adopted on the \_\_\_\_ day of \_\_\_\_\_, 2019.

Vote: Ayes: Commissioners:

Nays: Commissioners:

Absent: Commissioners:

BY: \_\_\_\_\_

John Koenig, Chairman  
Nye County Board of  
County Commissioners

ATTEST: \_\_\_\_\_

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





NCCA  
PO BOX 974  
Pahrump, NV 89041

March 20, 2019

Nye County Commissioners  
2100 E. Walt Williams Dr.  
Pahrump, NV 89048

*Re: Comments on Proposed Amendments to NCC 17.06 Relating to the Zoning and Special Use Permit Requirements for Marijuana Establishments*

Greetings Commissioners,

We would like to present the following comments and requests to the proposed amendments to Nye County Code 17.06 relating to the Zoning and Special Use Permit requirements for Marijuana Establishments:

17.06.040 D (10) - We request that the recordings from cameras which must be maintained in a retrievable manner for at least sixty (60) days from the date of the recording reflect the State requirement which is thirty (30) days. There have not been any issues since inception of this program that have warranted the additional hold time which can be costly. Several surrounding jurisdictions reflect the State requirement and it makes sense to have continuity with Nye County.

17.06.040 D (11) – Currently, the County requires a security guard to be on duty 24 hours a day, 7 days a week. It is financially burdensome to many facilities which has been demonstrated as some waivers have already been requested and approved by the Board. We would propose a suggestion that the facilities be given the option of being remotely monitored via video, or of having a security guard on duty at all times.

17.06.040 D (8) & F (2) - Currently, if a facility intends to request outdoor cultivation, they are required to obtain a waiver. We have no objection to continuing that practice, especially inside the PRPD. We strive to be good community partners and understand outdoor cultivation in a densely populated area could cause some citizens concern. Additionally, as more and more hemp and marijuana farms erect, the chance of cross-pollination increases which increases the potential of destroying crops. The current waiver process allows for this specific detail to be highlighted during the notification portion of the process.

17.06.040 D (16)- We would request that the section outlining Water Impact Plans be removed. During their December meeting, the WDGB was presented with all the data for water usage and chemistry reports. After review, it was concluded that there was no significant impact. The WDGB voted unanimously to request that the BoCC have the tracking of Marijuana Establishments via the Water Impact Plans by the WDGB be discontinued.

SB487 which was approved last legislative session, included language in Sec. 15 (5) (e) that limits local jurisdictions on enacting or enforcing regulations that would be more restrictive than or conflict with regulations of the State regarding certain items governing marijuana. Included in that language were items involving transportation except for the requirement of notification of transport and direct transportation to a consumer. We would request that the Security and Transportation Plan Minimum Checklist language be changed to reflect that all transportation requirements reflect State Standards as required by SB487.

Thank you for your time and consideration; it is very much appreciated.

Sincerely,

Sarah Chapman  
President

cc: Brett Waggoner, Planning Director  
cc: Tim Sutton, County Manager

Mike Floyd  
PO Box 2093  
Pahrump, NV 89048  
[mfloyd@pahrump.com](mailto:mfloyd@pahrump.com)

March 27, 2019

Nye County Board of Commissioners  
2100 E Walt Williams Dr. #100  
Pahrump, NV 89048

RE: Changes to Nye County Code Title 17.06.040.6

Dear Commissioners:

As the commission discusses changes to the 5.32 marijuana licensing codes, I would request that you also look at title 17, as indicated above, and consider revising the Special Use Permit requirements for marijuana businesses in Nye County.

As it currently reads:

*17.06.040.6 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.*

I would argue that a special use permit should be site specific, and **not** business owner specific as indicated above and should be re-written or removed from the regulation. My reasons are as follows:

- Since the special use permit is a land use approval only, it can only be used by someone who also possesses a Nye County and State of Nevada Marijuana license to operate their business.
- Preventing the transfer of the special use permit is overly burdensome since it prevents persons like myself, from marketing parcels in Nye County towards marijuana specific buyers or leasing space in approved sites to other properly licensed groups. If the parcel has been examined, notices given, fees paid, and the owner has appeared before your board to answer questions, I feel the purpose of the special use permit has been met. Your vote to approve would indicate that.



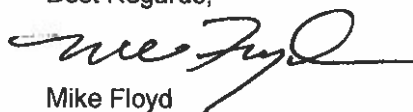
- After looking through the Sterling Codifiers website, I can find no other instances in Nye Title 17 where a special use permit is non-transferable.
- I understand the reasoning for this requirement in July of 2014. As you may remember, the State had not issued any licenses for marijuana businesses and would not until November of that year. The only way Nye County could regulate the industry at that time was through special use permitting, which in part, required the assessment of the individuals or groups requesting the permit. However, since then, all that has changed. The State has issued licenses, Nye County has issued licenses, and the only persons able to operate marijuana businesses are those that are properly licensed by both entities. Nye County now regulates marijuana businesses through the annual business license process and as far as I know, you have been able to do so effectively. Once an initial license is issued, I don't believe your board ever considers or discusses the special use permit for that parcel again.

In conclusion, I feel your board should be able to remove the non-transferability requirement from Nye Title 17 without harming or degrading your ability to regulate the Nye County marijuana businesses in any way. You have the ability to approve or deny marijuana business on an annual basis through the licensing process. Making this change will allow land owners with parcels in acceptable zones, to lease or sell their properties and able to include a pre-approved special use permit to go along with it. As you know, this can take several months to obtain and is an attractive bonus to potential buyers.

Finally, I feel a revision could be made that ties the special use permit to the parcel and not the individual(s) that applied for it in the first place. This would allow for a second party to use the permit as long as they were properly licensed by your board and State.

I hope you will consider my arguments and can help with this matter.

Best Regards;



Mike Floyd