

**OFFICE OF THE COUNTY COUNSEL  
COUNTY OF NEVADA**

ALISON A. BARRATT-GREEN, COUNTY COUNSEL  
AMANDA S. UHRHAMMER, ASSISTANT COUNTY COUNSEL  
JAMIE L. HOGENSON, DEPUTY COUNTY COUNSEL  
KATHRYN E. JACOBS, DEPUTY COUNTY COUNSEL  
SCOTT A. MCLERAN, DEPUTY COUNTY COUNSEL  
RHETTA K. VANDER PLOEG, DEPUTY COUNTY COUNSEL



ERIC ROOD ADMINISTRATIVE CENTER  
950 MAIDU AVENUE, SUITE 240  
NEVADA CITY, CA 95959  
TELEPHONE (530) 265-1319  
FACSIMILE (530) 265-9840  
county.counsel@co.nevada.ca.us

December 7, 2016

Honorable Board of Supervisors  
Eric Rood Administrative Center  
950 Maidu Avenue  
Nevada City, CA 95959

**DATE OF MEETING:** December 13, 2016

**SUBJECT:** Ordinance Adding Subsections G-IV 5.2.X, G-IV 5.3.CC, G-IV 5.3.DD, G-IV 5.4.M and G-IV 5.4.N to Article 5 of Chapter IV of the Nevada County General Code Regarding Indoor Personal Marijuana Cultivation.

**RECOMMENDATION:** Introduce and Waive Further Readings of the proposed Ordinance.

**FUNDING:** Not applicable.

**BACKGROUND:**

This limited amendment is offered as a good faith effort to ensure the current ordinance is aligned with the legal requirements of Proposition 64. The discussions regarding long-term regulations involving community input will continue to move forward.

On November 8, 2016, the voters of the State of California adopted Proposition 64, the Control, Regulate and Tax Adult Use of Marijuana Act (commonly referred to as "AUMA"). AUMA legalized the nonmedical use and possession of marijuana by persons 21 years of age and older. Among other provisions, Proposition 64 makes it legal for such persons to possess, plant, cultivate, harvest, dry or process up to six (6) living marijuana plants, indoors for personal use. Proposition 64 requires that marijuana in excess of 28.5 grams produced under the personal cultivation provisions of Proposition 64 be kept in a locked space on the grounds of a private residence, and that any marijuana-related activities cannot be visible from a public place.

Proposition 64 provides that local governments can reasonably regulate the personal cultivation of nonmedical marijuana, but cannot completely prohibit the personal indoor cultivation of up to six (6) living marijuana plants inside a private residence or in an accessory structure on the same property as the private residence, so long as the accessory structure is fully enclosed, secure and not visible from a public space.

Proposition 64 defines a private residence as “a house, an apartment unit, a mobilehome, or other similar dwelling unit.”

The attached ordinance would add the following five new subsections to the County’s existing marijuana regulations to allow for limited personal indoor cultivation of medical or nonmedical marijuana in accordance with Proposition 64:

- (a) Section G-IV 5.2.X: Added a new finding regarding voter approval of Proposition 64, to explain and support the need for this very limited code amendment.
- (b) Section G-IV 5.3.CC: Added a new definition for “Nonmedical Marijuana”.
- (c) Section G-IV 5.3.DD: Added a new definition for “Private Residence” consistent with Proposition 64.
- (d) Sections G-IV 5.4.M and G-IV 5.4.N: Added new provisions which allow for indoor only personal cultivation of up to 6 marijuana plants per private residence by persons 21 or older, for medical or nonmedical purposes. In accordance with Proposition 64, the six plant limit applies regardless of how many people live at the residence. Indoor grows under this new section are subject to the same health and safety regulations as are currently required for all other types of indoor grows, except that (a) cultivation would be allowed in any area of the residence except in areas occupied by, or easily accessible to children; and (b) some flexibility in applying setback requirements will be allowed if and to the extent that the strict application of setbacks would completely prohibit the ability to cultivate under this new section.

For purposes of the County’s ordinance, the term “Cultivation” includes cultivating, planting, harvesting, drying, processing or storing of marijuana.

At present, the County’s marijuana regulations allow marijuana cultivation only for medical purposes. The sole purpose of this very limited amendment is to ensure the County’s marijuana regulations remain consistent with current state law as it relates to the indoor personal cultivation of marijuana. Proposition 64 itself also prohibits the sale or distribution of nonmedical marijuana until January 1, 2018, to provide the State time to develop the licensing scheme and regulations related to commercial cultivation and distribution. It is recommended that any policy discussions or potential regulations related to the cultivation of nonmedical marijuana be handled as part of the long-term regulation process that the County will be engaged in next year.

Initiated and approved by:

ALISON A. BARRATT-GREEN  
County Counsel