

NOTICE OF EXEMPTION

TO: ___ Office of Planning & Research
1400 Tenth Street, Rm. 121
Sacramento, CA 95814

FROM: Nevada County Sheriff's Office
950 Maidu Ave
Nevada City, CA 95959

County Recorder
County of Nevada

Project Title:

Addition of Subsections G-IV 5.2.W, G-IV 5.4.C.4, G-IV 5.4.E.4, G-IV 5.4.H.14, G-IV 5.4.L, G-IV 5.10.C, G-IV 5.10.D, G-IV 5.10.E, G-IV 5.10.F, and G-IV 5.15.D to ARTICLE 5 OF CHAPTER IV, and Amendments to Subsections G-IV 5.2.V, G-IV 5.3.F, G-IV 5.4.C, G-IV 5.4.C.3, G-IV 5.4.E, G-IV 5.4.E.1, G-IV 5.4.E.2, G-IV 5.4.F, G-IV 5.4.H, G-IV 5.4.H.9, G-IV 5.4, G-IV 5.7.F, G-IV 5.7.G, G-IV 5.8.B, G-IV 5.9.A, G-IV 5.9.B, G-IV 5.9.C, G-IV 5.9.E, G-IV 5.9.F, G-IV 5.10.A, G-IV 5.11, G-IV 5.12.A, G-IV 5.13, G-IV 5.14, G-IV 5.15.C, G-IV 5.16, G-IV 5.17, and G-IV 5.18 of Article 5 of Chapter IV of the Nevada County General Code regarding Restrictions on Cannabis Cultivation (collectively "Amendments")

Project Location - Specific

Unincorporated Areas of Nevada County

Project Location – City

N/A

Project Location - County

Nevada

Description of Nature, Purpose, and Beneficiaries of Project

The Amendments implement State law by regulating the cultivation of cannabis in a manner consistent with State law. The purpose and intent of the Amendments is to modify and establish restrictions regarding the manner in which commercial cannabis activities may be conducted, including restrictions on the amount of commercial cannabis that may be cultivated in any location or premises within the unincorporated area to protect public health, welfare and safety and for protection of natural resources and the environment. The Amendments modify existing regulations by (a) allowing commercial cannabis cultivation and self-transport in limited areas and quantities both indoor and outdoor, and (b) creating a temporary permitting structure to track medical commercial cannabis activities and ensure compliance with local and state laws. The Amendments also make minor administrative changes to the appeal and enforcement process regarding temporary medical commercial cannabis permits, and make textual changes as necessary to clarify the County's regulations.

Name of Public Agency Approving Project

Nevada County Board of Supervisors

Name of Person or Agency Carrying Out Project: County of Nevada

Exempt Status: (Check One)

___ Ministerial (Sec. 15073)
___ Declared Emergency [Sec. 15071 (a)]
___ Emergency Project [Sec. 15071 (b) and (c)]
 Categorical Exemption. General Exemption - Sections 15060(c)(2) and 15061(b)(3) Categorical exemptions - Sections 15301, 15303, 15304, 15307, 15308 and 15321.

Reasons why project is exempt:

The County's unique geographic and climatic conditions, which include dense forested areas receiving substantial precipitation, along with the sparse population in many areas of the County, provide conditions that are favorable to Cannabis Cultivation. Cannabis growers can achieve a high per-plant yield with high economic value because of the County's favorable growing conditions. Proposition 215 and Senate Bill 420 primarily address the criminal law, providing qualifying patients and primary caregivers with limited immunity from state criminal prosecution under certain identified statutes. Neither Proposition 215 nor Senate Bill 420, nor the Attorney General's August 2008 Guidelines for the Security and Non-Diversion of Cannabis Grown for Medical Use adopted pursuant to Senate Bill 420, provide comprehensive civil regulation of premises used for cannabis cultivation. The unregulated cultivation of cannabis in the unincorporated area of Nevada County can adversely affect the health, safety, and well-being of the County and its residents.

Nevada County and other public entities have reported adverse impacts from Cannabis Cultivation, including but not limited to increased risks of criminal activity, acts of violence in connection with attempts to protect or steal cannabis grows, degradation of the natural environment, unsanitary conditions, violations of building codes, malodorous and disagreeable odors, killing of wildlife, hazardous materials spills and illegal discharges to waterways, water theft, excessive water usage, illegal and excessive grading and significant soil erosion, and negative effects on physical, mental and community health. The creation of persistent strong odors as Cannabis plants mature and flower is offensive to many people, results in complaints of respiratory problems, and creates an attractive nuisance, alerting persons to the location of valuable Cannabis plants and creating an increased risk of crime.

The Indoor Cultivation of substantial amounts of Cannabis within a residence presents potential health and safety risks to those living in the residence, especially to children, including but not limited to increased risk of fire from grow light systems and improper electrical wiring, exposure to fertilizers, pesticides, anti-fungus/mold agents, and exposure to potential property crimes targeting the residence. Comprehensive restriction of premises used for Commercial Cannabis Cultivation is proper and necessary to address the risks and adverse impacts as stated herein, that are especially significant if the amount of cannabis cultivated on a single premises is not regulated and substantial amounts of cannabis are thereby allowed to be concentrated in one place.

In 2011, Nevada County experienced a dramatic increase in citizen complaints regarding the odor, threats to public safety and other nuisances that Cultivation sites can and have created. In May of 2012, Nevada County enacted Article 5 of the General Code setting forth comprehensive civil regulations governing the cultivation of medical cannabis within the unincorporated areas of Nevada County to address the adverse effects to the health, safety, and well-being of the County and its residents could suffer as the result of unregulated Cannabis Cultivation. In January of 2016, the Board of Supervisors adopted Ordinance No. 2405 amending the County's cannabis cultivation regulations to include a ban on outdoor cannabis cultivation. Also in January of 2016, Resolution 16-038 was passed authorizing the placement of Measure W on the June 2016 ballot related to certain amendments to Measure W, particularly the ban on outdoor cultivation. In February of 2016, the Board of Supervisors passed Resolution 16-082 memorializing the intent of the Board to repeal the ban on outdoor cultivation and to consider and adopt other outdoor regulations if Measure W was not adopted by the voters. On June 7, 2016, Measure W failed to pass, and those

results were certified on July 19, 2016. The current ordinance does not permit any commercial cannabis activities in Nevada County.

Effective January 1, 2018, the State of California implemented “emergency regulations” pertaining to Commercial Cannabis Activities in the State of California allowing for those seeking to enter the business to obtain temporary licenses for commercial cannabis activities. In connection with the emergency regulations, the State implemented a temporary license program to allow licensees to engage in Commercial Cannabis Activity prior to the development and implementation of permanent state regulations. The State’s temporary license program requires local governments to provide “local authorization” for licensees to engage in Commercial Cannabis Activities.

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

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

The Amendments are intended and designed to address these concerns, and also to reduce environmental impacts to wildlife, natural resources, and the community while simplifying the regulations so that they can be more readily understood by those affected and improve the enforcement process and to more effectively control the adverse impacts associated with Cannabis Cultivation as stated herein, while accommodating the desires and needs of Qualified Patients and their Primary Caregivers. These regulations are also intended to permit local cultivators to enter the state commercial cannabis market.

Cultivation of any amount of Cannabis at locations or premises within 600 feet of schools, school bus stops, school evacuation sites, churches, parks, child care centers, or youth-oriented facilities creates unique risks that the Cannabis plants may be observed by juveniles, and therefore be especially vulnerable to theft or recreational consumption by juveniles. Further, the potential for criminal activities associated with Cannabis Cultivation in such locations (which are typically within or in close proximity to residential areas) poses heightened risks that juveniles will be involved or endangered. Therefore, Cultivation of any amount of Cannabis in such locations or premises is especially hazardous to public safety and welfare, and to the protection of children and the person(s) cultivating the Cannabis.

The purpose and intent of these Amendments is to implement State law by regulating the Cultivation of Cannabis in a manner consistent with State law. The Amendments are also intended to balance the needs of medical patients and their caregivers and to promote the health, safety, and general welfare of the residents and businesses within the unincorporated territory of the County of Nevada. The Amendments are intended to be consistent with Proposition 215 and Senate Bill 420 as well as the newly enacted State regulations embodied in AB 266, AB 243 and SB 643 as well as the emergency regulations. The intent and purpose of this Article is to establish reasonable regulations regarding the manner in which Cannabis may be cultivated, including restrictions on the amount and location of cannabis that may be cultivated on any Premises, in order to protect the public health, safety, and welfare in Nevada County, and to continue to address the adverse impacts previous local regulations have failed to curtail.

The Amendments allow for limited indoor and outdoor cultivation only in certain locations and prohibit cultivation in residential areas where sensitive uses, including schools, parks and other juvenile uses are most likely to be located, except as required by state law. By limiting cannabis cultivation in this way, the Amendments will not result in significant impacts associated with commercial cannabis cultivation as limited outdoor grows may only occur on larger, primarily agricultural parcels and indoor grows will only occur in permitted and regulated structures that are subject to ministerial approvals through the building permit process. Due to the limited size of allowed grow areas, such grows would only require small structures which are required to be fully permitted and located consistently with existing land use regulations. The additional enforcement provisions and other minor text revisions in these Amendments are administrative activities which are not a project as defined by CEQA.

Therefore, the County finds that these Amendments are not subject to the California Environmental Quality Act (CEQA) pursuant to Sections 15060(c)(2) (the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment) and 15061(b)(3) (there is no possibility the activity in question may have a significant effect on the environment). In addition to the foregoing general exemptions, the following categorical exemptions apply: Sections 15301 (permitting, leasing and minor alterations to existing facilities), 15303 (construction and location of new, small structures), 15304 (minor alterations to land), 15307 (actions taken as authorized by local ordinance to assure protection of natural resources), 15308 (actions taken as authorized by local ordinance to assure protection of the environment) and 15321 (action by agency for enforcement of a law, general rule, standard or objective administered or adopted by the agency, including by direct referral to the County Counsel as appropriate for judicial enforcement).

Contact Person - Alison A. Barratt-Green, County Counsel
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If filed by applicant:

1. Attach certified document of exemption finding.
2. Has a Notice of Exemption been filed by the Public Agency approving the project? Yes No

Date Received for Filing: _____

Alison A. Barratt-Green
County Counsel, County of Nevada