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NEVADA COUNTY BOARD OF SUPERVISORS
Board Agenda Memorandum

MEETING DATE: November 12th, 2024

TO: Board of Supervisors

FROM: **Brian Foss, Director of Planning**

SUBJECT: Ordinance to amend Zoning Ordinance Section 12.03.300 (Commercial Cannabis) and adding Section 12.02.713 Cannabis Exclusion Combining District (CE) and a Resolution to approve the Competitive Application Selection Process for up to two (2) Retail Storefront Commercial Cannabis Dispensaries and the Establishment of the Retail Commercial Cannabis Application Evaluation Committee.

RECOMMENDATION:

The Planning Commission recommends that the Board of Supervisors take the following actions:

- I. Adopt the Ordinance to amend the Nevada County Code Section 12.03.300 (Commercial Cannabis) and adding Section 12.02.713 Cannabis Exclusion Combining District (CE).
- II. Adopt the Resolution to approve the Competitive Application Selection Process for up to two (2) Retail Storefront Commercial Cannabis Dispensaries and the Establishment of the Retail Commercial Cannabis Application Evaluation Committee.

FUNDING:

No budget amendments are required.

ATTACHMENTS:

1. Draft Ordinance Section 12.03.300 and Section 12.02.713
 2. Draft Resolution for Competitive Selection Process and Review Committee
 3. Draft Ordinance Redline Version
 4. Planning Commission Staff Report with Maps and Public Comments Received
 5. Draft Planning Commission Minutes October 10, 2024
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BACKGROUND:

The cannabis ordinance was originally adopted by the Board of Supervisors in 2019. Since that time a number of updates and amendments have been approved to refine and modify cannabis cultivation requirements and permitting regulations. At the annual Board of Supervisors Workshop in January of 2023, the Board directed staff to consider amendments to the Ordinance for the Board's consideration to allow for limited retail dispensaries, allow some license types in Industrial zones, create a Cultivation Exclusion Zone option, allow temporary cannabis events/markets and require all property taxes to be paid prior to permit issuance.

An Ad hoc Committee made up of two (2) Board of Supervisors and staff was established in order to work with staff to help develop and guide the process for the ordinance changes and the development of the competitive selection process. The Ad hoc committee met with staff on a number of occasions and provided input and guidance regarding the proposed changes while taking into account community and stakeholder comments and input throughout the process.

PROJECT DESCRIPTION:

The project is a Zoning Ordinance Amendment to Section 12.03.300 of the Zoning Ordinance to amend the County's Commercial Cannabis Cultivation Ordinance and add Section 12.02.713 as a Cannabis Exclusion combining district. The ordinance proposes the following general changes in addition to other minor changes, clarifications, and clean-up:

- 1) Allow a maximum of two (2) Retail Dispensaries in select areas of the unincorporated County through a competitive selection and Use Permit process.
- 2) Allow for manufacturing, indoor cultivation, distribution, and testing laboratories in Industrial (M1) zone districts in the unincorporated County.
- 3) Create an Exclusion Zone combining district that would prohibit all commercial cannabis activities.
- 4) Allow temporary cannabis events/markets in commercial zones.
- 5) Require all cannabis sold to be Nevada County grown only.

- 6) Require all property taxes to be paid prior to issuing cannabis permits.

Additionally, the project includes a Resolution for the following:

- 1) Create a Competitive Application Selection Process for up to two (2) retail storefront commercial cannabis dispensaries and the establishment of a retail commercial cannabis application evaluation committee.

STAFF COMMENT:

1. Retail Dispensaries: The ordinance amendments include the allowance of up to 2 retail storefront dispensaries. Dispensaries would be allowed only in the C1, C2, M1 or BP zoning districts and would be subject to a Use Permit. In addition to a Use Permit a Competitive Selection process would be required for prospective applicants as described below.

Zoning: The zoning districts of Commercial, (C1, C2), industrial (M1) and Business Park (BP) were identified as appropriate zoning for cannabis dispensaries due to the similar allowed uses within those zoning designations. Retail sales, light manufacturing and storage associated with sales are currently allowed uses. Retail sales of cannabis products is a similar land use to retail sales of any other type of commercial product. Commercial/Industrial/Business Park zoned sites typically are in areas with adequate support infrastructure such as water, sewer and road access in addition these areas tend to be separated from residential and rural uses. The retail sales component of a cannabis dispensary is consistent with the purpose and uses already allowed within these zones.

Cannabis products are considered an adult product such as alcohol and are limited to persons 21 and older. The ordinance contains setback requirements from sensitive sites in order to provide some distance from schools and churches. The ordinance requires a 600/500 foot setback from youth-oriented facilities, schools and churches. The maps in the attachments show the parcels that meet both the zoning and separation requirements of the proposed ordinance.

Identified Areas: The proposed ordinance amendments originally proposed a maximum of three (3) dispensaries in the unincorporated areas of the County which could be located in four (4) identified areas of the County. The four areas of the County included the Community Regions of Lake of the Pines, the Community Region of Penn Valley, The Rural Center of North San Juan and the Rural Center of Soda Springs. Community Regions and Rural Centers were identified as appropriate locations for future cannabis dispensaries due the similar allowed uses and purposes of those areas as identified by the General Plan. The General Plan defines Community Regions and Rural Centers as:

“Community Regions provide for an adequate supply and broad range of residential, employment-generating, and cultural, public and quasi-public uses located for

convenience, efficiency, and affordability while protecting, maintaining, and enhancing communities and neighborhoods.”

“Rural Centers are intended to provide for the development, within Rural Places, of existing centers to provide a focus for Rural Regions. Such centers should have a mix of uses which may include residential, commercial, office, business park, and public or institutional uses, grouped together and interrelated to form a functional and cultural center, and to create a visual identity related to the rural character of the region.”

These are the areas of the County that are identified and designated for retail and commercial-type development as opposed to the Rural Regions of the County which are those areas outside of Community Regions that are designated for low density residential, agricultural and open space/resource protection uses.

However, after holding public workshops and meeting with numerous stakeholders and the Ad-hoc committee the draft ordinance was amended to propose only 2 areas of the County for a maximum of two (2) dispensaries. The proposed areas include the Rural Center in North San Juan and the Rural center in Soda Springs. The Community Regions of Penn Valley and Lake of the Pines are not currently proposed. Those communities expressed an opposition to retail cannabis dispensary due to a number of factors including the prevalence of schools and youth-oriented facilities and odor and nuisance concerns. After consultation with the Cannabis Ad-hoc committee those areas were removed as part of the current proposal and the recommendation is to allow a maximum of two (2) dispensaries in the unincorporated area of the County and only one (1) in each area of Soda Springs and North San Juan Rural Centers. The Selection Committee and a Use Permit approved by the Planning Commission would be required prior to any construction or operation of a dispensary.

2. Industrial Zone Uses: The ordinance amendments include the allowance for four (4) different license types to be allowed in Industrial Zones (M1). Currently there is no allowance for any type of cannabis cultivation or processing outside of the original ordinance allowances in AG, AE and FR zones. The amendments would allow an Administrative Development Permit (ADP) to be issued for cannabis activities in the industrial zones for the following activities:

- a) Indoor cultivation up to a maximum of 10,000 square feet of canopy.
- b) Testing Laboratories
- c) Manufacturing (Volatile and Non-Volatile)
- d) Distribution (Delivery)

A number of Development Standards are included within the ordinance to ensure that the activities allowed within the industrial zone do not create any nuisance or environmental impacts. These standards include mandatory odor control, compliance with allowed noise levels established by the code, parking requirements and all other site development

standards of the M1 Industrial district. Additionally, only stand-alone building could be utilized for these activities. This is to ensure that odor from these activities do not waft into other areas of a condominium building and affect non-cannabis related businesses.

The manufacturing of products using volatile materials would be allowed only in Industrial zones. These types of materials are currently used in other industrial uses that are allowed in the M1 zones already such as propane companies, welding shops, auto body businesses and other similar business types. Examples of volatile materials includes butane, hexane, and propane by definitions contained in State codes.

3. Exclusion Zone: The proposed changes to the zoning ordinance includes the creation of a new Combining District which would be entitled “Cannabis Exclusion”. Combining Districts are established to provide specialized consideration of unique or sensitive areas. When added to a base zoning district, the standards established in the combining district may require more or less restrictive regulations than those contained elsewhere in this Chapter. Except as noted, allowed uses within the base district are also allowed within each applicable combining district subject to approval of the same land use permit and level of review.

The Combining District (CE) would prohibit the cultivation of commercial cannabis on properties that have the base zoning of AG, AE or FR which would otherwise qualify for an Administrative Development Permit to cultivate cannabis. Personal use would still be allowed consistent with State law.

The process to establish a CE combining district would be through the standard rezone process. The rezone process could be initiated by the property owner or the Board of Supervisors only. Any property owner wishing to apply the combining district to their property would file an application and it would be heard before the Planning Commission and then by the Board of Supervisors for final approval which is the standard existing process for any and all rezones including the application of combining districts. The CE combining district would not be able to be removed without Board of Supervisors approval and would require a five (5) year roll-out period. The purpose of the roll-out period is to ensure that the property could not immediately begin to cultivate cannabis so that the neighborhood and surrounding property owners would be aware of the future potential for that property to apply for permits to cultivate cannabis. The roll-out period is similar to the Williamson Act/Timber Preserve contract requirement that mandates a 10-year roll-out period to remove a property from the requirements and benefits from a Timber Production zone or an Agricultural Preserve contract.

The CE Combining District would not be forced upon unwilling property owners as the ordinance is currently written and proposed. The purpose of a voluntary exclusion zone is for a neighborhood or group of neighbors to designate their properties as restricted properties for cannabis in order to contain and further restrict future growth of cannabis farms in their neighborhood. Existing permitted farms would remain legal and would not

qualify for a CE district and unwilling property owners would not be forced to apply the district to their property by neighborhood vote or Homeowner's Association direction. Again, the purpose is to limit future growth of cannabis farms in certain neighborhoods and to indicate to prospective buyers of property that they may be considering cannabis cultivation that certain neighborhoods have taken action to limit cannabis in their area. The five-year roll-out allows neighborhoods and properties to change the restriction on cannabis overtime if desired but still ensures a near term restriction of cannabis cultivation.

4. Temporary Events/Markets: A Temporary Cannabis Event permit would allow a licensed cannabis event organizer to hold a temporary cannabis event where the onsite sale of cannabis products is authorized at the location indicated on the DCC license during the dates indicated on the license consistent with County permit approvals. These type of events would operate similar to a Farmer's market. As proposed in the ordinance changes, the events would be located in the same areas as the potential dispensary locations. The Temporary Cannabis events would be allowed subject to the approval of an Administrative Development Permit and only allowed in M1, BP, C1 or C2 zones within the identified Rural Centers of North San Juan and/or Soda Springs as defined by the General Plan. The areas of North San Juan and Soda Springs Rural Centers are each allowed a maximum of eight (8) events per calendar year. The number of 8 events per year is consistent with the County's existing Outdoor Event Permit allowances for 8 events to occur per calendar year on a private property.

A number of development standards are included in the ordinance amendment to ensure compatibility with surround land uses. The standards include hours of operation restrictions, parking requirements, lighting restrictions, dust control and noise level restrictions. Additionally, permitting from the State Department of Cannabis Control, County Environmental Health Department, Building Department and Fire Department is required.

5. Nevada County Grown Products: The proposed amendments to the zoning ordinance includes the requirement that only Nevada County grown products can be sold from cultivation sites through the microbusiness license and Use Permit process. Currently, the restriction for only Nevada County grown product is not codified. The County has issued one Use Permit for a microbusiness with storefront retail sales and a condition of approval for that Use Permit is that only products grown and manufactured in Nevada County can be sold. This was the intention of the original ordinance however it was not explicitly codified. Therefore, the amendments include this requirement in order to meet the original intent and is consistent with the conditions of approval for the existing permitted retail storefront business in the unincorporated County.

6. Payment of Property Taxes: The proposed amendments to the cannabis ordinance include a requirement that all property taxes be paid and properties are in good standing before a permit to cultivate cannabis or conduct a cannabis business can be issued.

7. Other Minor Modifications: Based on direction from the Ad-hoc committee, an amendment to the allowable hours for storefront retail facilities to operate is proposed. Currently, the ordinance restricts storefront retail facilities to be only operated on Monday through Saturday. Weekend days are important to the success of a storefront retail business. The ordinance is proposed to allow a business to be open on Sundays but will still be regulated and required to comply with all other applicable conditions of approval and code requirements through a Use Permit.

Retail Commercial Cannabis Application Evaluation Committee

As part of the updates to the Nevada County Code; Section 12.03.300 - Commercial Cannabis Cultivation, a Resolution is included in Attachment 2 for consideration by the Board of Supervisors, that would adopt a competitive application selection process for up to two (2) Retail Storefront Commercial Cannabis Dispensaries and establish an Evaluation Committee. The Retail Commercial Cannabis Application Evaluation Committee (Evaluation Committee) would be established that would consist of seven (7) members, to be appointed by the Nevada County Board of Supervisors. Each appointed member of the Evaluation Committee shall be a resident of one of the five Supervisorial Districts, with two members being appointed from District IV and District V. The Evaluation Committee members shall be of diverse / unique perspectives, with a wide breadth of experience in cannabis, hospitality, design, business, local government licensing, social justice, drug policy reform, as well as familiarity with Nevada County.

The Evaluation Committee shall meet on an as needed basis to review submitted Retail Storefront Commercial Cannabis Applications and shall establish a merit-based approach to selecting the most qualified applicants to apply for a discretionary Use Permit for a Retail Storefront Commercial Cannabis Dispensary. All meetings of the Evaluation Committee shall be open to the public.

Application Permit, Scoring and Review:

Beginning no sooner than 2025, and then continuing on a yearly basis, until two (2) applications have been selected, there would be a 30-day Retail Storefront Commercial Cannabis Dispensary screening application period. The second and any subsequent application screening periods would commence upon a determination by the Community Development Agency Director, or their designee, that additional Retail Storefront Commercial Cannabis Dispensary applications are available.

The Evaluation Committee, as appointed by the Nevada County Board of Supervisors, would establish the application process by which applicants would submit their competitive applications for a Retail Storefront Commercial Cannabis Dispensary. The specific criteria and weighting (points per criteria) would be determined by the Evaluation Committee, prior to commencement of the initial screening application period and posted publicly and each application would be independently scored by evaluation committee members.

As included in the draft Resolution, the following general criteria would be used to rank applications, however the final application criteria, as outlined in the Resolution, would be established by the Evaluation Committee:

- a. Previous cannabis business retail, medical-use dispensing, or cannabis cultivation operation experience that was subject to state cannabis regulation, or experience in a similarly state- regulated activity (by way of example and not limitation, alcohol sales).
- b. Ability to demonstrate the quality of cannabis strains and derivative product offerings.
- c. Employee training, standard operating procedures, online ordering systems and procedures for providing medical cannabis to disadvantaged or disabled persons.
- d. Social equity in terms of provision of a living wage and employee benefits and compliance with local, state, and federal employee non-discrimination policies.
- e. Security program.
- f. Pre-existing Nevada County Cannabis Business that has no outstanding code violations with the County and is in compliance with local and state laws.
- g. Ability to meet County of Nevada Western or Eastern Design Standards.
- h. Additional information that demonstrates the ability to operate in a safe and responsible manner in the County, including without limitation a review of the quality and thoroughness of application materials, connection to Nevada County, ability to serve Nevada County, familiarity with the County, and innovative business models consistent with the Nevada County business community.

Prior to scoring applications County staff would review applications for general compliance with the County's Land Use and Development Code or any other applicable laws and shall reject any application which does not meet such requirements. Rejected applications would not be scored and the County would also disqualify any application that contains any false or misleading information. The scores awarded by the Evaluation Committee would be totaled and averaged for each applicant and the applications would be ranked from highest to lowest based on their total scores. Upon notification from the Evaluation Committee, the top-ranking applicant during each evaluation period, based on points, would have twelve (12) months to apply to the Nevada County Planning Department for a Use Permit, as outlined in Nevada County Code, Section 12.05.060 – Use Permits. If the top-ranking applicant has not applied for a Use Permit within twelve (12) months of the Evaluation Committee notification, their ability to obtain a discretionary land use permit, shall terminate. Applicants that have an approved Commercial Retail Cannabis

Dispensary, shall obtain a license from the State, as well as any other required permits from the County or other local or state agencies, prior to operating a retail dispensary cannabis business in the County.

COMMUNITY OUTREACH

The draft ordinance was prepared by County staff with guidance from the cannabis Ad-hoc committee made up of two Board of Supervisors. The draft ordinance was released for public review and comment on July 15, 2024, and was available for comment through August 30, 2024. Public comments will still be accepted on the project through the Planning Commission and Board of Supervisors hearings to consider the amendments.

During the public circulation period staff hosted/attended 4 advertised public meetings to receive comments, and answer questions regarding the proposed changes and the process. The meetings included a public workshop in North San Juan, a public workshop in Soda Springs and presentations at the South County Municipal Advisory Council (MAC) and the Penn Valley Municipal Advisory Council. Additionally, staff met with members of the Nevada County Cannabis Alliance, Nevada County Contractors Association, Nevada County Realtors Association, Nevada County Economic Resource Council and the Grass Valley Chamber of Commerce. In total 33 comment letters/emails were received during the comment period in addition to testimony given and the public workshops and MAC meetings. The written comments received are attached in Attachment 4 and all of the comments were considered in drafting the proposed ordinance.

ENVIRONMENTAL REVIEW:

The proposed amendments are considered exempt from further environmental review pursuant to 15061(b)(3) and 15308. These sections of CEQA allow an exemption based on the fact that the changes to the ordinance will not cause an adverse impact to the physical environment and are proposed with adequate requirements and standards to not cause significant impacts to environmental resources. Additionally, the revisions fall within the scope of the original EIR prepared for the initial ordinance adoption due to the fact that the proposed amendments do not allow any uses not already allowed by the ordinance and/or the proposed uses considered are similar in nature as other allowed uses specifically in the industrial zones within the County and are consistent with the requirements of Section 15162 of CEQA that does not require recirculation or an addendum to the previous environmental document.

PLANNING COMMISSION HEARING AND RECOMMENDATION:

At the October 10, 2024, Planning Commission hearing the proposed ordinance amendments were considered. The Planning Commission voted 5-0 to recommend the adoption of the ordinance and resolution with the modifications as described below.

1. **Allow a maximum of two (2) Retail Dispensaries in select areas of the unincorporated County through a competitive selection and Use Permit Process.**
No changes recommended by the Planning Commission.

2. **Allow for manufacturing, indoor cultivation, distribution and testing laboratories in (M1) zone districts.**

The Planning Commission recommended the removal of the requirement for a stand alone building to be used for cannabis businesses in the Industrial Zones (M1) and allow landlords and property owners to decide whether or not to rent/lease to cannabis businesses. The sections of the proposed ordinance that the Planning Commission recommended be removed are Section J.1(b), J.2(b), J.3(b) and J.4(b) which states:

“Only stand-alone structures are allowed to be permitted for cultivation/testing laboratories/manufacturing/distribution. No partial building use, use within a condominium building or use within a building that is shared with non-cannabis related businesses is allowed for cultivation/testing laboratories/manufacturing /distribution. Shared building use is allowed with other permitted cannabis businesses such as cultivation, manufacturing, testing laboratories and/or distribution.”

3. **Create an Exclusion Zone combining district that would prohibit all commercial cannabis activities.**

The Planning Commission was not unanimous on this proposal. Three commissioners were in support of removing the creation of an Exclusion Zone combining district and two commissioners were in support of creating the Exclusion Zone combining district. The Commissioners against the creation of the combining district thought it was ineffective and would be discriminatory toward cannabis. The Commissioners in support of the combining district felt that it could be a useful tool to give to neighborhoods to use to help control future cannabis projects in certain locations. The Planning Commission recommended the Board make the final determination.

4. **Allow temporary cannabis events/markets in commercial/industrial zones.**

The Planning Commission was in support of this addition to the ordinance as proposed. However, the Planning Commission recommended adding the Community Center parcel in North San Juan as an eligible parcel to host cannabis events/markets. This parcel is zoned Residential Agriculture 1.5. The Residential Agriculture (RA) zoning district was not included in the allowed zoning districts to hold temporary cannabis events. Typically, residential agriculture properties do not make good candidates for commercial type uses and the cannabis ordinance strives to accomplish land use compatibility between all land uses through identifying appropriate zone districts for allowable uses. Residential uses are not typically compatible with commercial uses and public gatherings on a regular basis due to lack of infrastructure and impacts on surrounding residential uses. In the case of the North San Juan Community Center it

is developed and used for public gatherings and is not a typical residentially developed or residentially used parcel.

If the Board chooses to include the North San Juan Community Center as an eligible parcel to host temporary cannabis events/markets it could be accomplished by the following options:

1. Adding the RA zone district in the North San Juan Rural Center as an allowed zoning district for cannabis events. This approach would add other RA zoned parcels in the Rural Center as well. These parcels are developed with residential uses and may not be appropriate for commercial cannabis events.
2. The Board could initiate a rezone to change the North San Juan Community Center's zoning to Commercial (C1) to accommodate future cannabis events consistent with the proposed ordinance language.
3. The ordinance could be amended to include language that temporary events are allowed in C1, C2, M1 or BP zoning districts and/or at any permitted community gathering location. This language is similar to language in the outdoor event ordinance which identifies permitted facilities customarily and lawfully used for outdoor events can hold outdoor events even if the zoning is not listed in the event ordinance. The added language would allow the North San Juan Community Center to eligible for holding temporary cannabis events.

N. Temporary Cannabis Event. Temporary Cannabis Events are allowed subject to the approval of an Administrative Development Permit and only allowed in M1, BP, C1, C2 zones and/or at any permitted community gathering location within the identified Rural Centers of North San Juan and/or Soda Springs as defined by the General Plan.

Staff would recommend option #3 to accomplish the recommendation of the Planning Commission.

5. Require all cannabis sold to be Nevada County grown only.

The Planning Commission recommended adding the requirement that all cannabis sold should be from legal sources. Adding language to sections K.6 and L.4 as follows would further clarify that a legal source of cannabis is required.

“Only cannabis products grown, cultivated, manufactured and processed onsite and/or originating from legally permitted cannabis cultivation operations within Nevada County (including incorporated cities/town) may be sold as part of non-storefront retail sales. Products grown, cultivated, manufactured, or processed from locations outside of Nevada County are NOT allowed to be sold, displayed or offered.”

“Only cannabis products grown, cultivated, manufactured and processed onsite and/or originating from legally permitted cannabis cultivation operations within Nevada County (including incorporated cities/town) may be sold onsite as part of the Storefront Retail Sales. Products grown, cultivated, manufactured or processed from locations outside of Nevada County are NOT allowed to be sold, displayed or offered.”

6. Require all property taxes to be paid prior to issuing cannabis permits.

The Planning Commission recommended removing this requirement completely. The Commission felt that only applying this requirement to cannabis related businesses was not a fair and equitable requirement. The Commission recommended removing section G.1.b.xxi which states:

“Provide evidence that all property taxes have been paid and are current for all parcels included in the cannabis application.”

SUMMARY:

The revised ordinance is intended to respond to the needs of the cannabis cultivation community and to the evolving state laws and regulations as well as ensuring there are no increased impacts on neighboring properties or the environment. This intent is matched by providing a more comprehensive process and viable business model by providing allowances for retail dispensaries in limited areas, outdoor events/markets and allowing compatible uses in the Industrial zones within the County. These changes have been made while being sensitive to concerns and discussions with the ad hoc committee, members of the public and with consideration for potential environmental concerns.

The updates and revisions have been made to clarify the permitting process and make the cultivation process within the County more efficient and responsive to the needs of permittees as well as insuring protection of surrounding land uses equal to the original ordinance protections. The amendments also address and allow other types of license types in Industrial zones and well and limited retail dispensaries within the unincorporated County to further meet the needs of the cannabis industry.

RECOMMENDATION:

The Planning Commission recommends the Board of Supervisors take the following actions:

- I. Adopt the Ordinance to amend Nevada County Code Section 12.03.300 (Commercial Cannabis) and adding Section 12.02.713 Cannabis Exclusion (CE) Combining District.

- II. Adopt the Resolution to approve the Competitive Application Selection Process for up to two (2) Retail Storefront Commercial Cannabis Dispensaries and the Establishment of the Retail Commercial Cannabis Application Evaluation Committee.

Item Initiated and Approved by: Brian Foss, Planning Director