

**REGIONAL PLANNING COMMISSION
ORDINANCE AND FEES SUB-COMMITTEE MINUTES**

The Humboldt County Regional Planning Commission (RPC) Ordinance and Fees Sub-Committee meeting was held on Thursday, August 28, 2014 at 5:00 p.m. in the Meeting Room of the Humboldt County Courthouse located at 50 West Fifth Street, Winnemucca, Nevada.

SUB-COMMITTEE MEMBERS PRESENT

Jean Kinney
Ray Olsen
Vickie Rock
Lewis Trout

SUB-COMMITTEE MEMBERS ABSENT

Dave Mendiola

STAFF PRESENT

Betty Lawrence

Niki Linn

LEGAL COUNSEL

Mike Macdonald

Gabrielle Carr

PUBLIC PRESENT

Marlene Brissenden
Ken Hladek
Robert Dolan
Joyce Sheen
Chelsea Eldridge
Justin Hernandez
K.C. Harrison
Ken Tipton

Dawn Hagness
Bradley Holden
Anthony Gordon
Dee Holzel
Matt Cameron
Stephen West
Stevie Noyes
Jerry Hirsch

Shara Rynearson
Dian Putnam
Mike Owens
Brad Bauman
Shalena Hoisington
Ed Kilgore
Jim French
Diana Ibanez

I. OPENING

- A. Chairman Olsen called the meeting to order and led members and guests in the Pledge of Allegiance.
- B. Roll call was taken; there was a quorum present.
- C. Public Commentary – None

- II. Discussion and possible action on recommendations to the Humboldt County Regional Planning Commission concerning amendments to the Humboldt County Code and Winnemucca Municipal Code to prohibit or restrict medical marijuana establishments in certain zoning districts within the county and the city, including but not limited to, discussion and for possible action on recommendations to the Humboldt County Regional Planning Commission concerning proposed amendment to the Humboldt County Code to prohibit or restrict medical marijuana establishments in any zoning district within the unincorporated areas of Humboldt County, and to prohibit, restrict or regulate medical marijuana establishments in all commercial and industrial zoning districts, specifically Humboldt County Code Chapters 17.28 for NC-R Neighborhood Commercial/Rural District, 17.30 for GC General Commercial District, 17.32 for CH Highway Commercial District, 17.36 for M-L Light Industrial District, 17.40 for M-2 Heavy Industrial District, and other matters properly related thereto.

Mike Macdonald, District Attorney, provided a brief overview and history of the Medical Marijuana Establishment (MME) issue as it relates to Humboldt County. Some highlights include:

- The only item for discussion at this meeting relates to recommendations to the Regional Planning Commission (RPC) concerning amendments to the Humboldt County Code for areas outside the City limits and amendments to the Winnemucca Municipal Code for areas within the City limits to prohibit or restrict MMEs in certain zoning districts.
- The original ordinance text amendment was written specifically for the commercial or industrial districts.
- In 2001 the first Medical Marijuana Act was adopted within the state of Nevada and allowed residents to apply for identification cards that permitted the holder to possess up to one ounce of medical marijuana for medical purposes and to grow seven plants. That law was in effect until April 1, 2014.
- The new law allows a cardholder or caregiver to possess up to 2½ ounces of marijuana within a 14-day period and up to 12 plants. The biggest change under the new law was the introduction of MMEs, which covers "seed to sale" in Nevada. MMEs include:
 - Cultivation
 - Production
 - Lab testing
 - Dispensaries
 - Combination of cultivation and production of marijuana products or dispensaries
- Testing of marijuana and marijuana products must be performed by an independent laboratory.
- Nevada is a reciprocal state so cardholders from outside the state can receive marijuana from a licensed dispensary in Nevada if all the requirements are met.
- Every person involved in the "seed to sale" must be licensed by the State of Nevada.
- The law does not contemplate out of state cultivation, dispensaries or agents. A tracking system will be in place for every step in the process.
- A great deal of information is available via the State Health Division website at: <http://www.health.nv.gov/MedicalMarijuana.htm>, including the fees required and the application process.
- Nevada Revised Statute (NRS) 453A.350 states that the applicants must comply with local ordinances for zoning, land use and signage, specifically commercial or industrial zoning districts or overlays.
- The Ordinance and Fees Subcommittee is a recommending body to the Regional Planning Commission, which can make a recommendation to the Humboldt County Commission (HCC) and Winnemucca City Council (WCC). The Subcommittee is being asked for a recommendation on the zoning ordinances for the unincorporated areas of Humboldt County and City of Winnemucca Municipal Code, related to the commercial and industrial zoned districts.

Mr. Macdonald stated that the initial focus would be on identification of concepts, preferences and other such issues that the RPC would like to incorporate into formal recommendations to the governing bodies. He added that his office and Planning Department staff can assist in drafting specific language or provide further research, which can then be brought back to the subcommittee or the RPC.

Mr. Macdonald reported that the only draft ordinance made available to the public was the result of a request made that he provide the ordinance for discussion purposes, following what had been done in Lyon and Elko Counties. Those counties determined that they would prohibit MMEs in their unincorporated areas.

Mr. Macdonald summarized that many of the components are provided under state law and reiterated that the issue before us is to determine the appetite of local government in our commercial or industrial zoning districts. He stated that the draft prohibition ordinance would prohibit MMEs in all zoning districts; however, if there is a recommendation contrary to that, we would still refer to the general MME provisions in reference to zoning or land use regulations. In the various County commercial and industrial zones, it is indicated as a prohibited use. He added that the City and County also have additional considerations in relation to business licensing or privileges, which is outside the RPC's authority.

Chairman Olsen invited questions from the Board.

Mr. Trout asked Mr. Macdonald if in his reading of the statute, the zoning requirement cited for establishments precludes siting a cultivation facility in an agricultural zone even with an overlay. Mr. Macdonald stated that the statute requires that an establishment must be in a commercial or industrial zone or a commercial or industrial overlay. Mr. Trout asked if the Division has concurred with that language, which Mr. Macdonald stated he has not received concurrence from the Division; however, he is comfortable that the Division would agree the zoning would have to be commercial or industrial or overlay, i.e. not other types of zoning districts. Mr. Trout summarized that this is Mr. Macdonald's interpretation although he has not consulted with the Division to determine if cultivation in an agricultural zone might be permitted.

Mr. Trout asked Mr. Macdonald if a firm with appropriate Nevada licenses and certifications that is cultivating in another state, such as the federal program involving the University of Mississippi, they would be permitted to have their marijuana imported into Nevada. Mr. Macdonald stated that would be up to the state and is beyond our statute, which refers specifically to "seed to sale" in Nevada. He added that all individuals that possess or are transporting, must be licensed within the state of Nevada.

Mr. Trout asked Mr. Macdonald if his reading is that the requirements regarding distances from specified facilities in NRS 453A.322 are not subject to being added as part of our zoning review, specifically the 300 foot distance requirement from a community facility. He asked if we, as a group, could recommend that the distance of 1,000 feet from public and private schools be applied for example to churches. Mr. Macdonald stated he believed if there were a basis for the change, it could be a defensible restriction that local government could impose.

Mr. Trout mentioned that the list of facilities does not include such facilities as the County Courthouse, nor police or fire stations, and asked if those facilities could be added as part of our recommendations. Mr. Macdonald stated it would depend on the specifics and the reasons for it. He added that he would like to see from this subcommittee meeting more concepts, ideas, suggestions and recommendations that Planning Department staff and District Attorney staff could provide additional research to support a position or not, as well as to develop any draft language for a possible ordinance.

Mr. Trout stated that the statute seems to be silent on the issue of distance of a MME from residential zoning. He asked if it would be within the RPC's purview to specify a distance of 1,000 feet from residentially zoned property in the city or county. Mr. Macdonald stated that a

general consideration in land use planning is looking at compatible uses. He stated that in drafting an ordinance, one must be mindful of what and where zoning districts are designated. He added that in the city there are residences within a block or two of every business except those on the west end of town and by adding restrictions, any potential property for a MME could be eliminated within the city. Mr. Trout stated that a map is needed to show where any potential properties might be available.

Mr. Trout referred to the statute, which specifies that the local county or city has the authority to review fire, life safety and security issues and asked Mr. Macdonald if he believed we could impose a conditional use permit (CUP) requirement if any of the MMEs were to be permitted that would provide for the review specifically by fire and law enforcement. Mr. Macdonald stated that is typical of any CUP, which requires compliance with all local, state and federal licensing or permitting requirements. Mr. Trout asked if a proposed MME could be subject to completion of a CUP, which Mr. Macdonald stated would be the case regardless.

Mr. Trout asked Mr. Macdonald to provide an overview status on the federal law regarding MMEs. Mr. Macdonald stated that under federal law and in the state of Nevada, marijuana is a Schedule 1 controlled substance. He added that what we are discussing is *medical* marijuana, which falls under very strict restrictions monitored by the state of Nevada. He stated that even medical marijuana cardholders are not exempt from prosecution at the federal or state level if they violate the law. Mr. Trout asked Mr. Macdonald if he had an update on the Rohrabacher Amendment ("to bar the Justice Department from preventing states' implementation of their own medical marijuana laws"). Mr. Macdonald stated he did not and added that it is not pertinent to the RPC's purview. He added that all we can work with is current law, not speculation.

Ms. Kinney referred to Section 6 of NRS 453A.200, effective April 1, 2016, that the personal growing of marijuana is prohibited. Mr. Macdonald stated that if a dispensary is unavailable to a cardholder, they would still be allowed to grow their own.

Chairman Olsen mentioned that he believed that the federal government approved a medical marijuana research program at the University of Nevada, Reno (UNR).

Chairman Olsen stated that discussion needs to focus on zoning and what is allowed with regard to MMEs, which NRS requires would only be allowed in commercial or industrial-zoned areas. He added that if allowed, a special or conditional use permit would be required. He summarized that the decision to allow or disallow would be based on public comments and the RPC's decision at a public hearing. Mr. Trout agreed that is an option but added that MMEs might be prohibited in certain zoning designations, such as N-C (Neighborhood Commercial). Chairman Olsen stated that allowance would be based on a case-by-case basis for each zoning district. Mr. Macdonald agreed that the options are:

- Allow
- Restrict or provide oversight regarding a use permit
- Prohibit

IV. PUBLIC COMMENTARY

Chairman Olsen invited comments from the public. (Note: Comments have been summarized.)

- Robert Dolan spoke in general support of allowing MMEs in Humboldt County consistent with Nevada law because he believes it is a beneficial medical treatment. He proposed that MMEs should be allowed in commercial or industrial zoned areas. He urged the RPC not to adopt a blanket prohibition.
- Stevie Noyes spoke in support of MMEs for those patients who benefit from medical marijuana. She added that she is not a medical marijuana cardholder; however, she has friends who are. She added that a friend has multiple sclerosis (MS) and at times cannot see well enough to drive to Reno to obtain medical marijuana. She mentioned that although cardholders can grow their own plants, many are not physically able or perhaps do not have a "green thumb". She also spoke on the safety issue of having a local dispensary versus driving back and forth to Reno. She provided a copy of some MME information and studies for distribution to members.
- Ed Kilgore stated that he does not dispute that marijuana does have a benefit to those who need it. He voiced concerns from the law enforcement view based on a study in Colorado, which includes traffic fatalities, in which the driver tested positive for marijuana use in Colorado from 2007 to 2012 increased 100%; drug-related suspensions and expulsions increased 32% for grades 8 through 12; Denver adult arrestees testing positive for marijuana increased 48.45%. Mr. Olsen asked if these statistics were based on *medical* or *illegal* marijuana users. Mr. Kilgore stated he did not know.
 Ms. Rock mentioned that Colorado legalized marijuana for recreational use as opposed to medical marijuana on which the RPC is focused. Mr. Trout asked Mr. Kilgore if he saw an increase in drivers under the influence of opiates when it was moved from Schedule 1 to 2, which he did not. Ms. Kinney stated that 23 states have legalized marijuana in various forms and asked Mr. Kilgore if he has statistics from those states that have *medical* marijuana in relation to crime statistics, which he did not.
 Mr. Kilgore stated that he is gathering information from California. He reported that the dispensaries in Sacramento have security in place; however, most of the crime (robbery and murder) is being reported in a one-mile radius, which has risen exponentially. The rise in crime is attributed to the fact that cardholders are either carrying cash or marijuana. He added that he would like to receive more information on hours of operation and other issues. Ms. Kinney suggested that cardholders be allowed to use a debit card (which is currently prohibited).
 Mr. Macdonald stated that some counties and cities have restricted dispensary hours of operation to daytime. He explained that the issue could be addressed under licensing or permitting conditions.
 Mr. Kilgore summarized that his focus is on safety of medical marijuana users, as well as other citizens. Chairman Olsen reiterated that any MME could only be allowed in commercial or industrial zoning districts.
 Mr. Trout asked Mr. Macdonald about the number of MMEs allowed in the County, for which dispensaries are limited to one. He asked if other types of facilities would be allowed. Mr. Macdonald stated that there is no limit; however, the Division will review the number of cultivators and possibly the laboratories to ensure sufficient capacity to meet the need.
- Justin Hernandez spoke in support of MMEs as a medical marijuana patient. He mentioned some laws that could be in place in the future. Mr. Trout reiterated that we are basing our discussion and decisions on current law rather than speculation. Mr. Hernandez requested that the RPC does not recommend a blanket prohibition due to the true medical benefits. He asked when the RPC would make a decision. Chairman Olsen explained that the RPC would review all the issues, including zoning, prior to

making a recommendation. Mr. Trout clarified that this subcommittee would make a recommendation to the RPC, which in turn would make a recommendation to the City Council and Board of County Commissioners, which would be the governing bodies to make a final determination.

- Shara Rynearson spoke in support of MMEs. She referred to Mr. Macdonald's comment that Nevada is a reciprocal state, which could result in a shortage of medical marijuana for patients. She stated that if the nearest dispensary were in Reno, they could run out of product before she arrived. Mr. Olsen suggested calling the dispensary prior to driving to Reno to ensure it would be available.
- Diana Ibanez stated she has been in Winnemucca for almost three years, coming from Atlanta, Georgia, where she had never seen a casino or brothel. She is writing a college paper regarding MMEs and had some questions regarding zoning. She asked if zoning requirements were as strict for the casinos and brothels as it is for MMEs. She mentioned that her son and his friends walk from the grammar school by the casino to get home. She referred to studies she found that talk about the medical benefit received by use of marijuana.

Mr. Trout stated that the conditional use process applies to many different uses within the county and city. Ms. Rock explained that the most of the casinos and brothels were in place prior to the zoning ordinances being in place so many were "grandfathered in".

- Dawn Hagness, Assistant Superintendent of Humboldt County School District, read into the record a letter written by Dr. David Jensen, Superintendent (copy on file). Dr. Jensen was not able to attend the meeting; however, he opposes MMEs in Humboldt County due to substance abuse by students. Mr. Trout asked if any of the substance abuse was attributed to use of medical marijuana, which Ms. Hagness did not know.
- Matthew Cameron spoke in favor of allowing MMEs based on the ease of obtaining marijuana on the black market, which he felt would decrease if a dispensary were allowed. He stated that he thought that marijuana should be in the hands of experts. He also mentioned the tax revenue that would be generated by allowing MMEs.

Discussion ensued over growing marijuana at one's home versus purchasing it from a dispensary. Some of the issues mentioned include security, cost and testing.

- Brad Holden spoke in support of MMEs and stated it would be a travesty to not have it available.
- Ms. Rock referred to an article about areas where MMEs have been legalized that have seen a decrease in suicide rates of people in pain by as much as 20% in the first year, 25% in the next two years and 33% in the five to six-year range. She provided the article to staff, who distributed it to members (copy on file).

Chairman Olsen thanked everyone for their comments and stated that he would close this meeting. He added that members would review the information and comments received and further discuss the issue at their next special meeting. Mr. Macdonald stated that staff would log and compile the comments and information received. Members discussed the next meeting date, which set for 5:30 p.m. on September 18, 2014. Chairman Olsen adjourned the meeting at 7:23 p.m. until 5:00 p.m. (*changed to 5:30 p.m.*) on Thursday, September 18, 2014.



Chairman Olsen, Chairman