



**COUNTY OF NEVADA
COMMUNITY DEVELOPMENT AGENCY**

Building – Cannabis Division

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**NEVADA COUNTY BOARD OF SUPERVISORS
Board Agenda Memo**

MEETING DATE: April 13, 2021

TO: Board of Supervisors

FROM: Craig Griesbach, Building Director

SUBJECT: An Ordinance Amending Chapter II of Title 3 of the Nevada County Land Use and Development Code Regarding Administrative Enforcement and Cannabis Cultivation

RECOMMENDATION: Introduce and waive further reading of the attached Ordinance amending Chapter II of Title 3 of the Nevada County Land Use and Development Code regarding cannabis cultivation and administrative enforcement.

FUNDING: No impact to the General Fund would occur.

ATTACHMENTS:

- An Ordinance Amending Chapter II of Title 3 of the Nevada County Land Use and Development Code Regarding Administrative Enforcement and Cannabis Cultivation
- Exhibit A, Proposed Amendments to Article 5 of Chapter II of Title 3 of the Nevada County Land Use and Development Code regarding administrative enforcement.
- Exhibit B, Proposed amendments to Article 3 of Chapter II of Title 3 of the Nevada County Land Use and Development Code regarding cannabis cultivation.
- March 11, 2021 Planning Commission meeting minutes.
- Staff Report from March 23, 2021 Board of Supervisors Meeting

BACKGROUND:

The attached Ordinance and item were presented at a public hearing to the Board of Supervisors at their regular March 23, 2021 meeting. During this meeting the Board provided feedback and direction to staff to revise two sections of the updated Ordinance

based on board and community feedback. Further, the Board designated Supervisors Hall and Scofield to review these changes prior to bringing them back to the full board today.

The two sections that have been revised are related to the definition of “Responsible Party” and the “reasonable” determination that a Code Violation exists. Both the prior Ordinance text presented at the March 23, 2021 meeting and the revised text are shown below:

“Responsible Party” Definition:

After further review and discussion, staff’s recommendation is to mirror this definition with the intent of the adopted definition of “Violator” as currently shown in the Commercial Cannabis Ordinance (Ord No. 2467) that was adopted on May 14, 2019.

“Violator” definition as adopted in the Commercial Cannabis Ordinance (Ord No. 2467) on May 14, 2019:

Violator - Any person or entity who causes, permits, maintains, conducts or otherwise suffers or allows a violation of this Section and/or a nuisance to exist, including but not limited to the owner(s) of the Parcel or Premises, the occupant(s) if other than the owner(s), the holder(s) of any permit obtained pursuant to this Section, any Designated Responsible Party, and/or any person or entity who causes a public nuisance as described in this Section L-II 3.30, including any person or entity who causes such nuisance on property owned by another.

Revised proposed “Responsible Party” definition:

RESPONSIBLE PARTY means any person or entity who causes, permits, maintains, conducts or otherwise suffers or allows a Public Nuisance and/or a Code Violation, including but not limited to the property owner(s) or the occupant(s) if other than the owner(s), including any person or entity who causes a Public Nuisance and/or a Code Violation on property owned by another.

Definition presented on March 23, 2021 which is no longer recommended:

1. *RESPONSIBLE PARTY. Any of the following:*
 - a) *A party, who by action or inaction, causes, maintains, permits or allows a Code Violation;*
 - b) *A party, whose agent, employee, or independent contractor, by action or inaction, causes, maintains, permits or allows a Code Violation;*
 - c) *An owner, in whole or in part, of real property on which a Code Violation occurs;*
 - d) *A lessee or sublessee with the current right of possession of real property on which a Code Violation occurs;*

- e) *A person who uses real property on which a Code Violation occurs;*
- f) *An on-site manager who regularly works on real property on which a Code Violation occurs and who is responsible for the business or other activities on that real property;*
- g) *The owners, majority stockholders, corporate officers, trustees, general partners and any other party with the authority to act for a legal entity that is a responsible person under divisions (a) through (f) of this definition;*
- h) *If a party is a minor or incompetent, the parents, guardians, or legal representative of such party shall be deemed the Responsible Party; and*
- i) *Any other individual, association, co-partnership, political subdivision, public entity, municipality, industry, public or private corporation, firm, organization, partnership, joint venture or any other person or entity whatsoever whose act or omission caused or contributed to a violation of this Code.*

Determination of Code Violation:

Based on board and community feedback the term “reasonably” should be added back into the Ordinance text regarding what determines that a Code Violation exists.

Ordinance text presented on March 23, 2021:

Whenever an Enforcement Officer determines that a Code Violation exists, the Enforcement Officer may issue a Notice of Violation and/or an Abatement Order to any Responsible Party.

Proposed Ordinance text:

Whenever an Enforcement Officer reasonably determines that a Code Violation exists, the Enforcement Officer may issue a Notice of Violation and/or an Abatement Order to any Responsible Party.

This concludes the changes requested by the Board of Supervisors at the March 23rd, 2021 Board meeting. These changes were reviewed and discussed with Supervisors Hall and Scofield as directed prior to today’s meeting. All other ordinance revisions as presented at the March 23rd Board Meeting are still recommended as originally proposed.

It should be noted that successful enforcement of the County’s Cannabis Cultivation Ordinance directly supports the legal cannabis industry and those cultivators who have become permitted and entered the legal market.

PUBLIC NOTICE AND PLANNING COMMISSION RECOMMENDATION:

The draft ordinance with the proposed amendments has been reviewed with several community organizations and stakeholders over this past year. Some of those stakeholders have included:

- Nevada County Cannabis Alliance
- Multiple Commercial Cannabis Applicants
- Multiple Cannabis Consultants
- Key Community Cannabis Stakeholders Including Past Community Advisory Group (CAG) Members
- Local Attorneys
- Nevada County Contractors' Association (NCCA)
- Local Design Professionals
- Western and South County Neighborhood Groups

The draft ordinance with the proposed amendments was circulated for a period of ten (10) days between March 2, 2021 and March 11, 2021. The draft ordinance was sent to over 250 individuals, homeowner's associations, public agencies and was noticed in The Union and Sierra Sun newspapers in addition to a posting on the County's website. Two review meetings were held with the Nevada County Cannabis Alliance representatives and no written comments were received regarding the proposed amendments.

A public hearing was held on March 11, 2021, before the Planning Commission where the proposed amendments were discussed. After public comment and discussion, the Planning Commission voted 5-0 to recommend the approval of the ordinance amendments to Chapter II of Title 3 of the Nevada County Land Use and Development Code.

SUMMARY:

In summary, the proposed Zoning Ordinance Amendments were prepared on behalf of the Community Development Agency at the direction of the County Board of Supervisors. The draft ordinance intends to centralize and streamline the land-use administrative enforcement and appeals process, while supporting staff's ability to hold unpermitted cannabis cultivators accountable. Staff recommends that the Board of Supervisors approve the draft ordinance consistent with the Planning Commission's recommendation.

If approved, the ordinance will become effective on May 27, 2021.

Item Initiated By: Craig Griesbach, Building Director

Submitted: April 1, 2021