

ORDINANCE NO. 2017-10

AN ORDINANCE AMENDING CHAPTER 9.22 OF TITLE 9 OF THE NEVADA CITY MUNICIPAL CODE ENTITLED “MEDICAL CANNABIS DISPENSARIES AND OTHER CANNABIS BUSINESSES AND ACTIVITY” TO ALLOW FOR THE ESTABLISHMENT, PERMITTING, AND REGULATION OF MEDICAL CANNABIS CULTIVATION, MANUFACTURING, DISTRIBUTING, TRANSPORTING, AND TESTING LABORATORY BUSINESSES WITHIN THE CITY; AMENDING CHAPTER 17.142 ENTITLED “MEDICAL CANNABIS USES AND ACTIVITY”; AND AMENDING CHAPTER 17.48 ENTITLED “LIGHT INDUSTRIAL ZONE” TO ALLOW FOR THE SAME

WHEREAS, on April 12, 2017, the City Council of the City of Nevada City adopted Ordinance No. 2017-06 which amended Chapter 9.22 of the Nevada City Municipal Code to allow for the establishment, permitting, and regulation of medical cannabis dispensaries within the City of Nevada City; and

WHEREAS, the recitals from Ordinance No. 2017-06 declaring the City’s authority and purpose for allowing medical cannabis businesses to be established within the City are hereby adopted and incorporated herein by this reference; and

WHEREAS, the City Council desires to further amend Chapter 9.22 to allow for the establishment, permitting, and regulation of other medical cannabis businesses within the City including medical cannabis cultivation, manufacturing, distribution, transporting, and testing laboratories; and

WHEREAS, medical cannabis related businesses will be subject to the zoning and land use regulations of the zoning district in which such business establish and operate, as set forth in Chapter 17 of the Nevada City Municipal Code (the Nevada City Zoning Code), and as otherwise established by the City; and

WHEREAS, the City Council finds that the activities permitted under this ordinance are consistent with and implement the goals and policies of the Nevada City General Plan; and

WHEREAS, the City Council finds that the adoption of this ordinance is not a “project” under California Environmental Quality Act (CEQA), because the ordinance will allow for the establishment of medical cannabis businesses to operate in a similar manner as traditional pharmacies which will not cause a direct physical change in the environment nor a reasonably foreseeable indirect physical change in the environment (Public Resources Code section 21065) (See *Union of Medical Marijuana Patients Inc. v. City of San Diego (California Coastal Commission) (2016) 2016 Cal.App. LEXIS 864.*)

WHEREAS, the City Council finds that even if the ordinance is found to be a Project Under CEQA, the adoption of this ordinance is exempt from environmental review under pursuant to the following sections of the CEQA Guidelines, 14 Cal. Code of Regulations, Chapter 3:

A. The ordinance is exempt under Section 15061(b) (3) because it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment. The ordinance permits medical cannabis businesses including indoor cultivation, manufacturing, distribution, testing facilities, and transporter businesses to operate within the City which will have similar impacts to similar businesses that deal in non-cannabis products that are already authorized within the City. Furthermore, the ordinance contains requirements that prevent any potential impacts on the environment that may be unique to businesses involving medical cannabis. For example, the ordinance establishes prohibitions on nuisance odors, glare, excess energy usage, and establishes safety protections to prevent crime or deterioration of the business area into blight. Further, there is no possibility that this ordinance would create cumulative impacts that are significant because this ordinance only allows for medical cannabis businesses in limited zones within the City, does not authorize construction or other related activities or any other activities that are not already permitted, except that the ordinance allows the same activities but with a different material (medical cannabis) that is being sold for medical use; there are no other significant impacts that could occur as a result of this ordinance, and there are no unusual circumstances that would cause any such significant impacts;

B. The ordinance is also exempt under Section 15183 (projects consistent with a community plan, general plan, or zoning) since the type of business permitted by the ordinance is consistent with those contemplated by general plan and zoning, such as traditional manufacturing businesses, distribution warehouses, and chemical testing facilities;

C. The ordinance is also exempt under CEQA Guidelines Section 15301 (existing facilities) since the permitted medical cannabis businesses under the ordinance may locate in existing facilities, and any additions to structures would be expected to be also exempt under 15301; and

D. The ordinance is exempt under Section 15303 (new construction or conversion of small structures). A medical cannabis business will be established in an urban area, and given the build out of the existing city, and sufficient existing leasable property, the amount of construction that would occur is minimal to non-existent, and any such construction would be less than the thresholds established in Section 15303.

NOW THEREFORE, The City Council of the City of Nevada City does ordain as follows:

SECTION 1. Chapter 9.22 of the Nevada City Municipal Code entitled “Medial Cannabis Dispensaries and other Cannabis Businesses and Activity” shall be amended as follows:

A. Subdivision (B) of Section 9.22.040. MEDICAL CANNABIS BUSINESSES shall be amended to read as follows:

“B. ALL OTHER MEDICAL CANNABIS BUSINESSES

The Planning Commission may issue permits to other qualified medical cannabis business owners or operators to operate medical cannabis cultivation, manufacturing, distribution, transporting, or testing laboratory businesses within the City of Nevada City through the application and permit approval process contained in this Chapter 9.22 and resolutions adopted pursuant to this Chapter. All medical cannabis businesses must obtain a medical cannabis business permit from the City before commencing operations, must be in compliance with all applicable state and federal laws pertaining to its operation, including obtaining all necessary licenses from the state, and shall comply with all applicable operational and zoning requirements set forth in the Nevada City Municipal Code. Nothing in this Chapter creates a mandate that the Planning Commission or the City Council must issue one or more medical cannabis business permit to a medical cannabis cultivator, manufacturer, distributor, transporter, or testing laboratory if the Planning Commission or the City Council determines that there are no qualified applicants, the proposed locations for medical cannabis businesses are incompatible with neighboring land uses, or if the Planning Commission or the City Council determines that the issuance of a medical cannabis business permit would have a negative effect on the health, safety, or welfare of the citizens or businesses of Nevada City, or for any other reason allowed by law.”

B. Section 9.22.060 entitled “Appeals” shall be amended to read as follows:

“A. Appeals from Decisions of the City Manager or his Designee or the Planning Commission under this Chapter. Unless specifically provided elsewhere to the contrary, whenever an appeal is provided for in this Chapter from a decision of the City Manager or his or her designee, or a decision of the Planning Commission the appeal shall be conducted as prescribed in this Section.

B. Written request for Appeal.

- (1) Within ten (10) calendar days after the date of a decision of the City Manager or his designee(s) to revoke, suspend or deny a permit, or to add conditions to a permit, or within ten (10) calendar days after the Planning Commission has approved or denied an application for a medical cannabis

business permit, an aggrieved party may appeal such action by filing a written appeal with the City Clerk setting forth the reasons why the decision was not proper.

- (2) At the time of filing the appellant shall pay the designated appeal fee, established by resolution of the City Council from time to time.

C. Appeal Hearing.

- (1) Upon receipt of the written appeal, the City Clerk shall set the matter for a hearing before the City Council. The City Council shall hear the matter de novo, and shall conduct the hearing pursuant to the procedures set forth by the City.
- (2) The appeal shall be held within a reasonable time after the filing the appeal, but in no event later than ninety (90) days from the date of such filing. The City shall notify the appellant of the time and location at least ten (10) days prior to the date of the hearing.
- (3) At the hearing the appellant may present any information they deem relevant to the decision appealed. The formal rules of evidence and procedure applicable in a court of law shall not apply to the hearing.
- (4) At the conclusion of the hearing the City Council may affirm, reverse or modify the decision appealed. The decision of the City Council shall be final.”

C. Subdivision A. of Section 9.22.070 entitled “Permittee Selection Process” shall be amended to read as follows:

“9.22.070. Permittee Selection Process.

A. Selection and Review of Finalists.

- (1) The City Council shall adopt by resolution a procedure by which the top three applicants applying for a medical cannabis business permit in the dispensary category will be presented to the City Council for a final determination at a public meeting, and the applicants for other medical cannabis business categories will be presented to the Planning Commission for a final determination at a public meeting.
- (2) The top three finalists in the medical cannabis dispensary category shall be invited to attend the City Council meeting, where they will be expected to make a public presentation introducing their team and providing an overview of their proposal. In order to provide adequate time, presentations may be divided over more than one meeting over multiple days as

determined to be necessary. The applicants in the other categories of medical cannabis businesses shall be invited to attend a Planning Commission meeting, where they will be expected to make a public presentation introducing their team and providing an overview of their proposal. In order to provide adequate time, presentations may be divided over more than one meeting over multiple days as determined to be necessary.

- (3) At least ten (10) days prior to the hearing, notice of the hearing shall be sent to all property owners located within three hundred (300) feet of the proposed business locations of each of the finalists to be considered by the City Council or the Planning Commission.
- (4) The City Council shall rank the final three candidates and shall select one or more candidates to be issued a medical cannabis permit for a medical cannabis dispensary as permitted by this Chapter 9.22. The City Council's decision as to the selection of the candidate(s) to receive a medical cannabis dispensary permit shall be final. Decisions of the Planning Commission to issue or deny medical cannabis permits in the other business categories may be appealed to the City Council according to the procedure set forth in Section 9.22.060.
- (5) Official issuance of a medical cannabis business permit, however, is conditioned upon the prevailing candidate(s) obtaining all required land use approvals. Following the Council or Planning Commission's selection, the prevailing candidate(s) shall apply to the City's planning department to obtain any required land use approvals or entitlements for the permittee's location, if any. Land use approvals shall include compliance with all applicable provisions of the California Environmental Quality Act (CEQA). The City Manager shall formally issue a medical cannabis business permit once the City Manager and Chief of Police have both affirmed that all of the required land use approvals have been obtained.

If the selected permittee(s) is/are unable to fulfill all the requirements of obtaining the medical cannabis business permit(s), the City Council or the Planning Commission, in its sole discretion, may award the permit to the next highest ranked applicants, or may begin the application process again to allow for selection of a new set of applicants.

- (6) Issuance of a medical cannabis business permit does not create a land use entitlement. A medical cannabis business permit shall only be for a term of twelve (12) months, and shall expire at the end of the twelve (12) month period unless it is renewed as provided herein. Furthermore, no permittee may begin operations, notwithstanding the issuance of a permit, unless all of the state and local laws and regulations, including but not limited to the requirements of this Chapter and of the permit, have been complied with.

- (7) Notwithstanding anything in this Chapter to the contrary, the City Council and the Planning Commission reserves the right to reject any or all applications if it determines it would be in the best interest of the City, taking into account any health, safety and welfare impacts on the community. Applicants shall have no right to a medical cannabis business permit until a permit is actually issued, and then only for the duration of the permit's term. Each applicant assumes the risk that, at any time prior to the issuance of a permit, the City Council may terminate or delay the program created under this Chapter.
- (8) If an application is denied, a new application may not be filed for one (1) year from the date of the denial.
- (9) A person or entity granted a medical cannabis business permit shall be required to pay the permit fee established by resolution of the City Council, to cover the costs of administering the medical cannabis business permit program created in this Chapter."

D. Subdivision Q shall be added to Section 9.22.090 to read as follows:

"C. All medical cannabis business permittees other than medical cannabis dispensary businesses must comply with the following security requirements:

(1) A medical cannabis business permittee shall comply with the security plan that is approved by the City Manager, which plan may include building specifications, lighting, alarms, and state-licensed security personnel.

(2) Each security plan approved by the City Manager must include the following:

a. Security surveillance cameras. Security surveillance cameras and a video recording system must be installed to monitor all doors into the buildings on the business site, the parking lot, loading areas, and all exterior sides of the property adjacent to the public rights of way. The cameras and recording system must be of adequate quality, color rendition, and resolution to allow the identification of any individual present on the business site. The recording system must be capable of exporting the recorded video in standard MPEG formats to another common medium, such as a DVD or USB drive.

b. Security video recording and retention. Video from the security surveillance cameras must be recording at all times (24 hours a day, seven days a week) and the recording shall be maintained for at least 30 days. The video recordings shall be made available to the city upon request.

c. Alarm system. Professionally and centrally-monitored fire, robbery, and burglar alarm systems must be installed and maintained in good working condition. The alarm system must include a private security company that is required to respond to every alarm.

(3) A medical cannabis business permittee shall report to the City Police Department all criminal activity occurring on the cannabis business site.”

E. Section 9.22.110 shall be added to read as follows:

“9.22.110. Additional Requirements for Cultivation Facilities.

- A. Outdoor Cultivation Prohibited. The cultivation of all cannabis must occur indoors. All outdoor cultivation is prohibited.
- B. In no case shall cannabis plants be visible from a public or private road, sidewalk, park or any common public viewing area.
- C. If the medical cannabis business permitted by the City as a cultivator is operating as a collective or cooperative under Health and Safety Code Section 11362.775, subdivision (a), the medical marijuana business shall not allow more medical cannabis plants or plants per member of a medical marijuana business than the amounts permitted pursuant to State law, to be cultivated at the medical marijuana business premises.
- D. Cannabis cultivation shall be conducted in accordance with state and local laws related to land conversion, grading, electricity, water usage, water quality, woodland and riparian habitat protection, agricultural discharges, and similar matters.
- E. Pesticides and fertilizers shall be properly labeled and stored to avoid contamination through erosion, leakage or inadvertent damage from pests, rodents or other wildlife.
- F. The cultivation of cannabis shall at all times be operated in such a way as to ensure the health, safety, and welfare of the public, the employees working at the medical marijuana business, visitors to the area, neighboring properties, and the end users of the cannabis being cultivated, to protect the environment from harm to streams, fish, and wildlife; to ensure the security of the cannabis being cultivated; and to safeguard against the diversion of cannabis.
- G. All applicants for a cannabis cultivation permit shall submit the following in addition to the information generally otherwise required for a medical cannabis business:

- (1) A cultivation and operations plan that meets or exceeds minimum legal standards for water usage, conservation and use; drainage, runoff, and erosion control; watershed and habitat protection; and proper storage of fertilizers, pesticides, and other regulated products to be used on the parcel, and a description of the cultivation activities (indoor, mixed-light) and schedule of activities during each month of growing and harvesting, or explanation of growth cycles and anticipated harvesting schedules for all-season harvesting (indoor, mixed-light).
- (2) A description of a legal water source, irrigation plan, and projected water use.
- (3) Identification of the source of electrical power and plan for compliance with applicable Building Codes and related codes.
- (4) Plan for addressing odor and other public nuisances which may derive from the cultivation site.”

F. Section 9.22.120 shall be added to read as follows:

“9.22.120 Additional Requirements for Medical Cannabis Manufacturing Businesses.

A. Cannabis Manufacturing: Edibles and Other Cannabis Products; Sale or Distribution of Edible and Other Cannabis Products. The manufacturing of food or other products infused with or which otherwise contain cannabis may be manufactured within the appropriate manufacturing zoning districts Section 17.142 of the Nevada City Municipal Code, subject to the regulations set forth in this Chapter, and subject to whatever additional regulations may be promulgated hereunder by an ordinance or resolution of the City Council.

B. Packaging and Labeling.

- (1) Before a medical cannabis manufacturer delivers any edible cannabis or edible cannabis product to a dispensary, the same shall be labeled and placed in tamper-evident packaging which at least meets the requirements of California Business and Professions Code section 19347, as the same may be amended from time-to-time or superseded or replaced by subsequent State legislation or by any department or division of the State of California.
- (2) All items to be sold or distributed shall be individually wrapped at the original point of preparation by the business permitted as a medical cannabis manufacturer.

- (3) Labeling must include a warning if nuts or other known allergens are used, and must include the total weight (in ounces or grams) of cannabis in the package.
- (4) A warning that the item is a medication and not a food must be clearly legible on the front of the package.
- (5) The package must have a label warning that the product is to be kept away from children.
- (6) The label must also state that the product contains cannabis and must specify the date of manufacture.
- (7) Any edible cannabis product that is made to resemble a typical food product must be in a properly labeled opaque (non-see-through) package before it leaves the medical marijuana manufacturing business.
- (8) Deliveries must be in a properly labeled opaque package when delivered.
- (9) The City Council may impose additional packaging and labeling requirements on cannabis or cannabis products by resolution, as permitted by law.”

SECTION 2. Chapter 17.142 (Medical Cannabis Businesses and Activity) of Title 17 of the Nevada City Municipal Code is amended to add Section 17.142.040 to read as follows:

“17.142.040. Location of Medical Cannabis Business- Other than Dispensaries.

Medical cannabis businesses, other than dispensaries, including medical cannabis cultivation, manufacturing, distribution, transporting, and testing laboratory businesses shall be permitted in the Light Industrial (LI) zones only.

Medical cannabis cultivation businesses may not be located within six hundred (600) feet of a school that is in existence at the time the initial medical cannabis cultivation permit is issued as required by California Health and Safety Code Section 11362.768.”

SECTION 3. Chapter 17.48 of the Nevada City Municipal Code entitled “Light Industrial Zone,” is hereby amended to include medical cannabis cultivation businesses, medical cannabis manufacturing businesses, medical cannabis distribution businesses, medical

cannabis transporting businesses, and medical cannabis testing laboratory businesses as permitted uses, subject to the requirements of Chapter 17.142:

Chapter 17.48 LIGHT INDUSTRIAL ZONE

17.48.020. Principal Permitted Uses.

In the LI zone, the following uses are permitted:

- A. Automobile and truck service stations and terminals;
- B. Business services, including advertising, credit, bookkeeping, employment and similar agencies, business and management consultants, stenographic, duplicating, blueprinting, photocopying and messenger services;
- C. Building materials sales yards;
- D. Light construction and special trade contractors, offices and shops, ornamental iron works, and sheet metal shops;
- E. Offices, administrative and executive;
- F. Refrigerators, furnaces and water heaters, repairs and servicing;
- G. Electrical transmission and/or substations;
- H. Warehousing, except mini-storage, including storage of furniture and household goods, but excluding feed and grain when handled in bulk;
- I. Public utility service yard or garage;
- J. Light manufacturing uses and all uses allowed in the EC zone;
- K. Artists' studios, craft workshops, and cabinet shops.
- L. Emergency shelters.
- M. Medical Cannabis Dispensaries pursuant to the provisions outlined in Chapter 17.142.
- N. Medical Cannabis Cultivation businesses pursuant to the provisions outlined in Chapter 17.142.
- O. Medical cannabis manufacturing businesses pursuant to the provisions outlined in Chapter 17.142.
- P. Medical cannabis distribution businesses pursuant to the provisions outlined in Chapter 17.142.
- Q. Medical cannabis transporting businesses pursuant to the provisions outlined in Chapter 17.142.
- R. Medical cannabis testing laboratory businesses pursuant to the provisions outlined in Chapter 17.142.

SECTION 4. Severability. If any section, subsection, sentence, clause or phrase of this Ordinance is for any reason held invalid by a court of competent jurisdiction, such a decision shall not affect the validity of the remaining portions of this Ordinance. The City Council declares that it would have passed this Ordinance and each section, subsection, sentence, clause, or phrase thereof, irrespective of the fact that one or more sections, subsections, sentences, clauses, or phrases, be declared invalid.

SECTION 5. Effective Date. This ordinance shall be in full force and effect commencing thirty (30) days after its final adoption and a summary hereof shall be published once within fifteen (15) days in The Union, a newspaper of general circulation printed and published in the County of Nevada and circulated in the City of Nevada City and hereby designated for that purpose by the City Council.

This Ordinance was introduced and read by title only on the 14th day of June, 2017 and was passed and adopted on this 28th day of June, 2017 by the following vote:

AYES: PHELPS, STRAWSER, MOBERG, PARKER

NOES: NONE

ABSENT: SENUM

ABSTAIN: NONE



Evans Phelps, Mayor

ATTEST:



Niel Locke, City Clerk