



STAFF REPORT

Report To: Board of Supervisors

Meeting Date: January 5, 2017

Staff Contact: Lee Plemel, Community Development Director

Agenda Title: For Possible Action: To introduce, on first reading, Bill No. __, an ordinance declaring a moratorium, for a period of up to 180 days with the ability to extend it by resolution for up to an additional 60 days, on the acceptance and processing of planning or other applications for construction or operation of new marijuana establishments. (Lee Plemel, lplemel@carson.org)

Staff Summary: The Regulation and Taxation of Marijuana Act, the Act to legalize "recreational" marijuana, was passed by Nevada voters during the general election on November 8, 2016. The deadline for preparation of final regulations by the Nevada Department of Taxation ("Department") is December 31, 2017. Until the final adoption of such regulations, the Board of Supervisors will not have a complete picture to facilitate a decision regarding zoning regulations for Marijuana Establishments beyond what is currently in place for Medical Marijuana Establishments. Applications pertinent to Marijuana Establishments would be prohibited during the moratorium, allowing City staff and the Board of Supervisors time to evaluate the implications of the Department's regulations and consider other impacts related to the regulation or prohibition of Marijuana Establishments within the frame work of State Law. This moratorium would not apply to Medical Marijuana Establishments with valid provisional certificates wishing to operate under the current Medical Marijuana Establishment regulations in Carson City as of the effective date the ordinance.

Agenda Action: Ordinance - First Reading

Time Requested: 10 minutes

Proposed Motion

I move to introduce, on first reading, Bill No. __, an ordinance declaring a moratorium, for a period of up to 180 days with the ability to extend it by resolution for up to an additional 60 days, on the acceptance and processing of planning or other applications for construction or operation of new marijuana establishments, based on the findings contained in the staff report.

Board's Strategic Goal

Safety

Previous Action

The Planning Commission recommended approval of the proposed ordinance on December 21, 2016, by a vote of 6-1.

Background/Issues & Analysis

The Regulation and Taxation of Marijuana Act, the Act to legalize recreational marijuana, was passed by Nevada voters during the general election on November 8, 2016. The deadline for preparation of final regulations by the Nevada Department of Taxation is December 31, 2017. Until the final adoption of such regulations, the Board of Supervisors will not have a complete picture to facilitate a decision regarding zoning or business license regulations for Marijuana Establishments (also known as Recreational Marijuana Establishments, "RMEs" or "RME") beyond what is currently in place for Medical Marijuana Establishments ("MMEs" or "MME").

A moratorium on any new marijuana establishment would allow City staff and the Board of Supervisors time to evaluate the implications of the regulations adopted by the Nevada Department of Taxation and consider other impacts related to the regulation of RMEs. This moratorium would not apply MMEs with valid provisional certificates wishing to operate under the current MME regulations in Carson City as of the date the moratorium is enacted.

The adoption of this moratorium would effectively prohibit Marijuana Establishments for the period established by the moratorium, which would be for up to 180 days or until applicable regulations are adopted, whichever comes first. The moratorium may be extended in accordance with Carson City Municipal Code (CCMC) 18.02.120 through additional public hearings.

Adopting the moratorium will allow a more thorough and complete review of the finalized state regulations pertinent to the Regulation and Taxation of Marijuana Act. It will also allow a more thorough and complete evaluation of complicated and difficult issues, from both a policy and legal perspective, and facilitate the decision to regulate RMEs and/or prohibit some or all RMEs. Moreover, the moratorium will make it clear that RMEs are not currently contemplated by the Carson City Municipal Code. Refer to the draft ordinance for more information regarding the purpose of implementing the moratorium.

A moratorium is a temporary ban or suspension on the acceptance and processing of planning applications or permits for a specific type of application or a specific geographic area, authorized by the Carson City Municipal Code (CCMC) 18.02.120 (Moratorium). Moratoriums are typically used to allow time for a city or county to address a specific zoning issue without having to process the particular type of application for development or applications for a particular geographic area while regulations are being developed.

The Carson City Municipal Code requires the Board of Supervisors to initiate the moratorium process by adoption of a Resolution. The Board adopted Resolution 2016-R-29 on December 1, 2016, to initiate the moratorium process. The Planning Commission recommended approval of the moratorium ordinance on December 21, 2016, by a vote of 6-1.

CCMC 18.02.120(5) requires the Board of Supervisors to make specific findings of fact when approving a moratorium. Staff recommends that the Board of Supervisors approve the moratorium based on the following findings and responses:

- A. *The moratorium is necessary to promote the health, safety and welfare of the area described in the moratorium declaration.*

Response: The moratorium is necessary to promote the health, safety, and welfare of Carson City by allowing City staff and the Board of Supervisors time to responsibly consider the policy and legal implications of the Regulation and Taxation of Marijuana Act and the Department of Taxation regulations and to provide amendments to the CCMC to address the policy and legal implications of RMEs in Carson City. Until the State's regulations for RMEs are established and potential regulations for RMEs in Carson City can be evaluated, the effects of such regulations on the health, safety, and welfare of Carson City residents cannot be completely known and, therefore, the moratorium is necessary.

- B. *The moratorium is necessary to permit the staff, commission, board and public to focus on the efficient and effective preparation of an amendment to the master plan.*

Response: Ordinances establishing zoning requirements are adopted pursuant to the Master Plan in accordance with the CCMC and NRS. The moratorium is necessary to allow City staff and the Board of Supervisors time to responsibly consider the policy and legal implications of the Regulation and Taxation of Marijuana Act and the Department of Taxation regulations and to provide amendments to the CCMC to address the policy and legal implications of RMEs in Carson City. No amendment to the Master Plan is expected to be required as a result of any regulations that may be imposed regarding RMEs.

C. *The moratorium is necessary because continued development during the proposed moratorium period possibly would result in development that may conflict with the plan amendment.*

Response: The CCMC, including portions pertinent to zoning, currently does not allow for the development of RMEs as contemplated by the Regulation and Taxation of Marijuana Act, and because these uses and business are not permitted to operate in Carson City, no building permits can be issued specifically for the construction of structures to house any RME. As some potential applicants for State RME certificates might attempt to assert to Carson City that such RME is a use contemplated by the CCMC. The Carson City Board of Supervisors desires to make clear that the current version of the CCMC does not permit RMEs as contemplated by the Regulation and Taxation of Marijuana Act, and the Carson City Board of Supervisors desires that representatives of Carson City not accept any land use applications, business license applications, building permit applications or any other application or request to operate or otherwise license or permit any RME. To allow any applications for RMEs at this time or any time during the moratorium could result in such facilities being in conflict with any regulations that will be developed or additional MMEs without current provisional certificates.

Attachments:

- 1) Moratorium Ordinance

Applicable Statute, Code, Policy, Rule or Regulation

CCMC 18.02.120 (Moratorium)

Financial Information

Is there a fiscal impact? Yes No

If yes, account name/number: N/A

Is it currently budgeted? Yes No

Explanation of Fiscal Impact: A business impact statement is not required for zoning matters pursuant to NRS Chapter 278.

Alternatives

Do not implement the moratorium.

Board Action Taken:

Motion: _____

1) _____

Aye/Nay

2) _____

(Vote Recorded By)

Ordinance No. ____

Bill No. ____

AN ORDINANCE DECLARING A MORATORIUM, FOR A PERIOD OF UP TO 180 DAYS WITH THE ABILITY TO EXTEND IT BY RESOLUTION FOR UP TO AN ADDITIONAL 60 DAYS, ON THE ACCEPTANCE AND PROCESSING OF PLANNING OR OTHER APPLICATIONS FOR CONSTRUCTION OR OPERATION OF NEW MARIJUANA ESTABLISHMENTS.

The Carson City Board of Supervisors do ordain:

SECTION 1: A moratorium is hereby declared on all new marijuana establishments, including those contemplated by the Regulation and Taxation of Marijuana Act passed by Nevada voters during the November 8, 2016 general election, as well as any new Medical Marijuana Establishments that do not hold a valid provisional certificate issued by the State of Nevada as of the effective date of the moratorium, prohibiting Carson City acceptance and consideration of any and all land use applications, business license applications, building permit applications and any other applications or requests to operate or otherwise license or permit such marijuana establishments.

SECTION 2: This moratorium excludes the processing of land use applications, business license applications, building permit applications and any other applications or requests to operate or otherwise license or permit any Medical Marijuana Establishment for which the applicant already holds a valid provisional certificate issued by the State of Nevada for such Medical Marijuana Establishment at the time this moratorium becomes effective. These exclusions also allow the transfer of ownership or location of any Medical Marijuana Establishment for which the applicant already holds a valid provisional certificate issued by the State of Nevada at the time this moratorium becomes effective.

SECTION 3: This moratorium shall commence upon the adoption of this ordinance by the Carson City Board of Supervisors, and shall terminate at the close of business 180 calendar days from the date of the effective date of this ordinance and commencement of the moratorium, unless: 1) earlier terminated by the Carson City Board of Supervisors; or 2) an extension of this moratorium is approved by the Carson City Board of Supervisors at a public meeting. One extension, of a period of no greater than 60 days, is contemplated hereby and such an extension may be accomplished by a resolution with a simple majority vote of the Carson City Board of Supervisors, without the need for adopting a new ordinance.

SECTION 4: The Carson City Board of Supervisors declares this moratorium for the following reasons:

A. The "Regulation and Taxation of Marijuana Act," was passed by Nevada voters during the general election on November 8, 2016, becoming effective on January 1, 2017; and

B. Provisions of the Regulation and Taxation of Marijuana Act (Sec. 5) require the Nevada Department of Taxation (“Department”) to adopt regulations for the consideration of applications and the issuance of licenses to allow the operations of “marijuana establishments,” herein also known as “Recreational Marijuana Establishments” (“RMEs” or “RME”), in the State of Nevada, including in Carson City, not later than 12 months after the effective date of the Act; and

C. The Regulation and Taxation of Marijuana Act requires the Department to approve a license for an RME provided that, among other things, “The locality in which the proposed marijuana establishment will be located does not affirm to the Department that the proposed marijuana establishment will be in violation of zoning or land use rules adopted by the locality” (Act, Sec. 10[5][e]); and

D. The Regulation and Taxation of Marijuana Act allows up to four “retail marijuana stores” in a county with a population of more than 55,000 and less than 100,000 (Act, Sec. 10[5][d]), which includes Carson City, and the Act has no limit on the number of marijuana cultivation or marijuana product manufacturing facilities that would be allowed within any given county; and

E. The Regulation and Taxation of Marijuana Act gives applicants holding existing State certificates to operate a Medical Marijuana Establishment (“MME” or “MME’s”) first priority to apply for and obtain a license to operate a RME; and

F. State certificates have already been issued for MMEs in Carson City for two Dispensaries, three Cultivation facilities, one Production facility, and three combination Cultivation and Production facilities; and

G. The Carson City Municipal Code (“CCMC”), including portions pertinent to zoning, currently does not allow for RMEs as contemplated by the Regulation and Taxation of Marijuana Act, nor does the CCMC, as it pertains to business licensing, allow for the issuance of any business license for any RME, and because these uses and business are not permitted to operate in Carson City, no building permits can be issued specifically for the construction of structures for any RME; and

H. As some potential applicants for state RME certificates might attempt to assert to Carson City that such a use is contemplated by the CCMC, the Carson City Board of Supervisors desires to make clear that the current version of the CCMC does not permit any of the RMEs as contemplated by the Regulation and Taxation of Marijuana Act, and the Carson City Board of Supervisors desires that representatives of Carson City not accept any land use applications, business license applications, building permit applications or any other application or request to operate or otherwise license or permit any RME; and

I. The Carson City Board of Supervisors desires that additional applications for MMEs not be approved while regulations for RMEs are being considered so that the City can make a comprehensive evaluation of City regulations for all marijuana facilities; and

J. The Carson City Board of Supervisors understands that there are numerous arguments for and against the use, regulation and taxation of the sale of marijuana; and

K. Because Carson City's Board of Supervisors must either decide to regulate RMEs and/or prohibit some or all RMEs within its jurisdiction, and this challenge presents very complicated and difficult issues from both a policy and legal perspective; and

L. Because the Department currently does not have proposed regulations concerning the certification and operation of RMEs and the products to be produced and sold by these RMEs; and

M. Because the Carson City Board of Supervisors desires to take a responsible amount of time to thoughtfully consider the policy and legal implications of permitting RMEs to exist within the boundaries of Carson City; and

N. The Carson City Board of Supervisors desires to declare this moratorium as provided in Sections 1, 2 and 3 above, to prohibit staff acceptance and consideration of any and all land use applications, business license applications, building permit applications and any other application or request to operate or otherwise license or permit any new marijuana establishments, including those contemplated by the Regulation and Taxation of Marijuana Act passed by Nevada voters during the November 8, 2016 general election, as well as any new Medical Marijuana Establishments that do not hold a valid provisional certificate issued by the State of Nevada as of the effective date of the moratorium, for a period of 180 days, in order to permit the Department to adopt final regulations for RMEs by their December 31, 2017 deadline, and to permit the Carson City Board of Supervisors to responsibly consider the policy and legal implications of the Regulation and Taxation of Marijuana Act and the Department regulations and to provide amendments to the CCMC to address the policy and legal implications of RMEs in Carson City.

SECTION 5: If any section, subsection, subdivision, paragraph, sentence, clause or phrase in this ordinance, or any part hereof, is for any reason determined to be unconstitutional or invalid or ineffective by any court of competent jurisdiction, such decision shall not affect the validity or effectiveness of the remaining portions of this ordinance. The Carson City Board of Supervisors hereby declares that it would have passed each section, subsection, subdivision, paragraph, sentence, clause or phrase hereof irrespective of the fact that any one or more sections, subsections, subdivisions, paragraphs, sentences, clauses or phrases be declared unconstitutional, invalid or ineffective.

SECTION 6: No other provisions of the CCMC are affected hereby, except that all ordinances or parts of ordinances or sections, subsections, phrases, sentences, clauses or paragraphs contained in the CCMC in conflict herewith are hereby repealed.

PROPOSED on _____, 2017

PROPOSED by Supervisor _____

PASSED on _____, 2017

VOTES: AYES: Supervisors _____

VOTES: NAYS: Supervisors _____

ABSENT: Supervisors _____

Robert L. Crowell, Mayor

ATTEST:

Susan Merriwether, Clerk-Recorder

This ordinance shall be in force and effect from and after the ___ day of _____, 2017.