

COUNTY OF NEVADA DRAFT CANNABIS CULTIVATION ORDINANCE

Nevada County Board of Supervisors
Special Meeting
May 1, 2018

Draft Ordinance Overview

- ▶ Comprehensive Rewrite of Existing Regulations
 - ▶ Align with Board direction
 - ▶ Consistency with existing State Emergency Regulations
 - ▶ Add permit processes and other oversight
 - ▶ Create basis for beginning CEQA process
- ▶ Identified Additional Decision Points for Board

Draft Ordinance Overview

- ▶ Overview of Changes to Draft Ordinance
 - ▶ Remove or reduce cannabis cultivation in residential areas
 - ▶ Allow commercial cannabis cultivation and increase allowed cultivation areas in AG, AE, & FR zones
 - ▶ Create uniform setback standards with potential for variances

Draft Ordinance Overview

- ▶ Overview of Changes to Draft Ordinance, *cont'd*
 - ▶ Replace single set of regulations with three separate categories:
 - ▶ Personal Use cultivation
 - ▶ Commercial cultivation
 - ▶ Non-remuneration
 - ▶ Add discretionary permit requirements for commercial cultivation
 - ▶ Land Use Permits (Property Owner)
 - ▶ Administrative Development Permit - Up to 2500 sf
 - ▶ Conditional Use Permit - Over 2500 sf
 - ▶ Annual Regulatory Permit (Cultivator)

Draft Ordinance Overview

- ▶ Overview of Changes to Draft Ordinance, *cont'd*
 - ▶ Update definitions and other technical requirements
 - ▶ Revise and increase penalties for non-compliance
 - ▶ Increased Fines
 - ▶ Permit Revocation
 - ▶ Reports to State
 - ▶ Criminal Penalties

BOARD DECISION POINTS

Commercial Cultivation Sizes- Background

- ▶ In March, Board decided on a maximum grow size of 10,000 sf in AG, AE and FR
- ▶ Board Direction to Staff to return with proposed tiered grow sizes

Proposed Tiered Cultivation Sizes

AG, AE and FR:

- ▶ >2 acres up to 5 acres:
 - Indoors: a maximum of 500 sf of Canopy
(State License: Specialty Cottage Indoor)
 - Mixed-Light and Outdoors: No Commercial Cannabis Cultivation.
- ▶ >5 acres up to 10 acres:
 - Indoors, Mixed-Light, Outdoors or a combination: a maximum of 2,500 sf of Canopy
(State License: Specialty Cottage Mixed Light and rough equivalent of Specialty Cottage Outdoor which is 25 plants)

Proposed Tiered Cultivation Sizes (Con't)

AG, AE, FR:

- ▶ >10 acres up to 20 acres:

Indoors, Mixed-Light, Outdoors or a combination: a maximum of 5,000 sf of Canopy (State License: Specialty)

- ▶ >20 acres:

Indoors, Mixed-Light, Outdoors or a combination: a maximum of 10,000 sf of Canopy (State License: Small)

Minimum Parcel Size for Personal Use

- ▶ Draft Ordinance allows for 6 plants Indoors on any parcel in any zone-Prop 64
- ▶ Board direction was to allow Outdoor cultivation on AG, AE, FR and TPZ

Minimum Parcel Size for Personal Use-(Con't)

- ▶ March meeting, the Board provided a range of 1-3 acres for minimum parcel size for outdoor cultivation on AG, AE, FR and TPZ.
- ▶ Seeking final Board direction to establish a minimum parcel size in these zones for outdoor Personal Use Cultivation in AG, AE, FR and TPZ zones.

Personal Use Plant Count

- ▶ During drafting, Staff determined Board clarification was needed
- ▶ Staff recommends allowing Personal Use Cultivation of up to 6 plants in addition to Commercial Cultivation
- ▶ State licensing process will likely require identification of other activities on the site which may include personal use cultivation.

Non-Remuneration

- ▶ In March, the Board asked Staff to return with suggested provisions pertaining to non-remuneration.
- ▶ The State allows a Qualified Patient who cultivates for their own personal use, and does not donate, sell, distribute or provide to any other person to be exempt from licensing.
- ▶ The State allows a Primary Caregiver of no more than 5 specified qualified patients to cultivate, transport, manufacture, provide and donate medical cannabis without a state license.
- ▶ Primary Caregiver has assumed responsibility, on a consistent basis, for the housing, health, or safety of that qualified patient.

Non-Remuneration (Con't)

Staff Proposes for Board Consideration the following:

- ▶ Qualified Caregiver may cultivate for no more than 5 specified Qualified Individuals
- ▶ No more than 500 sf per Qualified Individual
- ▶ Obtain local Non-Remuneration Permit
- ▶ Otherwise Comply with Commercial Cannabis Cultivation Requirements

“Sensitive Site” Definition

- ▶ The current ordinance has a setback requirement from sensitive sites.
- ▶ In March, the Board directed Staff to return to the Board with a side-by-side of the State and Current Ordinance definitions to aid in the development of an appropriate definition.

“Sensitive Site” Definition

State Requires a setback from:

- ▶ “School providing instruction in kindergarten or any grades one (1) through twelve (12), or a day care center or youth center as defined in section 26001 of the Bus and Professions Code...”

Current County Setback Requirements are from:

- ▶ School, School Bus Stop, School Evacuation Site, Church, Park, Child Care Center, or Youth-Oriented Facility.

“Sensitive Site” Definition

Request Board decision on
components of the definition of
“Sensitive Site”

Registration Process for Personal Use

- ▶ In March, this issue was discussed, but not decided.
- ▶ Staff contemplates a simple online procedure to capture information such as name and address of cultivation site.

Registration Process for Personal Use Cultivation

- ▶ **Decision Point: Do we institute a simple Registration Process regarding Personal Use cultivation in Nevada County?**

Transport of Cannabis

- ▶ In March, public comment was concerned with how cultivators might transport their own cannabis off of cultivation sites.
- ▶ State Law prohibits the transfer of cannabis off of a cultivation site by anyone other than a licensed Distributor. (C.C.R. §8202)
- ▶ State offers a Distribution/Transport Only (Self-Distribution) license. (C.C.R §5315)

Transport of Cannabis- (Con't)

- ▶ **Decision Point:** Whether to allow a licensed cultivator to transfer their own cannabis off of their own cultivation site if they possess the proper state licenses.

Permit Limits

- ▶ Concern has been raised about large corporations taking over the cannabis business and driving out the smaller farmers.
- ▶ State of California regulations contain anti-monopoly language and provide excessive concentration as a basis to deny licenses. (B&P §26051.)

Permit Limits

For Board Consideration:

- ▶ Limit any individual or entity to 3 permits
- ▶ Limit the number of cannabis businesses in which one can have a financial interest in Nevada County to 3

Setback Easement/Variance

- ▶ County has oddly-shaped parcels which has been reported as problematic for application of uniform setbacks to grow sites.
- ▶ In March, the Board gave direction to Staff to explore whether a variance procedure or other process could be put in place to address the concern.

Setback Easement/Variance

Staff Proposals for Consideration:

- ▶ Allow cultivators to apply for a variance to reduce any setback by up to 40% using existing variance procedures
- ▶ Setback Easement: obtain a setback easement from an adjacent parcel owner that would run with the land

Setback Adjustment for State and Federal Parks

- ▶ State and Federal Parks are considered a “Park” for purposes of the sensitive site setback.
- ▶ In March, a question arose about whether one could cultivate within a setback of less than 1,000 feet if the lot adjacent to the grow site was an unimproved part of a State or Federal Park.

Setback Adjustment for State and Federal Parks-(Con't)

For Board Consideration:

- ▶ Allow a cultivator to apply for approval of a setback of less than 1,000 if :
 - ▶ Setback is not less than 300 feet; and
 - ▶ Only to construct an Accessory Structure; and
 - ▶ Only if adjacent lot is inaccessible by people and is unimproved.

Transition Period

- ▶ In March, the Board directed Staff to return with a proposal to allow for a transition period to bring non-cannabis-related structures on cultivation sites into compliance while allowing cannabis activities to go forward.

Transition Period (Con't)

For Board Consideration:

- ▶ Allow up to two years to correct code violations in any structures other than those in which cannabis activities would occur
- ▶ Provision would expire 2 years from the date this ordinance is initially adopted

Enforcement

- ▶ The Board has consistently expressed the importance of ensuring the ordinance is enforceable and effective in providing for impactful consequences for non-compliance.
- ▶ Operating without a State license now has criminal consequences.

Enforcement-(Con't)

Proposed Changes to Enforcement Penalties

- ▶ Staff recommends an increased monetary penalty option as follows:
 - ▶ 3 times the amount of the permit fees for licensed cultivators per day/per violation, OR
 - ▶ \$1,000 per violation per day whichever is greater.
 - ▶ Each penalty could be imposed per violation per day, up to a maximum of \$25,000 per violation per year.
- ▶ Local Permit revocation/non-renewal
- ▶ Report of violation to State licensing authorities
- ▶ Report to local and state law enforcement and local and state prosecuting authorities regarding criminal

Firearms

- ▶ U.S. Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF): “Any person who uses or is addicted to marijuana, regardless of whether his or her state has passed legislation authorizing marijuana use for medicinal purposes, is an unlawful user of or addicted to a controlled substance, and is prohibited by federal law from possessing firearms or ammunition.” [18 U.S.C. §922(g)(3)]
- ▶ 9th Circuit sided with gun store owner who refused to sell a gun to a medical marijuana card holder.
- ▶ Other Counties have implemented provisions prohibiting possession on Commercial Cannabis sites.

Firearms (con't)

Decision Point:

- ▶ Whether to ban possession of firearms on Commercial Cannabis locations.

Temporary Permits

- ▶ State allows temporary permits with local authorization
 - ▶ Initial Term: Up to 120 days
 - ▶ Extensions: Up to two 90 day extensions with completed State application
 - ▶ Program expires January 1, 2019
- ▶ March Board Direction: Consider options for Temporary Licenses

Temporary Permits

- ▶ Staff reviewed and considered:
 - ▶ Duration of temporary permits
 - ▶ Likelihood of maturing into permanent permits
 - ▶ Diversion of resources away from work on long-term, permanent regulations
 - ▶ Need for additional CEQA work
 - ▶ Overall time and cost required to develop temporary program
- ▶ After careful review and consideration, Staff does not recommend temporary cannabis permits

Temporary Licenses

- ▶ Potential alternative for Board consideration
 - ▶ Allow in AG, AE and FR zones only
 - ▶ Commercial cultivation area complies with existing ordinance
 - ▶ From 6 plants/300 sf to 25 plants/1000 sf
 - ▶ Includes 6 plants for Personal Use

Temporary Licenses

- ▶ Potential alternative for Board consideration, *cont'd*
 - ▶ Administrative-Type license prior to cultivation
 - ▶ Inspection & Right of Entry
 - ▶ Written, notarized landowner consent
 - ▶ No guarantee or assurance of future permits
 - ▶ Indemnification
 - ▶ Subject to Permit & Inspection Fees
 - ▶ Limit number of permits (up to 100)
 - ▶ Lottery system

Temporary Licenses

- ▶ Requires urgency ordinance - 4/5ths vote
 - ▶ Estimated schedule:
 - ▶ May 22nd - Urgency Ordinance
 - ▶ July 1st - Issue licenses
 - ▶ With changes, implementation may take longer
- ▶ Legal risks to County and applicants
 - ▶ CEQA
 - ▶ Urgency ordinance
- ▶ Board Direction

BOARD QUESTIONS AND DISCUSSION

PUBLIC COMMENT

The background features abstract, overlapping geometric shapes in various shades of blue, ranging from light sky blue to deep navy blue. These shapes are primarily located on the right side of the page, creating a modern, dynamic feel. The text is centered on a white background.

ADDITIONAL BOARD QUESTIONS AND DISCUSSION

STAFF SUMMATION*

*Reflects final Board direction on 5-1-18

Agreed Decision Points

- ▶ Minimum Parcel Size for Personal Use in AG, AE, FR & TPZ: 2 acres
- ▶ Personal Use Plant Count: In addition to Commercial Cultivation limits
- ▶ Non-Remuneration: Up to 5 qualified individuals, 500 sf per patient, comply with commercial cannabis cultivation regulations
- ▶ “Sensitive Site” Definition
 - ▶ School, ~~School Bus Stop~~, ~~School Evacuation Site~~, Church, Park, Child Care Center, or Youth-Oriented Facility

Agreed Decision Points

- ▶ Registration Process for Personal Use: None
- ▶ Transport of Cannabis: Allow Transport/Self-Distribution License
- ▶ Permit Limits:
 - ▶ Limit individual or entity to 3 cultivation permits
 - ▶ Return for further discussion regarding financial interests
- ▶ Setback Easement/Variance:
 - ▶ Allow variance for reduced setbacks by up to 40%
 - ▶ Allow setback easements using adjacent parcels
 - ▶ Allow variances for accessory structures & outdoor grows

Agreed Decision Points

- ▶ Setbacks for State and Federal Parks
 - ▶ Allow setback of 300 feet adjacent to inaccessible, unimproved State and Federal parks
 - ▶ Clarify that “inaccessible/unimproved” includes no trails or buildings
 - ▶ Review Coop Agreements for consistency
- ▶ Transition Period:
 - ▶ 2 year transition for structures not used for cannabis activities and for permitted structures being converted to cannabis activities

Agreed Decision Points

- ▶ Enforcement: Changes to Enforcement Penalties as proposed by Staff
- ▶ Firearms: Remove restriction on firearms on Commercial Cultivation sites
- ▶ Tiered Commercial Cultivation in AG, AE, FR
 - ▶ 2-4.99 acres: Indoors Only (500 sf)
 - ▶ 5-9.99 acres: Any Combination (2500 sf)
 - ▶ 10-19.99 acres: Any Combination (5000 sf)
 - ▶ 20+ acres: Any Combination (10,000 sf)

Agreed Decision Points

- ▶ Temporary Permits
 - ▶ Allow temporary permits in AG, AE, FR and as outlined by staff
 - ▶ Bring back urgency ordinance on May 22
- ▶ Accessory Structures
 - ▶ Return with revised definition which is less restrictive with regard to components