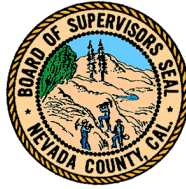


COUNTY OF NEVADA

STATE OF CALIFORNIA

Heidi Hall, 1st District
Ed Scofield, 2nd District (Chair)
Dan Miller, 3rd District
Wm. "Hank" Weston, 4th District
Richard Anderson, 5th District (Vice-Chair)



BOARD OF SUPERVISORS

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Julie Patterson Hunter, Clerk of the Board
Richard A. Haffey, County Executive Officer
Alison Barratt-Green, County Counsel

SUMMARY MINUTES

Date	Time	Location
Tuesday, May 1, 2018	9:00 AM	Board Chambers, First Floor Eric Rood Administrative Center 950 Maidu Avenue Nevada City, California

SPECIAL MEETING: 9:00 AM

Rollcall

The following Supervisors present:

Heidi Hall, 1st District
Ed Scofield, 2nd District
Dan Miller, 3rd District
Hank Weston, 4th District
Richard Anderson, 5th District

STANDING ORDERS:

Chairman Scofield called the meeting to order at 9:00 a.m.

Pledge of allegiance led by Craig Griesbach, Director of Building.

Corrections and/or deletions to agenda.

ACTION TAKEN: No corrections and/or deletions to the agenda were noted.

DEPARTMENT HEAD MATTER:**County Counsel: Alison Barratt-Green**

1. [SR 18-0341](#) Review of draft ordinance and related issues regarding long-term cannabis cultivation regulations, and direction to staff.

ACTION TAKEN: Chairman Scofield introduced the agenda item and reviewed the meeting process. He explained that he did not expect action to be taken by the Board at today's meeting, with the goal to move forward with direction to keep the process moving.

Mr. Sean Powers, Community Development Agency Director, gave a brief history of the cannabis ordinance process and a timeline going forward. Mr. Brian Foss, Planning Director, provided a PowerPoint presentation regarding the California Environmental Quality Act (CEQA) process. Mr. Powers reviewed the purpose of CEQA and the activities that trigger the requirement. If there is substantial evidence of a significant effect on the environment the County would also need to prepare an Environmental Impact Report (EIR), which would be in place to mitigate impacts and protect environmental resources. He reported that if the CEQA process is not completed by the County at the front end, then each applicant will be required to complete their own CEQA analysis when pulling a permit. This would add extra cost for the applicant and delay the process. This means that the County is covering the upfront expense and streamlining the permit process. He reviewed the steps moving forward, reporting that staff is looking to get the necessary work done as quickly as possible. Mr. Powers noted that the prior Ordinance did not allow for commercial activity and the new Ordinance will allow for more cultivation. He reported that the State completed an EIR in November 2017, although it did not answer all questions and requires local lead agencies to fill in those areas that were not covered.

Mr. Powers and Mr. Foss responded to Board questioning.

Ms. Alison Barratt-Green, County Counsel, explained that six plants are already allowed per State law, so this would not be included in the CEQA analysis. She confirmed that the current Ordinance is still in effect.

Ms. Barratt-Green provided a PowerPoint presentation regarding the draft Ordinance. The purpose is to align with Board direction, ensure that the Ordinance is consistent with the existing State Emergency Regulations and to create a basis for beginning the CEQA process. Ms. Barratt-Green provided an overview of the changes to the draft Ordinance: to add permit processes, remove or reduce cannabis cultivation in residential areas, determine the size of grows, allow commercial cannabis cultivation and increase allowed cultivation areas in AG, AE and FR zones, and to create uniform setback standards with potential for variances. Ms. Barratt-Green gave an overview of the additions to the draft Ordinance, including a review of the three new separate categories: 1) personal use; 2) commercial cultivation; and 3) non-remuneration. She reviewed the discretionary permit requirements for commercial cultivation, including land use permits issued to the property owner, and an annual regulatory permit issued to the cultivator. She provided updated definitions revised to match State definitions and technical requirements that staff has identified, and clarified the revisions that have been made to the penalties for non-compliance.

Ms. Barratt-Green introduced Ms. Amanda Uhrhammer, Assistant County Counsel. Ms. Uhrhammer provided an overview of changes made to the draft Ordinance directed by the Board during previous meetings. Ms. Uhrhammer introduced the final Decision Points that were still left to be decided by the Board.

Commercial Cultivation sizes: in March the Board decided on a maximum grow size of 10,000 square feet in Zones AG, AE and FR. Staff is proposing tiered cultivation sizes: 1) 2 acres up to 5 acres; Indoors, maximum of 500 square feet of canopy; Mixed-Light and Outdoor, no commercial cannabis cultivation; 2) 5 acres up to 10 acres; Indoors, Mixed-Light, Outdoors or a combination, a maximum of 2,500 square feet of canopy; 3) 10 acres up to 20 acres; Indoors, Mixed-Light, Outdoors or a combination, a maximum of 5,000 square feet of canopy; and 4) 20 acres; Indoors, Mixed-Light, Outdoors or a combination, maximum of 10,000 square feet of canopy. Ms. Uhrhammer asked for Board direction and consensus on the proposed cultivation sizes.

Board questioning and discussion ensued.

The Board's general consensus was to accept staff's proposal. Chairman Scofield suggested the Board could return to the topic following public comment.

Personal Use cultivation sizes: Currently the draft Ordinance allows for 6 plants Indoors on any parcel, in any Zone, pursuant to Proposition (Prop) 64. In March the Board provided a range of 1-3 acres for minimum parcel size for Outdoor cultivation in Zones AG, AE, FR and TPZ. Ms. Uhrhammer asked for Board direction to establish a minimum parcel size in these Zones for Outdoor Personal Use cultivation in Zones AG, AE, FR and TPZ.

Board questioning and discussion ensued.

The Board's general consensus was a minimum parcel size of 2 acres for Outdoor Personal Use cultivation.

Ms. Uhrhammer requested clarification regarding Personal Use cultivation of 6 plants; whether or not it is in addition to any Commercial cultivation.

The Board's general consensus was the cultivation of 6 plants for Personal Use would be in addition to Commercial cultivation.

Non-Remuneration cultivation: In March the Board asked staff to return with suggested provisions to allow for Non-Remuneration cultivation. Ms. Uhrhammer reviewed what the State currently allows. Staff is proposing the following: a qualified Caregiver may cultivate for no more than 5 specified Qualified Individuals; no more than 500 square feet per Qualified Individual; obtain local Non-Remuneration permit; and otherwise comply with Commercial Cannabis cultivation requirements.

Board questioning and discussion ensued.

The Board's general consensus was in agreement with the proposed Non-Remuneration requirements.

Clarification of "Sensitive Sites" outlined in the draft Ordinance - Schools, School Bus Stops, School Evacuation Site, Church, Park, Child Care Center, or Youth-Oriented Center: 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. Ms. Uhrhammer provided a side-by-side review of the County's current Ordinance and State regulations.

Board questioning and discussion ensued.

The Board's general consensus was to follow the current definitions, but exclude school bus stops and school evacuation sites.

Registration process for Personal Use cultivation: In March the Board discussed this issue but no decision was reached. Staff is suggesting a simple online procedure to capture information such as name and address of cultivation site.

Board questioning and discussion ensued.

The Board's general consensus was not to require a Personal Use registration process.

Transport of cannabis: In March, public concerns were raised regarding how cultivators might transport their own Cannabis off of cultivation sites. Ms. Uhrhammer reviewed State law regarding transport of Cannabis and asked the Board to decide whether the County should allow a licensed cultivator to transport their own Cannabis off their own cultivation site, if they possess the proper State licenses.

Board questioning and discussion ensued.

The Board's general consensus was to allow licensed cultivators to transport their own Cannabis off their own cultivation site, if they possess the proper State licenses.

Permit limitations: Ms. Uhrhammer reported that there was public concern regarding large corporations coming in to Nevada County, taking over the Cannabis business, and driving out smaller farmers. State regulations contain anti-monopoly language which provides for excessive concentration as a basis for denial of a permit. Staff proposes limiting any individual or entity to 3 cultivation permits and to limit the number of Cannabis businesses in which one can have a financial interest in Nevada County to 3. This would include permits from cities within the County.

Board questioning and discussion ensued.

The Board's general consensus was to limit any individual or entity to 3 cultivation permits; the Board needed more information regarding the financial interest question.

Setback Easement/Variance: Ms. Uhrhammer explained that Nevada County has oddly-shaped parcels, which is 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 concerns of oddly shaped parcels. Staff proposes to allow cultivators to apply for a variance to reduce any setback by up to 40 percent using existing variance procedures, and to set a process to apply for a setback easement from an adjacent parcel owner, which would be attached to the land and be permanent.

Board questioning and discussion ensued.

The Board's general consensus was in agreement with staff's proposal regarding Variances and Setback Easements (Accessory Structures, Indoor, Mixed-Light, cultivation only).

Setback Adjustment for State and Federal Parks, currently considered sensitive sites under the County's Ordinance: Staff proposal for Board consideration: 1) allow a cultivator to apply for approval of a setback of less than 1,000 feet if: a) setback is not less than 300 feet; b) only to construct an Accessory Structure; c) only if adjacent lot is inaccessible by people and is unimproved.

Supervisor Anderson requested additional language defining "inaccessible" and "improved". Ms. Uhrhammer noted that they would add language to make the definitions clear.

Supervisor Weston wanted staff to verify that any cooperative agreements with the State or Federal governments regarding setbacks on private properties adjacent to government lands be reviewed. Ms. Alison Barratt-Green responded that staff would look into the question.

The Board's general consensus was in agreement with staff's proposal regarding Setback Adjustments for State and Federal Parks.

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 Commercial cultivation sites into compliance while allowing Cannabis activities to go forward. Staff's proposal for consideration is to allow up to two years for cultivators to correct Code violations on any structures other than those in which Cannabis activities are occurring and for this provision to expire 2 years from the date this Ordinance is initially adopted.

Board questioning ensued.

The Board's general consensus was to allow up to 2 years for cultivators to come into compliance for everything other than grow structures. The issue of the grow structures would be brought back in the future.

Enforcement: Board's direction has been to ensure the Ordinance is enforceable and effective in providing for impactful consequences for noncompliance. The County's current fine structure is in alliance with the State's. Also, the State now has criminal consequences for operating without a State license. Staff's proposed changes to enforcement penalties: 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. Also, penalties would include local permit revocation/non-renewal; report of violation to State licensing authorities and Local, State and Federal Law Enforcement.

Board questioning and discussion ensued.

The Board's general consensus was in agreement for the proposed enforcement and penalty structure.

Firearms: Should possession of firearms be banned on commercial cannabis locations? Ms. Uhrhammer reviewed the ATF's (Alcohol, Tobacco and Firearms) regulations, which indicate that anyone who uses Marijuana for medicinal purposes cannot possess firearms or ammunition. She reported that other California counties have implemented this same prohibition. Nevada County's current Ordinance has a ban on possession of firearms for anyone who is permitted. Staff is requesting Board direction going forward regarding whether to ban possession of firearms on Commercial Cannabis locations or to ban possession of firearms in their entirety by anyone seeking a permit for a Commercial Cannabis license in Nevada County.

Board questioning and discussion ensued.

The Board's general consensus was to not ban possession of firearms on Commercial Cannabis locations or to ban possession of firearms in their entirety by anyone seeking a permit for a Commercial Cannabis license in Nevada County.

Ms. Barratt-Green reported that the final decision point was related to temporary permits. The State does allow temporary permits with a local authorization. The initial term of the permit can be up to 120 days; there is an extension provision which allows up to two 90-day extensions if the applicant has completed a State application. This program expires on January 1, 2019 so the temporary permits also expire at that time. Ms. Barratt-Green asked for Board direction to consider options for temporary licenses at a local level. Staff reviewed many options for temporary permits; 1) duration of temporary permits; 2) the likelihood of maturing into permanent permits; 3) diversion of resources away from work on long-time permanent regulations; 4) the need for additional CEQA work; and 5) overall time and cost required to develop a temporary program. After careful review and consideration, staff does not recommend temporary cannabis permits at this time.

Staff provided some options that are potential alternatives for consideration regarding temporary licensing: 1) allow Commercial cultivation in Zones AG, AE and FR only; 2) Commercial cultivation areas must comply with the existing Ordinance, 2a) from 6 plants/300 square feet to 25 plants/1000 square feet, 2b) includes 6 plants for personal use. Ms. Barratt-Green reviewed how the current Ordinance affected these options.

Ms. Barratt-Green provided other considerations for temporary licenses: 1) administrative-type license prior to commencement of the cultivation activity; 1a) inspection and right of entry, 1b) written and notarized landowner consent, 1c) no guarantee or assurance of future permits, 1d)

require indemnification, 1e) subject to permit, and inspection fees; 2) limit number of permits to 100; and 3) initiate a lottery system if more than 100 requests for permits are received.

In order to get the temporary program moving, it would require an Urgency Ordinance be passed by a 4/5 affirmative vote. If the Urgency Ordinance was brought forward at the May 22 meeting, July 1, 2018 would be the first date to issue licenses. If the Board requests changes, the implementation may take longer. Ms. Barratt-Green reviewed potential legal risks to the County and applicants, including: 1) CEQA implications; and 2) an Urgency Ordinance would require a special set of findings. Ms. Barratt-Green requested Board direction.

Ms. Barratt-Green responded to Board questioning, and discussion ensued. No direction was provided on temporary permits at this point.

Following a short break, Chairman Scofield provided an opportunity for public comment.

ACTION TAKEN: The following members of the public provided comments regarding the cannabis ordinance: Ms. Pat Seeley, District II resident; Ms. Virginia Akers, District III resident; Ms. Diana Gamzon, District I resident and Executive Director of Nevada County Cannabis Alliance; Ms. Rosemary Metrailler, District I resident, small business Attorney and member of the Community Advisory Group (CAG); Mr. Matthew Coulter, District I resident; Mr. Gary Baker, District II resident; Mr. Karuna Warren, Environmental Engineer; Mr. John Foley, District II resident; Ms. Patricia Smith, District IV resident, Ms. Smith also spoke on behalf of Mr. Wade Laughter, District I resident; Mr. Charles Benner, District I resident; Ms. Hailey Muller; Nevada County resident; Mr. Michael Chestone, District IV resident; Mr. Gene Rouse, Nevada County resident and business owner; Mr. Basil McMahon, District II resident; Mr. David Cooper, District IV resident; Ms. Sarah Smale, District II resident and Cannabis Attorney; Ms. Lisa Acevedo-Dellsite, District IV resident; Mr. Jason Rainey, District I resident; Ms. Shelley Salvatore, District I resident; Mr. Forrest Hurd, District IV resident, Caladrius Network Director and Chair of the California Compassion Coalition; Ms. Song Kowbell, District IV resident; Mr. Jonathan Collier, District I resident; Mr. Don Bessee, District II resident and SMART Approaches to Marijuana Executive Director; Ms. Amber Morris, Principal with Green Guidance Solutions and former Branch Chief, CalCannabis Cultivation Licensing, California Department of Food and Agriculture; Mr. Mark Johnson, District II resident; Mr. Harry Bennet, District I resident; Mr. Abraham Valensky, District IV resident; Ms. Carrie Becker, District IV resident; Mr. Eric Robbins, District III resident; and Mr. Jon Oleson, District IV resident.

There being no further public comment, Chairman Scofield closed the public comment period and recessed the meeting for lunch at 1:30 p.m.

AFTERNOON SESSION

Chairman Scofield called the meeting back to order at 2:04 p.m.

ACTION TAKEN: Ms. Alison Lehman, Assistant County Executive Officer, explained that staff was looking for Board direction taking into consideration the comments made during public comment. Staff would then request a short break to prepare their Summation of the Board's direction.

Chairman Scofield called for the Board to provide final direction to staff.

Supervisor Hall heard members of the public question the regulations regarding requirements for greenhouse/outdoor mixed. Ms. Uhrhammer agreed to return with lighter regulations regarding greenhouse requirements. Supervisor Anderson asked staff to provide the rationale for any changes that would be made. Ms. Uhrhammer agreed, although Ms. Barratt-Green warned the Board that this may call for additional CEQA analysis.

Supervisor Weston asked for clarification regarding County requirements for tunnel houses. Mr. Craig Griesbach, Director of Building, explained that the County has Agricultural exemptions for hoop houses, however they are high-tunnel and low-tunnel construction and relatively small. The County has also permitted several greenhouses that fall into the high-tunnel category in Penn Valley and South County. Mr. Griesbach responded to further questions regarding greenhouse/hoop-house permits and County Code. He explained that small greenhouses have square foot limitations, and high and low tunnels have size limitations, which are listed under Agricultural exemptions in the County Code. Mr. Griesbach clarified that these structures are all without utilities; if utilities are included, the structures would require a permit.

Supervisor Hall asked about a variance process for Outdoor cultivation. She had concerns regarding how to accommodate oddly-sized parcels. Ms. Uhrhammer responded that the variance would allow growers to have an Accessory Structure within a closer setback due to the oddly shaped parcels.

Board discussion ensued regarding variance procedures for Outdoor cultivation.

Mr. Foss explained that there are certain criteria that would need to be met per the Zoning Ordinance. The property would need to have a physical constraint or unique characteristic that would prevent it from enjoying the same benefits that neighboring properties would have. He stressed that any impacts resulting from odor and light, etc. would also be reviewed.

The Board's general consensus was in favor of including a procedure for a setback variance and setback easements for outdoor grows.

Supervisor Hall asked for guidance from Counsel on the ability to allow cultivation on Residential Agricultural (RA) zoned parcels, hoping it was not a CEQA issue. Ms. Uhrhammer suggested that this would require a CEQA analysis.

Supervisor Weston reviewed RA Residential; RA Estate; RA Other, and asked what is RA Other? Mr. Foss responded that "Other" is Rural. Supervisor Weston wanted to clarify that on RA Residential and Estate, residences are the primary focus; on RA Rural, the focus is equal. Supervisor Weston reviewed the RA parcels, which is roughly 1/3 of all parcels being considered for cultivation. Supervisor Weston pointed out that there are some RA Rural parcels in the 10-acre and above category, and there are 5-10 acre parcels that may be worth considering for cultivation.

Supervisor Weston stated that he never agreed to 100-foot setbacks on larger grows, he wanted 200 feet. With 100 feet you could have grows closer to a neighbor's house than the cultivator's house, which he felt did not give much option to the neighbor. He noted regulations regarding lights and noise nuisances but did not see regulations about odor, and asked if odor could be tested. Mr. Powers responded that there is no odor test, and Supervisor Weston requested staff research ways to test odor.

Supervisor Weston raised the issue that the proposed regulations do not include information regarding fire prevention. He suggested the fire departments be given an opportunity to provide input. Mr. Powers agreed that staff would reach out to the fire officials and request their input.

Staff responded to further Board questioning regarding Cultivation on parcels Zoned Residential Agricultural (RA).

The Board's general consensus was not to include RA in any cultivation, which would not be included in the EIR Project at this point.

Ms. Uhrhammer requested consensus on the following issues:

Proposed Tiered Cultivation sizes: Allow any Mixed-Light and Outdoor Commercial cultivation in the greater than 2-5 acre category in the AG, AE and FR zones.

The Board's general consensus was no Outdoor commercial cultivation on 2-5 acre parcels.

Permit limitations:

The Board's general consensus was to limit any individual to 3 cultivation permits. However, the Board wanted to revisit the issue regarding limiting to 3 the number of cannabis businesses in which a person or entity could have a financial interest. Ms. Barratt-Green clarified that this decision does not affect the CEQA process; staff could research options and return with potential answers to the financial interest question.

Whether or not the transition period would include Cannabis related structures:

Ms. Uhrhammer reported that currently the draft ordinance allows up to two years to correct code violations in any structures other than those in which cannabis activities would occur and this provision would expire two years after the initial adoption of the ordinance and would not apply to any health and safety issues. Health and safety violations would have to be corrected before any use permits were issued.

The Board's general consensus was in favor of currently legally permitted structures being used for Cannabis to have 2 years to come into compliance.

Temporary Permits:

Ms. Uhrhammer clarified that the temporary permit issue would not necessarily affect the RFP and CEQA process. Ms. Barratt-Green also clarified that changes made to allow temporary licenses and to pass an Urgency Ordinance could result in challenges to CEQA law, and could result in legal CEQA issues for the County.

Board questioning and discussion continued.

Supervisor Hall clarified that restrictions for the temporary license would include everything in the current Ordinance. Staff would use the existing ordinance, add the commercial piece, and then create the temporary permit provision.

The Board's general consensus was in favor of temporary permits.

Chairman Scofield called for a short break while staff prepared a summary of today's direction.

Following the break, Chairman Scofield called the meeting back to order.

ACTION TAKEN: Staff provided their Summation of the Board's direction. Ms. Uhrhammer listed the Board's Agreed Decision Points:

Allow minimum parcel size for Personal Use in AG, AE, FR & TPZ of 2 acres outdoors;

Personal Use Plant Count will be in addition to Commercial Cultivation limits;

Non-Remuneration of up to 5 qualified individuals 500 square feet per patient, required to comply with Commercial Cannabis cultivation regulations;

"Sensitive Site" definition: Schools, churches, parks, child care centers, and youth-oriented facilities (remove bus stops and school evacuation sites);

No Registration Process for Personal Use cultivation;

Allow transport of cannabis off of a cultivation site by the cultivator if they have the proper transportation and distribution licensing from the State;

Limit individual or entity to 3 cultivation permits (the Board will continue discussion regarding financial interest permit limitations at a future meeting and Staff will research to be able to provide more information);

Allow Setbacks of 300 feet adjacent to inaccessible, unimproved State and Federal Parks (clarify that "inaccessible / unimproved" includes no trails or buildings; and review Cooperative Agreements with State and Federal agencies for consistency);

Allow a 2 year transition for structures not used for Cannabis activities and for permitted structures being converted to Cannabis activities;

Approved changes to Enforcement Penalties as proposed by staff;

Remove restrictions on firearms on Commercial Cultivation sites;

Tiered Commercial Cultivation in AG, AE, and FR:

2-4.99 acres: Indoors only (500 square feet)

5-9.99 acres: any Combination (2500 square feet)

10-19.99 acres: any Combination (5000 square feet)

over 20+ acres: any Combination (10,000 square feet);

Allow temporary permits in Zones AG, AE, FR and as outlined by staff (bring back an Urgency Ordinance on May 22, 2018);

Accessory Structures: return with revised definition, which is less restrictive with regard to components.

The Board thanked staff for the effort, and the public for their input and patience.

ADJOURNMENT:

ACTION TAKEN: Chairman Scofield adjourned the meeting at 3:58 P.M.

Signature and Attestation

Edward C. Scofield, Chairman

ATTEST:

By:

Lelia Loomis, Deputy Clerk to the Board