



WASHOE COUNTY

"Dedicated To Excellence in Public Service"

www.washoecounty.us

CM/ACM _____
Finance _____
DA _____
Risk Mgt. N/A
HR N/A
Other N/A

STAFF REPORT BOARD MEETING DATE: October 27, 2015

DATE: October 9, 2015

TO: Board of County Commissioners

FROM: Kevin Schiller, Assistant County Manager
328-2008, kschiller@washoecounty.us

THROUGH: John Slaughter, County Manager
328-2060, jslaughter@washoecounty.us

THROUGH: Nancy Parent, Washoe County Clerk
784-7260, nparent@washoecounty.us

SUBJECT: Request by the County Manager's Office through the Washoe County Clerk pursuant to WCC 2.030 for possible action by the Board of County Commissioners to initiate proceedings to amend Washoe County Code Chapter 25 (Business License Ordinance) concerning Medical Marijuana Establishments as follows: to establish a process for a medical marijuana establishment to request a public hearing before the Board to move to a new location from their State approved location and for the Board to act upon such a request; to provide for cost recovery by County agencies for inspections and other related tasks for medical marijuana establishments; to amend the Medical Marijuana Establishment section into multiple sections related to specific regulations and topics; to modify the distance measurements from a medical marijuana establishment to schools and/or community facilities to match State Law distance measurements; to clarify application requirements for medical marijuana establishment business licenses; to establish the content of the required disposal plan for medical marijuana establishments; to establish a process for the renewal, denial, revocation or suspension of medical marijuana establishment registration cards; to provide for other matters properly related thereto; and, to direct the County Clerk to submit the request to the District Attorney for preparation of a proposed ordinance, pursuant to Washoe County Code Sections 2.030 and 2.040.
(All Commission Districts.)

SUMMARY

Initiate proceedings to amend Washoe County Code Chapter 25 (Business License Ordinance) in response to changes in the State Law specific to medical marijuana

AGENDA ITEM # 14

establishments, and to update the code for other general matters pertaining to medical marijuana establishments.

Washoe County Strategic Objective supported by this item: Safe, secure and healthy communities.

PREVIOUS BOARD ACTION

On September 22, 2015, the Board directed staff to proceed with County Code amendments to respond to changes in State Law from Senate Bill 276 and Assembly Bill 70. The Board also received an update on the sixth medical marijuana dispensary awarded to unincorporated Washoe County by Senate Bill 276 and heard information on the Clinic Nevada dispensary location on Mount Rose Highway.

On July 14, 2015, the Board directed staff to contact the State of Nevada, Division of Public and Behavioral Health to request that the State issue a provisional registration certificate to the sixth ranked medical marijuana dispensary pursuant to the provisions of Senate Bill 276. The Board also discussed the public review process for future MME location changes as outlined in Senate Bill 276.

On December 9, 2014, the Board received an update on medical marijuana establishment regulations and processes for the State of Nevada and for unincorporated Washoe County.

On August 12, 2014, the Board took action to direct staff to notify the State of Nevada of the request for an allocation of five dispensaries for Washoe County, three for the City of Reno, and two for the City of Sparks.

On July 22, 2014, the Board received an update and approved the continued process to review potential dispensary locations within the County related to future action on dispensary allocation.

On July 8, 2014, the Board received an update and approved the continued process to review potential dispensary locations within the County related to future action on dispensary allocation, and requested a presentation on process for applicants.

On June 24, 2014, the Board received an update and approved an ongoing process for updates from staff including a process to review potential dispensary locations within the County related to future action on dispensary allocation.

On May 13, 2014, the Board discussed a request by the City of Reno to increase the City's medical marijuana dispensary allocation. The County Commissioners stated that it was premature at this time to consider increasing any one local government jurisdiction's allocation of dispensaries and the Commission would consider the matter at a future date when appropriate. The Board of County Commissioners continued the item on June 17, 2014.

BACKGROUND

As noted in the Previous Board Action section, the Board discussed State Law changes specific to medical marijuana establishments from Senate Bill 276 and Assembly Bill 70 on September 22, 2015. The staff report for that Board meeting is attached.

The Board directed staff to begin the process to amend County Code to incorporate appropriate County regulations to address the requirements established in Senate Bill 276 and Assembly Bill 70. This item is for the Board to initiate those Code changes within Washoe County Code (WCC) Chapter 25, the Business License Ordinance. The attached staff report details the proposed Code changes approved in concept by the Board on September 22, 2015. Briefly, those changes include:

1. Establish a process for the Board to consider requests from a medical marijuana location to move its facility to a new location from the location approved by the State Division of Public and Behavioral Health (Senate Bill 276, amends NRS 453A).
2. Provide for County agencies to recover actual costs incurred to perform inspections, reviews or other tasks related to a medical marijuana establishment once the establishment is in operation (Assembly Bill 70, amends NRS 453A).

In addition to these potential Code changes reviewed by the Board on September 22, 2015, staff recommends that the following areas also be included with any Code amendment initiation. Since Board will be amending the medical marijuana establishment section of WCC Chapter 25, staff recommends that these additional areas be include with any proposed Code amendments:

- A. Separate the medical marijuana establishment section of WCC Chapter into several sections by regulation topic. The current Codes are difficult for staff or a customer to locate regulation topics, since all the regulations are contained in one section and not clearly identified. Creating multiple code sections by regulation topic will help make the Code easier to read and to understand.
- B. Modify the distance measurement requirements from a medical marijuana establishment to a school and/or a community facility. Current code measurement requirements replicated early drafts of State Law which were ultimately never adopted. The measurement requirements should be amended to replicate current State Law requirements to provide equal treatment and evaluation of mandated distances.
- C. Clarify certain application requirements for a medical marijuana establishment business license. These clarifications include adding a consent form authorizing the release of application information, stipulating that only dispensaries and laboratories be consistent with the style of a pharmacy or medical office, adding a plan for the disposal of medical marijuana remnants, and requiring the applicant to furnish a copy of the approved State registration certificate when issued.
- D. Establish the content of the required waste disposal plan, which is reviewed by the Health District.

- E. Provide for a process to renew, deny, revoke or suspend medical marijuana establishment registration cards issued by the Sheriff's Office.
- F. Include other matters as necessary to clarify Code requirements based on the experiences gained from the current medical marijuana establishment business license applications.

FISCAL IMPACT

There is no fiscal impact associated with this staff report.

RECOMMENDATION

It is recommended that the Board of County Commissioners approve the request by the County Manager's Office to initiate proceedings to amend Washoe County Code Chapter 25 (Business License Ordinance) based on the staff report provided at the October 27, 2015 meeting and direct the County Clerk to submit the request to the District Attorney for preparation of a proposed ordinance, pursuant to Washoe County Code Sections 2.030 and 2.040.

POSSIBLE MOTION

Should the Board agree with staff's recommendation, a possible motion would be:

"Move to initiate proceedings to amend Washoe County Code Chapter 25 (Business License Ordinance) based on the staff report provided at the October 27, 2015 meeting and direct the County Clerk to submit the request to the District Attorney for preparation of a proposed ordinance, pursuant to Washoe County Code Sections 2.030 and 2.040."

Attachment: A. Staff report, September 22, 2015, Discussion of MME related matters
B. Initiation letter to Washoe County Clerk

xc: Medical Marijuana Establishment working group



WASHOE COUNTY

"Dedicated To Excellence in Public Service"

www.washoecounty.us

STAFF REPORT

BOARD MEETING DATE: September 22, 2015

CM/ACM _____
Finance _____
DA _____
Risk Mgt. N/A
HR N/A
Comptroller N/A

DATE: September 14, 2015
TO: Board of County Commissioners
FROM: Kevin Schiller, Assistant County Manager
328-2008, kschiller@washoecounty.us
THROUGH: John Slaughter, County Manager
328-2060, jslaughter@washoecounty.us

SUBJECT: Discussion and possible direction on Medical Marijuana Establishment regulations within Washoe County Chapter 25 to include compliance with State Law changes resulting from the 2015 Nevada State Legislative Session; and an update on Medical Marijuana Establishments and related matters within Washoe County. Upon direction from the Board on any regulation changes, staff will return with a County Code initiation request. (All Commission Districts.)

SUMMARY

Discussion and possible direction on Medical Marijuana Establishment regulations within Washoe County Chapter 25 to include compliance with State Law changes resulting from the 2015 Nevada State Legislative Session; and update on Medical Marijuana Establishments and related matters within Washoe County. Upon direction from the Board on any regulation changes, staff will return with a County Code initiation request.

Washoe County Strategic Objective supported by this item: Safe, secure and healthy communities.

PREVIOUS ACTION

On May 13, 2014, the Board discussed a request by the City of Reno to increase the City's medical marijuana dispensary allocation. The County Commissioners stated that it was premature at this time to consider increasing any one local government jurisdiction's allocation of dispensaries and the Commission would consider the matter at a future date when appropriate. The Board of County Commissioners continued the item on June 17, 2014.

On June 24, 2014 the Board received an update and approved an ongoing process for updates from staff including a process to review potential dispensary locations within the County related to future action on dispensary allocation.

The Board received an update on July 8, 2014 and approved the continued process to review potential dispensary locations within the County related to future action on dispensary allocation, and requested a presentation on process for applicants.

The Board received an update on July 22, 2014 and approved the continued process to review potential dispensary locations within the County related to future action on dispensary allocation.

On August 12, 2014 the Board took action to direct staff to notify the State of Nevada of the request for an allocation of five dispensaries for Washoe County, three for the City of Reno, and two for the City of Sparks.

The Board of County Commissioners received an update on December 9, 2014 on medical marijuana establishment regulations and processes for the State of Nevada and for unincorporated Washoe County.

On July 14, 2015, the Board directed staff to contact the State of Nevada, Division of Public and Behavioral Health to request that the State issue a provisional registration certificate to the sixth ranked medical marijuana dispensary pursuant to the provisions of Senate Bill 276. The Board also discussed the public review process for future MME location changes as outlined in Senate Bill 276.

BACKGROUND

Washoe County Code (WCC) Chapter 25 (Business License Ordinance) and Chapter 110 (Development Code) were amended in April 2014 to regulate Medical Marijuana Establishments (MME) in unincorporated Washoe County. The County regulations were based on changes to NRS 453A passed by the 2013 session of the Nevada State Legislature. MMEs are principally regulated within WCC Chapter 25 as a MME business for the establishment and operation of any MME in the unincorporated County.

The 2015 Nevada State Legislature passed two bills that affect current County MME regulations:

- Section 3, Senate Bill 276 amends the current five mile restriction on relocation on any MME;
- Section 29, Assembly Bill 70 enables Washoe County to recover costs related to inspections, review, and other related tasks; and
- Section 5, Senate Bill 276 allocated a sixth Medical Marijuana dispensary to unincorporated Washoe County.

The following is a summary of this legislation including the potential MME regulation impacts and options for the Board to consider for possible amendments to WCC Chapter 25. Also, an update of this matter from the Board's July 14, 2015 meeting is provided.

SECTION 3, SENATE BILL 276 (amends NRS 453A)¹

Section 3 amends the current five mile NRS 453A restriction on the relocation of any MME as follows:

2. A medical marijuana establishment may move to a new location under the jurisdiction of the same local government as its original location and regardless of the distance from its original location if the operation of the medical marijuana establishment at the new location as been approved by the local government. A local government may approve a new location pursuant to this subsection only in a public hearing for which written notice is given at least 7 working days before the hearing.

Section 3 is effective on October 1, 2015; however, the section was effective on June 9, 2015 for the Division of Public and Behavioral Health to adopt any necessary regulations or perform any required administrative tasks necessary to carry out the provisions of the section.

Under current State regulations, any MME desiring to relocate must apply to the Division of Public and Behavioral Health and any move must be no more than five miles from its original location. The Board discussed this bill section at its July 14, 2015 meeting. The Board's direction to staff was to utilize the existing County Code regulations on an MME location as the structure within which the Board would evaluate any future MME relocation requests. The Board was not supportive of any additional County Code regulations for the relocation of an MME pertaining to location, MME concentration, diversity, community ties, or other similar criteria.

Current County regulations restrict any MME to property with a regulatory zone of commercial or industrial². Article 302, *Allowed Uses*, within WCC Chapter 110 (Development Code) outlines the specific commercial and industrial regulatory zones within which an MME is allowed. WCC Chapter 25 also restricts the location of any MME within 1,000 feet of a public or private school, or within 300 feet of a defined community facility³.

Possible amendments to WCC Chapter 25

Based on the Board direction, staff proposes that WCC Chapter 25 be amended as follows to regulate any future MME relocation request through a public hearing as required by Section 3:

1. The MME company and/or applicant must apply to the Board of County Commissioners for the new proposed location. The relocation application shall be on a form as set forth by the County's license division and shall, at a minimum, contain information that the proposed new location:
 - a. Satisfies the regulatory zone requirements for an MME as established in Article 302, *Allowed Uses*, of WCC Chapter 110 (Development Code).

¹ Section 26.5 of Senate Bill 447 contained similar provisions for the relocation of an MME; with the exception that a public hearing was not required. Senate Bill 447 was signed into law by the Governor on June 11, 2015 and was effective on July 1, 2015.

² These zoning restrictions mirror the MME zoning restrictions in NRS 453A.350(1).

³ WCC Section 25.700(3)(b); these location restrictions mirror the MME location restrictions in NRS 453A.322(3)(a)(2)(II).

- b. Meets the distance restricts from a public or private school, or from a community facility, as established in WCC Section 25.700(3)(b). To satisfy this requirement, the MME Company and/or applicant must provide an attested certificate, as required by WCC Section 25.700(4).
2. The Board will hear the relocation application in a public hearing.
 - a. Written notice of the time, place and purpose of the public hearing, together with a map or physical description of the proposed new location, will be given to⁴:
 - i. Owners of the property(s) that is the proposed new location;
 - ii. Advisory boards created by the Board for the area in which the proposed new location is situated;
 - iii. All property owners within 750 feet of the proposed new location; and,
 - iv. All mobile home park tenants within 750 feet of the proposed new location.
 - b. The Board will take public testimony on the proposed relocation during the public hearing.
 - c. The Board may approve, approve with conditions, or deny the relocation application. Conditions imposed by the Board may be about matters to be done prior to the issuance of an MME business license, and/or operational conditions imposed as part of the MME business license pursuant to WCC Section 25.0263.
3. A Board approved relocation application is provisional, pending successful issuance of a Washoe County MME business license and other required Washoe County permits and licenses for the operation of the MME and of the business.

SECTION 29, ASSEMBLY BILL 70 (amends NRS 453A)

Section 29 enables Washoe County to recover from an MME any actual costs of a County agency to perform inspections, review or other related tasks to ensure the MME is in compliance with County ordinances. Section 29 also provides for the County to charge penalties and assess interest for nonpayment of any imposed fees. An MME may appeal any imposed fee to the "appropriate local government". Attachment A contains the text of Section 29.

Assembly Bill 70 was approved by the Governor on June 8, 2015 and all sections were effective on July 1, 2015.

Possible amendments to WCC Chapter 25

Staff proposes that WCC Chapter 25 be amended to incorporate the provisions of Section 29. The following are the major areas from Section 29 to be included in County Code:

1. Each MME shall pay an inspection and review fee to a County agency as follows:
 - a. The inspection and review fee is the actual costs for the agency to perform inspections, reviews or other tasks related to ensuring that the MME is in compliance with County ordinances or rules.
 - b. The County agency shall provide records no later than 30 days after the agency performs required inspections or reviews to the MME detailing the actual costs. The records shall contain, at a minimum:

⁴ Noticing requirements match those for a special use permit application, as established in WCC Section 110.810.25.

- i. Hours its employees spent performing the required inspections or reviews.
 - ii. The rate of pay for such employees.
 - iii. Equipment costs attributable to the MME for the required inspections or review.
 - c. County agencies include the Health District, Sheriff's Office, Truckee Meadows Fire Protection District, and County departments reporting to the Board of County Commissioners or the County Manager.
2. Any revenue from an inspection and review fee must:
 - a. Pay only the actual costs of the County agency to perform one or more inspections and/or to review or perform other tasks related to ensuring the MME is in compliance with County ordinances or rules; and,
 - b. Not supplant any other support provided to the County agency by Washoe County.
3. The inspection and review fee must be paid within 30 days after the MME receives the records from the County agency. Failure to pay the fee within the 30 days will result in:
 - a. A penalty of \$500; and,
 - b. Interest on the fee at the rate of 7 percent per year commencing 30 days after receipt of the records.

Unpaid inspection and review fees by an MME is cause for denial of an MME business license renewal pursuant to WCC Section 25.700(14) and are good cause for the suspension or revocation of an MME business license pursuant to WCC Section 25.018.
4. The inspection and review fee is appealable and will be heard by:
 - a. The Sheriff, or his designated agent, for Sheriff's Office agencies.
 - b. The District Board of Health for Health District agencies.
 - c. The Truckee Meadows Fire Protection District Board of Fire Commissioners for the Truckee Meadows Fire Protection District.
 - d. The Board of County Commissioners for County departments reporting to the Board of County Commissioners or the County Manager.
5. Any appeals of an inspection and review fee must be in writing to the appropriate hearing body no more than 30 days after the imposition of the fee by the County agency.
 - a. The appeal must include documentation sufficient to show that the fee amount is unsubstantiated or erroneous. Failure to submit the documentation or failure to submit documentation sufficient to show that the fee amount is unsubstantiated or erroneous will result in the hearing body administratively dismissing the appeal.
 - b. Payment of the inspection and review fee is suspended until a decision on the appeal by the hearing body.
6. The hearing body shall hold a public hearing on the appeal. The hearing body may dismiss the appeal, or revise the amount of the inspection and review fee. The hearing body may revise the amount of the inspection and review fee only if it determines that the records provided by the County agency to the MME do not support the amount of the imposed fee.

SECTION 5, SENATE BILL 276 (amends NRS 453A)

Section 5 of this bill was discussed by the Board at its July 14, 2015 meeting. This section allocated a sixth medical marijuana dispensary to unincorporated Washoe County (in addition to the five dispensaries for the unincorporated County awarded provisional dispensary registration certificates by the Division of Public and Behavioral Health). The Board was enabled by this bill section to not accept the sixth dispensary or to request that the State issue a provisional registration certificate for a sixth dispensary.

If requesting the sixth dispensary, the Board was allowed by the bill section to select its preferred dispensary application regardless of the application's ranking by the State on the final rankings issued in November of 2014 (when the State released all qualified MME application rankings). The Board could consider diversity, location and community ties in its selection of the sixth medical marijuana dispensary. Section 5 was effective on June 9, 2015 and expires on December 31, 2015. The Division of Public and Behavioral Health must issue the sixth dispensary its MME registration certificate prior to September 1, 2015.

The Board selected the sixth ranked medical marijuana dispensary application as the potential sixth dispensary for the unincorporated County. Washoe Dispensary, LLC is the sixth ranked application with a potential location at 290 US Highway 395 South in Washoe Valley. Subsequently, the County Manager wrote to the Division of Public and Behavioral Health requesting that State issue a provisional registration certificate to Washoe Dispensary, LLC so they can apply for the appropriate Washoe County licenses and permits.

UPDATE FROM JULY 14, 2015 BOARD MEETING

Following the July 14, 2015 update, continued concerns have been brought forward specific to the Clinic Nevada dispensary facility and its location at Mt. Rose Highway and Thomas Creek Road. The Clinic Nevada facility requested a change in location through the State of Nevada, Division of Public and Behavioral Health in accordance with current State regulations to move within the five mile radius to a location at 10725 Mt. Rose Highway. This approval occurred in accordance with the current regulations, which as previously discussed will change effective October 1, 2015 requiring a public hearing and approval through the Board of County Commissioners based on legislative changes.

Other areas of concern brought forward have been proximity to schools, current zoning ordinance, use at the facility, use in public locations, traffic, hours of operation, appearance, scenic byway issues, regulation of cardholders, and future recreational use. The following out lines specifics related to the concerns:

- Until October 1, the Board has no authority to approve or disapprove of a move of MME facility.
- Washoe County coordinates review of traffic impacts with other agencies within the business licensure process, none in Washoe County have completed the licensure process to date.
- Washoe County currently has 1,304 medical marijuana cardholders.
- Dispensaries can be open from 6:00 a.m. to 8:00 p.m., more restrictive hours can be applied from the State of Nevada.

- A dispensary is required to look like a business similar to a medical office or pharmacy.
- It is illegal to consume marijuana in a car or public parcel;
- Dispensaries currently exist in Federal and State scenic byways including the Las Vegas area.
- Recreational use of cannabis is illegal. This is a legislative issue that may or may not define local control.

The Board may direct changes to existing Washoe County Code that are more restrictive than current State regulations; however these changes will not apply retroactively to existing dispensaries or facilities that have received state provisional certificate and will complete the business licensure process in accordance with exiting code.

FISCAL IMPACT

There is no fiscal impact associated with this staff report.

RECOMMENDATION

It is recommended the Board of County Commissioners discuss and give possible direction on Medical Marijuana Establishment regulations within Washoe County Chapter 25 to include compliance with State Law changes resulting from the 2015 Nevada State Legislative Session; and an update on Medical Marijuana Establishments and related matters within Washoe County. Upon direction from the Board on any regulation changes, staff will return with a County Code initiation request.

POSSIBLE MOTION

Should the Board agree with staff's recommendation, a possible motion would be:

“Move to direct staff to return with a County Code initiation request for WCC Chapter 25 for the following MME regulations (list new or changed MME regulations).”

Attachment: Text of Section 29, Assembly Bill 70

Text of Section 29, Assembly Bill 70

Sec. 29. Chapter 453A of NRS is hereby amended by adding thereto a new section to read as follows:

1. Each agency of a local government which performs inspections, reviews or other tasks related to ensuring that a medical marijuana establishment is in compliance with all applicable local governmental ordinances or rules pursuant to NRS 453A.326 shall maintain records of the hours its employees spend performing these inspections, reviews and tasks, the rate of pay of each such employee and the share of any costs for equipment for the agency which is attributable to the establishment.

2. Each agency of a local government shall provide records maintained pursuant to subsection 1 to the medical marijuana establishment not less than 30 days after the agency performs an inspection, review or other related task.

3. Except as otherwise provided in subsection 5:

(a) A medical marijuana establishment shall pay a fee to an agency of a local government which provides records of its costs to the establishment pursuant to subsection 2 in an amount equal to other related task.

(b) If a medical marijuana establishment fails to pay the fee imposed by this subsection within 30 days after receipt of the records provided pursuant to subsection 2, the agency may charge a penalty of \$500 and assess interest on the fee at a rate of 7 percent per year commencing 30 days after receipt of the records.

4. Any revenue generated from a fee imposed pursuant to subsection 3:

(a) Must be expended only to pay the costs of the agency of a local government to perform an inspection, review or other task related to ensuring the medical marijuana establishment is in compliance with all applicable local governmental ordinances or rules; and

(b) Must not supplant any other support provided to the agency of a local government by the local government.

5. A medical marijuana establishment may appeal a fee imposed pursuant to subsection 3 to the appropriate local government by submitting a written request to the local government not more than 30 days after the imposition of the fee which includes documentation sufficient to show that the amount of the fee is unsubstantiated or erroneous. The obligation of the medical marijuana establishment to pay the fee is suspended until such an appeal is dismissed or the amount of the fee is redetermined pursuant to subsection 7.

6. A local government which receives a written request pursuant to subsection 5 shall administratively dismiss the request if it is not accompanied by documentation sufficient to show that the amount of the fee is unsubstantiated or erroneous.

7. A local government shall hold a hearing to determine the appropriate amount of a fee imposed pursuant to subsection 3 if the documentation which accompanies a written request submitted pursuant to subsection 5 shows that the amount of the fee was unsubstantiated or erroneous. The local government may revise the amount of the fee only if it determines that the records maintained by the agency of the local government do not support the amount of the fee imposed.