

City of Carson City Agenda Report

Date Submitted: January 24, 2014

Agenda Date Requested: February 6, 2014

Time Requested: 5 minutes

To: Mayor and Board of Supervisors

From: Community Development - Planning Division

Subject Title: For Possible Action: To adopt Bill No. 102, on second reading, Ordinance 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 medical marijuana establishments as contemplated by Senate Bill 374 of the 2013 Legislative Session. (Lee Plemel)

Summary: Senate Bill (SB) 374, commonly referred to as the "Medical Marijuana Act," was adopted by the Nevada Legislature during its 77th regular session in 2013 and was approved by the Governor of the State of Nevada on June 12, 2013. The deadline for preparation of final regulations by the Nevada Division of Public and Behavioral Health ("Division") is April 1, 2014. Until the final promulgation of such regulations, the Planning Commission and Board of Supervisors will not have a complete picture to facilitate a decision regarding zoning regulations for Medical Marijuana Establishments. Applications pertinent to Medical Marijuana Establishments would be prohibited during the moratorium, allowing City staff, the Planning Commission, and the Board of Supervisors time to evaluate the implications of the Division's regulations and consider other impacts related to the regulation or prohibition of Medical Marijuana Establishments.

Type of Action Requested:

- ☐ Resolution
☐ Formal Action/Motion

- ☒ Ordinance-Second Reading
☐ Other (Specify)

Does This Action Require A Business Impact Statement: () Yes (X) No

Prior Board Action: Approved the ordinance on first reading on January 16, 2014, by a vote of 5 ayes and 0 nays.

Recommended Board Action: I move to adopt Bill No. 102, on second reading, Ordinance 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 medical marijuana establishments as contemplated by Senate Bill 374 of the 2013 Legislative Session, based on the findings contained in the staff report.

Explanation for Recommended Board Action: See staff summary above.

Applicable Statute, Code, Policy, Rule or Regulation: 18.02.120 (Moratorium)

Fiscal Impact: N/A

Explanation of Impact: N/A

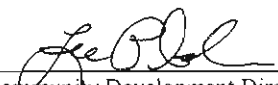
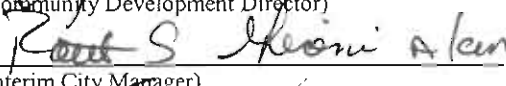
Funding Source: N/A

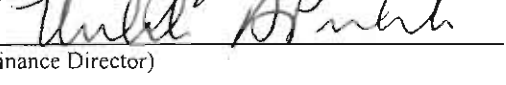
Alternatives: Do not implement the moratorium and provide further direction to staff regarding Medical Marijuana Establishment zoning regulations.

Supporting Material:

1) Ordinance

Prepared By: Janice Brod, Grants Program Coordinator

Reviewed By: 
(Community Development Director)

(Interim City Manager)

(District Attorney's Office)

(Finance Director)

Date: 1-28-14

Date: 1/28/14

Date: 1/28/14

Date: 1/28/14

Board Action Taken:

Motion: _____

1) _____

Aye/Nay

2) _____

(Vote Recorded By)

Ordinance No. ____

Bill No. 102

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 MEDICAL MARIJUANA ESTABLISHMENTS AS CONTEMPLATED BY SENATE BILL 374 OF THE 2013 LEGISLATIVE SESSION.

The Carson City Board of Supervisors do ordain:

SECTION 1: A moratorium is hereby declared on all medical marijuana establishments contemplated by Senate Bill 374 of the 2013 Nevada Legislative Session (SB 374), prohibiting Carson City 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 of the medical marijuana establishments as contemplated by SB 374.

SECTION 2: 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 3: The Carson City Board of Supervisors declares this moratorium for the following reasons:

A. SB 374, commonly referred to as the “Medical Marijuana Act,” was adopted by the Nevada Legislature during its 77th regular session in 2013 and was approved by the Governor of the State of Nevada on June 12, 2013; and

B. Provisions of SB 374 requires the Nevada Division of Public and Behavioral Health (“DPBH”), formerly the Health Division of Nevada’s Department of Health and Human Services and hereafter referred to as “Division,” to promulgate regulations for the consideration of applications and the issuance for certificates to allow the operations of “Medical Marijuana Establishments”¹ (“MMRs” or “MME”) in the State of Nevada, and specifically in Carson City; and

¹ Section 8.2 of SB 374 defines MMEs as: “1. An independent testing laboratory; 2. A cultivation facility; 3. A facility for the production of edible marijuana products or marijuana-infused products; 4. A medical marijuana

C. SB 374 mandates that the Division finalize these regulations on or prior to April 1, 2014; and

D. SB 374 requires an applicant for a MME certificate to provide “proof of licensure with the applicable local governmental authority or a letter from the applicable local governmental authority certifying that the proposed medical marijuana establishment is in compliance with those restrictions and satisfies all applicable building requirements ... ” (SB 374, Section 10[3][a][5]); and

E. SB 374 requires an applicant for a MME certificate to “[c]omply with all local ordinances and rules pertaining to zoning, land use and signage” (SB 374, Section 10.5[2]); and

F. SB 374 requires an applicant for a MME certificate to obtain a local business license and be compliant with all local governmental ordinances or rules (*See* SB 374, Section 11.5[3]); and

G. The Carson City Municipal Code (“CCMC”), including portions pertinent to zoning, currently does not allow for MMEs as contemplated by SB 374, nor does the CCMC, as it pertains to business licensing, allow for the issuance of any business license for any MME as contemplated by SB 374, 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 MME contemplated by SB 374; and

H. As some potential applicants for state MME certificates might attempt to assert to Carson City that such MME 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 any of the MMEs as contemplated by SB 374, 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 MME as contemplated by SB 374; and

I. The Carson City Board of Supervisors understands that there are numerous arguments for and against the use of marijuana for the treatment of certain debilitating diseases and ailments; and

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

K. Because the Division currently does not have a final draft of proposed regulations concerning the certification and operation of MMEs and the products to be produced and sold by these MMEs, nor will the Division have final regulations concerning the certification

dispensary; or 5. A business that has registered with the Division and paid the requisite fees to act as more than one of the types of businesses listed in subsections 2, 3 and 4.”

and operation of MMEs and the products to be produced and sold by these MMEs until at least December of 2013 and possibly not unit the statutory deadline of April 1, 2014; and

L. 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 MMEs to exist within the boundaries of Carson City; and

M. The Carson City Board of Supervisors desires to declare this moratorium as provided in Sections 1 and 2 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 of the MMEs as contemplated by SB 374, for a period of 180 days, in order to permit the Division to draft and submit final regulations for MMEs by their internal December 14, 2013 deadline, and to permit the Carson City Board of Supervisors to responsibly consider the policy and legal implications of SB 374 and the Division regulations and to provide amendments to the CCMC to address the policy and legal implications of MMEs in Carson City.

SECTION 4: 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 5: 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 _____, 2014

PROPOSED by Supervisor _____

PASSED on _____, 2014

VOTES: AYES: Supervisors

VOTES: NAYS: Supervisors

ABSENT: Supervisors

Robert L. Crowell, Mayor

ATTEST:

ALAN GLOVER, Clerk-Recorder

This ordinance shall be in force and effect from and after the ___ day of _____, 2014.