

STAFF REPORT

Date: January 10, 2018

To: Mayor and City Council

Thru: Sabra Newby, City Manager

Subject: **J.4. Staff Report (For Possible Action): Presentation, update and discussion regarding permanent recreational marijuana Reno Municipal Code changes and stakeholder discussions.**

From: Scott Gilles, Legislative Relations Program Manager

Summary: In preparation for the development of revisions and additions to Reno Municipal Code (RMC) to implement the permanent code changes for the licensing and land use rules for recreational marijuana, staff has prepared a presentation for the City Council. The presentation is intended to provide the City Council with background, the status of the Nevada Department of Taxation's (DoT) progress in implementing permanent regulations, the stakeholder outreach completed by staff to date, and feedback from the Reno Planning Commission. Staff is looking for City Council direction on pertinent policy decision points to assist and guide staff in preparing ordinances to complete the implementation of recreational marijuana rule changes into RMC.

Previous Council Action: At the June 7, 2017, City Council meeting, the City Council adopted Ordinance No. 8431 (Bill No. 7000), modifying the existing medical marijuana licensing code to allow for a temporary, add-on license for existing medical marijuana dispensaries in good standing to sell recreational (or retail) marijuana on a temporary basis. The RMC change was approved to allow the City of Reno's medical marijuana dispensaries to participate in DoT's Early Start Program. Direction was also given by the City Council for staff to develop and bring back ordinances creating permanent RMC code changes to regulate recreational marijuana licensing and land use rules to transition from the Early Start Program into the permanent implementation of the recreational marijuana industry.

Background: On November 8, 2016, Statewide Ballot Question Number 2 (Question 2) was passed by Nevada voters legalizing the recreational use of marijuana by individuals aged 21 or over. The possession of certain amounts of recreational marijuana and the right to consume in non-public places became effective January 1, 2017. The ballot measure was designed to have government regulated retail stores open and selling to the public by January 1, 2018, allowing the State time to draft the regulations.

On May 8, 2017, the DoT, in an effort to allow for the regulated and legal retail sale of recreational marijuana, enacted temporary regulations to authorize the Early Start Program on July 1, 2017. The Early Start Program temporary licenses from the DoT expire on June 30, 2018. The DoT currently is in the process of formalizing their permanent regulations for recreational marijuana to transition out of the temporary Early Start Program. It is estimated those permanent regulations will be adopted and approved by the end of February 2018. On a parallel track with the State's effort, City staff has conducted stakeholder outreach to all five Neighborhood Advisory Boards, the owners and staff of all types of existing marijuana facilities, commercial real estate organizations, and the Redevelopment Agency Advisory Board.

Pursuant to Question 2 (codified as NRS 453D.210(5)(d)(2)), state law has a statutory cap of 20 potential retail marijuana stores within Washoe County. Based on the DoT's proposed regulations and conversations with the DoT, up to 10 of those county-wide retail marijuana stores will be allocated to the City of Reno. Furthermore, the DoT has informed City staff that the process for the state issuing the retail marijuana certificates will mirror the process for the medical marijuana establishments. As such, the DoT will rank the various types of retail marijuana applicants pursuant to state law and the proposed regulations, and the local governments will not be given discretion to license applicants outside of the rankings by the state.

The DoT's regulations propose to cover a number of the areas where the public expressed concern (e.g. security, packaging, labeling, state licensing requirements, public health standards, quality assurance, etc.), but the regulations (and state statutory law) grant authority to the local jurisdictions to regulate land use and business licensing issues. As such, staff will eventually bring to the City Council proposed changes via ordinance to Title 5 (Privileged Licenses), Title 18 (Annexation and Land Development), Title 4 (Business License), and Title 8 (Criminal Offenses) of the RMC.

The purpose of the presentation under this item is to provide the City Council with background on the efforts of the State and those of City staff and to discuss key policy decision points staff needs direction on from the City Council. The Planning Commission reviewed the key decision points related to changes to Title 18 on December 7, 2017. A discussion of their feedback on each of the decision points is provided below.

Discussion: City staff is requesting the City Council provide direction on the following key decision points:

1. Zoning designations allowing retail marijuana establishments;
2. Retail marijuana establishments located in downtown Reno;

3. Locational criteria for retail marijuana establishments;
4. Hours of operation for retail marijuana establishments;
5. Privileged business license fees;
6. Home delivery service; and
7. Extension of the Early Start Program.

Each of these decision points are framed below.

1. Zoning Designations Allowing Recreational Marijuana Establishments:

With the exception of downtown Reno, we heard from members of the public during the stakeholder outreach that recreational marijuana establishments should be allowed in all zones where medical marijuana establishments are located. It is important to note that medical marijuana facilities were limited to medical patients and function similarly to pharmacies. Recreational marijuana will be treated similarly to alcohol and can be more akin to a liquor store from a land use standpoint. Further, recreational establishments will serve a broader clientele than medical facilities, which may present a new set of challenges not experienced with medical facilities. With the recent comprehensive planning efforts of ReImagine Reno, the Urban Land Institute, and the Downtown Action Plan, priorities for various areas of the City have been clarified from the time that the medical marijuana provisions were enacted. Therefore, this is an opportunity to review the appropriateness of zoning districts that allow for retail sales of recreational marijuana, as well as recreational marijuana cultivation, production, and testing facilities.

The table in **Exhibit A** shows a list of each of the zoning districts (with the exception of the Downtown Reno Regional Center), whether a medical marijuana establishment is currently allowed, and whether a recreational marijuana facility is proposed to be allowed.

Cultivation, Production, and Testing Facilities

Limited changes related to land use are expected in the State regulations between medical and recreational cultivation, production and testing establishments. Given the inconspicuous nature of cultivation, production, and testing establishment, staff is proposing limited changes to the zoning. Recreational marijuana cultivation is proposed by staff to be prohibited in the following zones where medical marijuana cultivation is currently allowed: Arterial Commercial (AC), Community Commercial (CC), and the Mixed Use/South Virginia Transit Corridor (MU/SVTC). Each of these zones is more commercial in nature serving commercial retail, office, and multifamily residential uses. Cultivation facilities are more industrial in nature and are more compatible with similar uses. All zones in which the cultivation of marijuana for recreational use will be allowed are more industrial in nature.

Recreational marijuana production is proposed by staff to be prohibited in the following zones where medical marijuana production is currently allowed: AC, CC, and Mixed Use/Redfield Regional Center/Retail Commercial/Academic (MU/RRC/RC/A). Similar to cultivation facilities, production facilities are more industrial in nature, but tend to be smaller than cultivation facilities. Because of their industrial nature, City staff has recommended removal of production facilities from the zoning districts that are predominantly commercial in nature.

Recreational marijuana testing facilities are proposed to be allowed in the same zones as the independent testing laboratory facilities for medical marijuana. Please note that currently there are no medical marijuana independent testing laboratories (nor any temporary recreational marijuana testing facilities) in the City of Reno.

Dispensaries

Recreational marijuana dispensaries (or retail marijuana stores) are proposed by staff to no longer be allowed in any of the regional centers or the CC zone. Both the Redfield Regional Center (RRC) and the Western Gateway Regional Center (WGRC) currently allow medical marijuana dispensaries within several districts (but none currently exist and the City of Reno has its cap on medical marijuana licensees). Both of these regional centers are located at gateways into the City. The WGRC is located along I-80 on the western city limits and the RRC is located along I-580 /US395 at the southern entrance to the City. Similar to the discussion related to downtown Reno (see below), City policies encourage a vibrant mix of uses that will be reflective of the City’s image. The location of retail marijuana stores may also discourage investment in high quality mixed use developments. The Downtown Reno Regional Center (DRRC) is discussed in greater detail below.

The table below highlights the decision points staff is requesting the City Council consider to provide staff with clear direction.

Policy Consideration	Positive	Negative
Allow recreational marijuana establishments in all zones where medical marijuana establishments are allowed.	<ul style="list-style-type: none"> • Ease of implementation 	<ul style="list-style-type: none"> • Could result in the establishment of dispensaries in areas at the gateways to the City, which may create an unwanted first impression • May be seen as exacerbating characteristics that limit investment and a variety of uses necessary for a healthy mix of uses in regional

		centers <ul style="list-style-type: none"> • Could allow for uses to be established that may be incompatible with existing uses and uses allowed in the underlying zone
Follow staff's recommended zoning districts as listed in Exhibit A	<ul style="list-style-type: none"> • Will assist in implementing the goals and objectives of creating a vibrant mix of uses in regional centers • Will provide a positive first impression of the City • Will create more consistency with surrounding uses allowed in the underlying zone 	<ul style="list-style-type: none"> • Could create inconsistencies with existing established production and cultivation uses • Eliminates an entire portion of the City as an opportunity to expand a new industry

In addition to the table above, the City Council may provide an alternative direction beyond the decision points framed therein. Any suggested amendments can be incorporated into the final RMC changes before they are developed.

The Planning Commission agreed to follow the recommended allowed zoning designations as outlined in **Exhibit A**.

2. Retail marijuana establishments located in downtown Reno:

For decades, downtown Reno has shifted away from a gaming-oriented tourist destination. The City has focused on efforts to diversify the economy and shift the uses in downtown to attract people of all ages and demographics. Some examples of these efforts include the construction of the river walk, the kayak park, the baseball stadium, the Reno Events Center, and ReTrac. Additionally, recent planning efforts like ReImagine Reno and the Downtown Action Plan have revealed that the perception of safety in downtown is a major deterrent to some choosing to visit or invest.

Many recommended policies are to encourage a mix of uses that support a wide variety of people living and working in downtown. While there is a rich history of entertainment uses such as bars, lounges, nightclubs, and gaming in downtown, the loss of resort/casinos and the prevalence of vacant buildings have led to a preponderance of liquor stores, pawn shops, bars, and vacant lots without a balance of alternative uses. While this leads to a vibrant nightlife on the evenings and weekends, there is a lack of a mix of uses that are necessary for a consistently vibrant downtown. The major decision point here centers on whether allowing retail marijuana stores

(aka dispensaries) in Downtown is appropriate. There is one existing establishment located within the Downtown Reno Regional Center (Mynt Cannabis Dispensary).

Policy Consideration	Positive	Negative
Allowed in the same zones as medical marijuana	<ul style="list-style-type: none"> • Ease of implementation 	<ul style="list-style-type: none"> • Located within close proximity to family-oriented facilities of which they may be seen as incompatible • May be seen as exacerbating characteristics that limit investment and a variety of uses necessary for a healthy downtown • Not in support of efforts to link UNR with downtown.
Not allowed in Downtown	<ul style="list-style-type: none"> • Will support implementing the goals and objectives of creating a vibrant mix of uses in Downtown • Will be consistent with connecting the University with Downtown • Will not contribute to more incompatible uses in Downtown 	<ul style="list-style-type: none"> • Limits the expansion of the established medical facility • Eliminates an entire portion of the City as an opportunity to expand a new industry
Allow recreational marijuana sales within existing established Medical Marijuana Establishments	<ul style="list-style-type: none"> • Will protect existing investments for current dispensaries • Will assist in implementing the goals and objectives of creating a vibrant mix of uses in Downtown • Will be consistent with connecting the University with Downtown • Will not contribute to more incompatible uses in Downtown 	<ul style="list-style-type: none"> • Eliminates an entire portion of the City as an opportunity to expand a new industry • The existing marijuana establishment in downtown will be located within close proximity to family-oriented facilities, of which they may be seen as incompatible • The existing marijuana establishment in downtown may be seen as exacerbating characteristics that limit investment and variety of uses necessary for a healthy downtown • The existing marijuana establishment in downtown is not in

		support of efforts to link UNR with downtown
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There was no consensus by the Planning Commission on this issue. A majority of the commissioners agreed that there should not be any new recreational marijuana establishments in Downtown. Some commissioners believed that there could be room for allowing recreational retail dispensaries on the outer edges of Downtown (e.g. Keystone Avenue and Wells Avenue Districts). One commissioner noted the improvements to the property made by the existing establishment in Downtown and that their investment may not all be negative.

3. Locational Criteria for Retail Marijuana Establishments:

State law consists of provisions for distance separation of marijuana establishments from community facilities such as churches and day cares (300 feet) and schools (1,000 feet). *See, NRS 453D*. One of the topics discussed with the various stakeholder groups included potentially increasing these distance separation requirements or placing distance separation requirements between retail establishments. This decision point has been split into two different categories: 1) distance separation requirements between marijuana facilities and community facilities/schools; and 2) distance separation between retail establishments.

Distance Separation of Establishments from Community Facilities and Schools

Policy Consideration	Positive	Negative
Defer to State Law on distance separation requirements	<ul style="list-style-type: none"> • Ease of implementation • Cross jurisdictional consistency • Utilization of a distance separation that has been proven to work 	<ul style="list-style-type: none"> • Less restrictive
Increase the distance separation	<ul style="list-style-type: none"> • Will ensure a greater separation to uses that are not compatible with marijuana establishments 	<ul style="list-style-type: none"> • Restricts beyond what is required by state law • Could be considered over regulating • Some of the existing medical establishments may not meet the standards

There was no consensus between the commissioners on this item. Some commissioners were in favor of deferring to the State law limitations, whereas others are interested in maximizing the distances from schools and community facilities. However, the commissioners agreed that if

there were an increase in distance separation to schools and community facilities that any new, increased City distance requirements be decided through an informed process. Staff mentioned that the current standards, when combined with the recommended zoning designations, already provide a limited area for new retail recreational marijuana establishments to be located in the City of Reno. Most commissioners were generally in favor of defaulting to the State law for distance separation, which would maintain consistency with our regional partners.

Distance Separation Between Establishments

Policy Consideration	Positive	Negative
No distance separation between retail establishments	<ul style="list-style-type: none"> • Maintains consistency with the existing requirements for medical marijuana establishments 	<ul style="list-style-type: none"> • Does not do anything to reduce over concentration.
Distance separation between establishments	<ul style="list-style-type: none"> • Reduces concentration of establishments and any negative effects associated with overconcentration 	<ul style="list-style-type: none"> • Could result in inconsistencies with existing established facilities meeting this requirement depending on the distance separation

The Planning Commissioners generally agreed with adding a distance separation between establishments. Much like the increased distance separation between community facilities and schools, the commissioners made it clear that developing the distance separation would need to be based on an informed and justifiable process.

4. Hours of Operation for Retail Marijuana Establishments:

In a majority of the zones within the City, the allowed hours of operation are 6:00 a.m. to 11:00 p.m. Several overlay zones allow 24 hour operations by right. Community safety, public consumption, and compatibility with surrounding uses were some of the concerns expressed during the stakeholder outreach. Hours of operation issues are typically associated with retail establishments. State law prohibits unauthorized people from entering into cultivation, production, or laboratory facilities. Further, they are often in discrete locations with little to no advertising. Therefore, these facilities are likely to see low levels of activity or impacts to surrounding uses. As such, the policy decision matrix below highlights each of the proposed allowed hours of operation ranges for retail marijuana stores (aka dispensaries) with their respective positive and negative attributes.

Policy Consideration	Positive	Negative
Code Default	<ul style="list-style-type: none"> • Already written in code 	<ul style="list-style-type: none"> • Lower levels of street activity to

	<ul style="list-style-type: none"> • Easy to administer • No impact to existing establishments operating under the early start program • No conflict with the existing medical marijuana regulations • Treats these businesses similarly to other businesses 	<p>deter crime that may occur during evening hours</p> <ul style="list-style-type: none"> • Increases the potential for public consumption • Higher probability of intoxicated people causing problems • Difficult to enforce hours of operation with certain zones allowing 24 hours and others not • Increased demand on public safety resources outside of maximum staffing hours
6:00 a.m. to 11:00 p.m.	<ul style="list-style-type: none"> • Easy to enforce a standard that is consistent across all locations • Consistent with the standard hours in the code • Reduction in the hours of operation will reduce the negative activities that occur later in the evening, thereby reducing crime potential 	<ul style="list-style-type: none"> • There may be a conflict with those establishments that will also operate as a medical dispensary • Lower levels of street activity to deter crime that may occur • Increases the potential for public consumption (less than 24 hour operations) • Higher probability of intoxicated people causing problems (less than 24 hours) • Increased demand on public safety resources outside of maximum staffing hours
10:00 a.m. to 10:00 p.m.	<ul style="list-style-type: none"> • Easy to enforce a standard that is consistent across all locations • Operating during the hours of highest number of officers on patrol, increasing the ability respond to incidents • Reduced impact to surrounding uses 	<ul style="list-style-type: none"> • Decreased business hours for the businesses • Not consistent with the standard operating hours in underlying zones • Only type of business with these operating hours allowed by code

The City Council may choose one of the alternatives analyzed above or provide direction with other suggested hours of operation. The Planning Commission unanimously supported restricting the hours of operation to 10:00 a.m. to 10:00 p.m.

5. Privileged Business License Fees:

State law allows the governing body of an incorporated city to fix, impose and collect for revenue or for regulation, or both, a license fee (tax) on a marijuana establishment or medical marijuana establishment located within its corporate limits as a flat fee, percentage of the gross revenue of the marijuana establishment or a combination of both the flat fee and percentage of gross revenue.

The total amount of the license fee imposed, regardless of how the license fee is imposed, must not exceed three percent (3%) of the gross revenue of the marijuana establishment or medical marijuana establishment.

Existing Medical Marijuana Establishments hold an annual business license and a quarterly privilege license. The current annual license fee is based on the percent of gross revenue for all non-privileged (i.e., marijuana) sales. The current quarterly privilege license fee is charged as a flat license fee per calendar quarter regardless of the amount of gross revenue from marijuana sales. The flat fee schedule is as follows:

- Dispensary - \$18,750 per quarter; **\$75,000 annually**
- Cultivation Facility - \$5,075 per quarter; **\$20,380 annually**
- Production Facility - \$5,075 per quarter; **\$20,380 annually**
- Testing Labs - \$5,075 per quarter; **\$20,380 annually**

Staff recommends proceeding with the implementation of a 3% quarterly privileged license fee based on the gross revenue from the sale of retail and medical marijuana. Staff further recommends retaining the existing flat quarterly fees through the end of the current fiscal year and implementing the 3% fee effective July 1, 2018.

6. Home delivery service:

State law enables the City to regulate direct transportation to a consumer from a retail marijuana store / medical marijuana dispensary. If the City Council wishes to permit home delivery service, in conformance with State law, it is believed that this may reduce the strain on enforcement and compliance staff in dealing with unauthorized (i.e., illegal) home deliveries. Staff recommends further discussion and direction to allow home delivery service with additional time to review law enforcement concerns with implementation.

7. Extension of Early Start Program:

This item is essentially a clean-up change to the RMC. The City Council previously adopted Ordinance No. 8431 (Bill No. 700), modifying the existing medical marijuana licensing code (RMC 5.21) to accommodate the Early Start Program and allow for issuance of a temporary

license for existing medical marijuana dispensaries in good standing to sell retail marijuana. The expiration date of the City issued add-on license is March 31, 2018 based on the first version of the emergency regulations adopted by the state. Since that time, DoT has enacted additional regulations extending the expiration date until June 30, 2018, and DoT has issued its temporary retail marijuana licenses with an expiration date of June 30, 2018.

Staff recommends direction to bring back a code change via ordinance to align the expiration dates of the RMC temporary retail marijuana licenses with that of the DoT. This amendment of Title 5, Chapter 5.21 of RMC, entitled "Council Action on License; Temporary Retail Marijuana Establishment License", will propose to revise Section 5.21.013(d) to extend the expiration date of the temporary retail marijuana license from April 1, 2018 to June 30, 2018 or upon the termination of the State's temporary Retail Marijuana Licensing Program, whichever is earlier.

Financial Implications: None at this time.

Legal Implications: The Controlled Substances Act (21 U.S.C. § 801 et seq.) ("CSA") prohibits the manufacture, possession, sale, and/or distribution of marijuana, as well as conspiring to manufacture, possess, sell and/or distribute marijuana. (21 U.S.C. §§ 841, 846.) In addition, 18 U.S.C. § 2 makes it unlawful for any person to aid, abet, counsel, command, or induce any person to violate the CSA.

Recommendation: Staff recommends the City Council provide direction on each of the key decision points and support the overall regulatory framework to assist staff in developing preferred direction for amendments to Title 5, Title 18, and other necessary RMC titles to implement permanent recreational marijuana code changes to the RMC.

Proposed Motion: I move to approve staff recommendation.

Attachments:

- Exhibit A- Zoning Designations (PDF)