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May 16, 2018

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

DATE OF MEETING: May 22, 2018

SUBJECT: Adopt Urgency Ordinance Amending Subsection G-IV 5.4.E.3 of, and Adding Subsection G-IV 5.4.O to Article 5 of Chapter IV of the Nevada County General Code Regarding Temporary Medical Commercial Cannabis Permits (4/5th Affirmative Vote Required)

RECOMMENDATION: Adopt the attached Urgency Ordinance

FUNDING: Implementation and enforcement of the proposed ordinance will come from General Fund revenues allocated to the Community Development Department budgets, which is expected to be partially offset by revenues from permit fees and the collection of fines and abatement costs.

BACKGROUND: On May 1, 2018, the Board of Supervisors held a study session regarding proposed permanent regulations related to commercial cannabis cultivation permits and options for a temporary cannabis cultivation permit program. At the study session, the Board directed staff to prepare an Urgency Ordinance to allow for the issuance of Temporary Medical Commercial Cannabis Permits for the 2018 grow season.

Proposed Ordinance

Attached for the Board's review and adoption is a proposed urgency ordinance to create a temporary medical commercial cannabis permit program for Nevada County. If adopted, the proposed ordinance would partially lift the ban on commercial cultivation and would allow commercial cannabis cultivation for medical purposes only in the AG, AE and FR zones. The proposed ordinance would also allow permittees to obtain a

State license for cultivation and self-transport of medical cannabis which has been cultivated on the permitted site.

The proposed ordinance authorizes the Community Development Director or his designee to implement and administer the new Temporary Medical Commercial Cannabis Permit program. Among other provisions, the new temporary permit program provides for the following:

- Commercial cultivation and self-transport is allowed only upon issuance of a Temporary Medical Commercial Cannabis Permit. This is an administrative permit for limited temporary regulation of the cultivation activity. No land use permits that would allow for permanent or long term cultivation will be issued.
- All cultivation is required to comply with grow area size limitations, setbacks and all other requirements in the County's current (interim) cannabis cultivation ordinance. Allowed cultivation areas and setbacks under the current ordinance depend on parcel size, but generally range from 6 plants or 300 sf on parcels between 2 and 5 acres to 25 plants or 1,000 sf on parcels greater than 20 acres, with setbacks ranging from 100 to 300 feet.
- Prior to commencement of commercial cultivation, the applicant must obtain a valid temporary permit from the State.
- Applicants are subject to an onsite inspection prior to issuance of the temporary permit and are required to provide a right of entry allowing County staff to conduct additional inspections at any time.
- Applicants must apply for permits to correct existing code violations on the Parcel prior to the issuance of a temporary permit and commencement of commercial cultivation activity and must correct the violations within 60 days after issuance of the temporary permit. This 60-day grace period does not apply to health and safety issues, new construction or violations related to the commercial cannabis activity.
- Payment of a Temporary Medical Commercial Cannabis Permit fee and all other applicable fees at the time of application. The Temporary Medical Commercial Cannabis Permit fee pays for the cost of processing the application and is nonrefundable.
- The CDA Director or his designee will establish application filing dates and dates during which this program will operate. This temporary permit program and all approvals issued under the program will automatically expire as of December 31, 2018, regardless of when a permit is issued. Current State regulations for temporary State permits also expire on December 31, 2018.

- Applicants are required to execute a standard indemnification agreement committing to defend and indemnify the County for all risks and liabilities associated with issuance of the permit and any cultivation activities on the site.
- Applicants will be required to self-certify, under penalty of perjury, that all statements made in the application are true and that they have no Class A or post Prop 47 felony convictions which would render them ineligible to obtain a temporary permit. False statements on the permit application may be grounds for denial, suspension or revocation of a permit.
- Permittees are subject to fines penalties for violating the terms of the temporary permit (including fines, immediate revocation of the permit, report to the State, abatement of the cultivation site, and criminal penalties as allowed under current State law).
- Permits are issued 'at risk', meaning that issuance of a temporary permit would not entitle the holder to a permanent license or provide any guarantee or assurance that a temporary cultivation site will comply with future cannabis regulations. Issuance of a temporary permit will not constitute a 'local authorization' for purposes of obtaining a permanent State license.
- Consistent with the State's temporary permit program, there is no appeal process related to denial, suspension or revocation of a temporary permit. This is due to the desire to issue temporary permits quickly, the requirements for obtaining a permit, and the short operation period for this program.

Upon further review and discussion of the proposed ordinance and for ease of administration, staff is also recommending the following changes to its previous recommendations:

- Staff originally proposed limiting temporary permits to 120 days, plus approved extensions, per State law. Staff is now recommending that the permits be valid from issuance until December 31, 2018, regardless of when issued, to reduce processing time and cost.
- Staff proposed limiting the number of temporary permits to be issued to 100. The logistics of creating a lottery or other system for fairly allocating these permits has been challenging. Staff believes it is unlikely that this cap will be reached within the short lifespan of this program and is therefore proposing to remove this cap.

Permit Program Implementation:

The Temporary Commercial Cannabis Permit process is proposed as a three-tier process including an application submittal, project review, and site inspection. There will be a single point of contact within the Community Development Agency (CDA) coordinating and completing project reviews. Incomplete application submittals will not be accepted. Once permits are approved for issuance, a site inspection is required to be completed verifying all permit requirements for the temporary permit to become valid. It is recommended that all applications be submitted by October 1, 2018. All temporary permits will expire as of December 31, 2018. Staff is working on finalizing all required permit applications, checklists and informational handouts.

The fees to complete all required permit activities are based on currently established and approved County fee schedules. This includes fees to complete permit processing, plan review and a site inspection. The total minimum fee proposed is \$542.49. This would be a minimum fee due at time of application. Any additional time needed for permit processing, plan review, inspections, or code compliance activities would be billed on an hourly rate basis at the hourly rate in effect at the time the service is provided. The fee schedule will be reviewed by the County User Fee Review Group on May 17, 2018 and will be presented in the CDA user fee schedules at the June 5, 2018 Board meeting. This fee will be effective immediately upon adoption by the Board. Existing County staff as well as the use of established consultants will be used to complete all required permit activities.

The proposed tentative start date to submit applications is June 20, 2018. Appointments are required to submit complete applications as well as to schedule compliance inspections. This will help to not substantially impact existing County services. Appointments will be made on a first come, first serve basis.

CEQA

As the County has done with prior iterations of these cannabis regulations, the proposed urgency ordinance includes findings to support use of CEQA exemptions for this ordinance. The Board would specifically find that this Ordinance is 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). A copy of the Notice of Exemption which more fully sets forth the substantial evidence to support these exemptions is included with this agenda packet.

Urgency Findings

The proposed ordinance is an urgency measure which, if adopted by a 4/5ths vote, will become effective immediately. Government Code section 25123(d) authorizes the Board to adopt an urgency ordinance “for the immediate preservation of the public peace, health, or safety.” In Nevada County, the typical growing season for cannabis is approximately late April through September of each year. 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 cannabis commercially during the upcoming growing season. The Board 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 licensing program. In short, due to the impending start of the current cannabis growing season there is an immediate need to provide certainty and guidance to those who choose to cultivate cannabis legally in Nevada County and to address the immediate threat to the health, safety and welfare of Nevada County residents if the cultivation of cannabis remains unregulated.

Item Initiated and Approved by: Alison A. Barratt-Green, County Counsel
Sean Powers, Community Development
Agency Director

Attachments: Proposed Urgency Ordinance Regarding Temporary Permits
Temporary Permit Workflow
Notice of Exemption