

**City of Carson City
Agenda Report**

Date Submitted: September 23, 2014

Agenda Date Requested: October 2, 2014
Time Requested: 30 minutes

To: Mayor and Supervisors

From: Community Development – Business License Division

Subject Title: For Possible Action: To introduce, on first reading, Bill No. _____, an ordinance amending the Carson City Municipal Code Title 4, Licenses and Business Regulations, Chapter 4.04, Business License, Section 4.04.005, Definitions, by adding Definitions for Medical Marijuana Establishments, Sections 4.04.020, 4.04.031 and 4.04.040 by adding fees for Medical Marijuana Establishments and exempting Medical Marijuana Establishments from certain fees, and adding a new Section 4.04.120 entitled Medical Marijuana Establishments – Application for License and Additional Regulations to provide additional requirements for Medical Marijuana Establishment Business Licenses, and other matters properly related thereto. (Susan Dorr Pansky)

Summary: In July 2014, the Board of Supervisors adopted zoning regulations to allow Medical Marijuana Establishments in Carson City. On September 18, 2014, staff presented a Business Impact Statement for proposed Medical Marijuana Establishment Business License fees as required by NRS Chapter 237. The Board found that the proposed fees outlined in the Business Impact Statement would impose a direct and significant economic burden and would directly restrict formation, operation or expansion of a Medical Marijuana Establishment business. The Board then directed staff to prepare an ordinance modifying Chapter 4.04 of the Carson City Municipal Code related to Business Licenses addressing Business License fees and other requirements to obtain a Medical Marijuana Establishment Business License in Carson City.

Type of Action Requested:

- | | |
|---|---|
| <input type="checkbox"/> Resolution | <input checked="" type="checkbox"/> Ordinance—First Reading |
| <input type="checkbox"/> Formal Action/Motion | <input type="checkbox"/> Other (No Action) |

Does This Action Require a Business Impact Statement: Yes - Completed No

Recommended Board Action: I move to introduce, on first reading, Bill No. _____, an ordinance amending the Carson City Municipal Code Title 4, Licenses and Business Regulations, Chapter 4.04, Business License, Section 4.04.005, Definitions, by adding Definitions for Medical Marijuana Establishments, Sections 4.04.020, 4.04.031 and 4.04.040 by adding fees for Medical Marijuana Establishments and exempting Medical Marijuana Establishments from certain fees, and adding a new Section 4.04.120 entitled Medical Marijuana Establishments – Application for License and Additional Regulations to provide additional requirements for Medical Marijuana Establishment Business Licenses, and other matters properly related thereto.

Explanation for Recommended Board Action: See the attached ordinance for additional information regarding modifications to Carson City Municipal Code, Chapter 4.04 (Business License) to accommodate Medical Marijuana Establishments.

Applicable Statute, Code, Policy, Rule or Regulation: SB 374 (2013); CCMC 4.04 (Business License).

Fiscal Impact: \$50,000 - \$175,000

Explanation of Impact: Staff estimates the first year Business License revenue from Medical Marijuana Establishments to be between \$50,000 and \$175,000 depending on how many provisional certificates are issued by the State for cultivation facilities, production facilities and laboratories proposed for location in Carson City. The minimum revenue of \$50,000 is based on two dispensaries that will be located in Carson City.

Funding Source: Business License annual fees.

Alternatives:

1. Modify the proposed Business License regulations, e.g.:
 - a. Change the proposed annual Business License Fees;
 - b. Modify proposed requirements to apply for a Medical Marijuana Business License.
2. Do not adopt the proposed regulations and allow Medical Marijuana Establishments to be regulated under the current Business License code requirements.

Supporting Material:

- 1) Draft Ordinance

Prepared By: Susan Dorr Pansky, Planning Manager

Reviewed By:  Date: 9.23.14
(Community Development Director)
 Date: 9/23/14
(District Attorney's Office)
 Date: 9/23/14
(Finance Director)
 Date: 9/23/14
(City Manager)

Board Action Taken:

Motion: _____ 1) _____ Aye/Nay
2) _____

(Vote Recorded By)

ORDINANCE NO. 2014-__

BILL NO. ____

AN ORDINANCE AMENDING THE CARSON CITY MUNICIPAL CODE TITLE 4, LICENSES AND BUSINESS REGULATIONS, CHAPTER 4.04, BUSINESS LICENSE, SECTION 4.04.005, DEFINITIONS, BY ADDING DEFINITIONS FOR MEDICAL MARIJUANA ESTABLISHMENTS, SECTIONS 4.04.020, 4.04.031, AND 4.04.040 BY ADDING FEES FOR MEDICAL MARIJUANA ESTABLISHMENTS AND EXEMPTING MEDICAL MARIJUANA ESTABLISHMENTS FROM CERTAIN FEES, AND ADDING A NEW SECTION 4.04.120 ENTITLED MEDICAL MARIJUANA ESTABLISHMENTS – APPLICATION FOR LICENSE AND ADDITIONAL REGULATIONS TO PROVIDE ADDITIONAL REQUIREMENTS FOR MEDICAL MARIJUANA ESTABLISHMENT BUSINESS LICENSES, AND OTHER MATTERS PROPERLY RELATED THERETO.

WHEREAS, Senate Bill 374, commonly referred to as the “Medical Marijuana Act,” was adopted by the Nevada Legislature during its 77th regular session in 2013 (SB 374) and was approved by the Governor on June 12, 2013; and

WHEREAS, state regulations to facilitate the implementation of SB 374 were finalized by the Nevada Division of Public and Behavioral Health (Division) on April 1, 2014; and

WHEREAS, delta-9-tetrahydrocannabinol or THC, the primary active ingredient in marijuana, has been found to have medicinal benefits; and

WHEREAS, despite Nevada’s decriminalization pertinent to medical marijuana pursuant to Senate Bill 374 of the 77th Regular Session 2013 (SB 374), marijuana remains a Schedule I controlled substance under the federal Controlled Substances Act (CSA) (Pub.L. 91–513, 84 Stat. 1236, enacted October 27, 1970, codified at 21 U.S.C. § 801 et. seq.); and

WHEREAS, a Schedule I controlled substance under the CSA is defined as a drug that has a high potential for abuse (21 U.S.C. § 812); and

WHEREAS, currently the Carson City Municipal Code (CCMC), including portions pertinent to zoning, special use permits, building permits and business licenses, does not allow for Medical Marijuana Establishments (MMEs) as contemplated by SB 374; and

WHEREAS, upon utilizing an equitable standard, section 2.260 of the Carson City Charter (Charter) gives Carson City the power to fix, impose and collect a license tax for revenue or for regulation, or both, upon MMEs doing business here; and

WHEREAS, sections 10 at subsections 3(a)(5) and section 11.5 of SB 374 acknowledges Carson City's right to issue business licenses to such MMEs; and

WHEREAS, when a power to license is given the intentment must be that regulation is the object and, indisputably, Carson City may regulate its licensees; and

WHEREAS, section 10.5 of SB 374 specifically acknowledges Carson City's right to regulate in the areas of zoning, land use and signage pertinent to MMEs; and

WHEREAS, in light of the foregoing, Carson City may regulate MMEs doing business here, provided that in doing so it does nothing inconsistent with state law; and

WHEREAS, the fees for the issuance of a business license taxes or fees to be exacted from MMEs doing business here have been arrived at using an equitable standard in light of the costs associated with such businesses, including an increase in criminal justice costs.

THEREFORE, THE BOARD OF SUPERVISORS OF CARSON CITY DO ORDAIN:

Section I: Title 4, Chapter 4.04, Section 4.04.005 of the Carson City Municipal Code is hereby amended as follows (added text is underlined and deleted text is ~~stricken~~):

4.04.005 - Definitions.

As used in this title, unless the context requires otherwise, the following words shall have the meaning as set forth in this chapter:

1. "Advertise" means to call attention to a product, service or business so as to promote sales. Business cards used as identification and invoices are not to be considered advertising.
2. "Billboards and off-premise signs" means all businesses that own billboards or off-premise signs (as defined in CCMC Title 18) for advertisement.
3. "Block Party" means an event in a residential neighborhood intended primarily for residents only, may not be advertised outside of the affected area, and that may involve a street closure.
4. "Board" means the board of supervisors of Carson City.
5. "Business" or "doing business" means, except as provided herein, all professions, trades, occupations and callings carried on for profit, and in addition includes labor unions, labor organizations and trade unions; however, "business" does not include the rental of three (3) or less residential units.
6. "Commercial rentals" means any leased nonresidential office unit or units.
7. "Contract office business" means a person doing business in Carson City without employees in Carson City by using the services of a shared resident office staff in Carson City.

8. "Contractor" means a person required by the state of Nevada Contractors Board to have a license as a contractor, whether the person is a general or subcontractor.

9. "Event Organizer" means any person who conducts, manages, promotes, organizes, aids, or solicits attendance at a special event or block party with or without compensation.

10. "Garage sale" means the occasional and casual sale of personal property open to the public and held on the seller's own residential premises and includes a "lawn sale," "yard sale," "attic sale," "rummage sale" and other similar sales.

11. "Hobby-Supplemental income business" means any activity conducted as a hobby, or to supplement one's income, if the gross income derived from such activity does not exceed three thousand five hundred dollars (\$3,500.00) per year.

12. "Home occupation business" means a person, excluding contractors conducting business out of a residence and whose business complies with the home occupation regulations of Title 18 of the CCMC.

13. "Independent contractor" means a person who contracts to do a piece of work according to his or her own methods and is subject to an employer's control only as to the final result of the work. Examples are, but not limited to: all real estate agents, insurance agents, stockbrokers, hairdressers, and shoe shiners. Employees of licensees are not independent contractors for the purposes of this chapter.

14. "Medical Marijuana Cultivation" means a business having the meaning ascribed in State law, registered with the State of Nevada, which acquires, possesses, cultivates, delivers, transfers, transports, supplies, or sells marijuana and related supplies to Medical Marijuana Dispensaries, Medical Marijuana Production Facilities, or other Medical Marijuana Cultivation Facilities.

15. "Medical Marijuana Dispensary" means a business having the meaning ascribed in State law, registered with the State of Nevada, which acquires, possesses, delivers, transfers, transports, supplies, sells, or dispenses marijuana or related supplies and educational materials to the holder of a valid State registry identification card.

16. "Medical Marijuana Production" means a business having the meaning ascribed in State law, registered with the State of Nevada, for the production of edible marijuana products or marijuana-infused products and acquires, possesses, manufactures, delivers, transfers, transports, supplies, or sells edible marijuana products or marijuana-infused products to Medical Marijuana Dispensaries.

17. "Medical Marijuana Testing Laboratory" means a business having the meaning ascribed in State law, registered with the State of Nevada, which tests marijuana, edible marijuana products, and marijuana-infused products.

[14]18. "Out-of-town business" means a person, excluding a contractor, conducting business in Carson City without a physical address in Carson City.

[15]19. "Person" means a corporation, association, syndicate, partnership, club, trust, independent contractor or natural person but does not include employees of businesses licensed under this chapter unless an employee is an owner of the business.

[16]12. "Premises" means actual space of a particular business which would include surrounding sidewalks and designated parking.

[17]21. "Professional" means one whose practice of a profession requires advanced education and a license from a state licensing agency, board, commission or court.

[18]22. "Nonprofit organization" means all institutions, corporations, organizations or associations that are for charitable, eleemosynary or civic purposes and whose donations or receipts received are not used for the private gain of any person.

[19]23. "Short-term" means conducting business in Carson City for a period of 60 days or less.

[20]24. "Special Event" means any indoor or outdoor activity taking place on private or public property for a period up to five consecutive days which is open to the public whether or not a fee is charged for admission, entrance, or other participation and is not the primary licensed nature of the business and/or includes vendors. This term includes but is not limited to:

- Events which require the closure of one or more streets, right-of-ways, or portions thereof.
- Events involving entertainment, food, liquor, beverage, or merchandise for sale.
- Activities promoted as a festival, trade show, craft show, car show, motorcycle rally, concert, or parade.
- Any organized event conducted by a person(s) for a common or collective use/purpose or benefit which reasonably requires the provision of city public safety services in response thereto or in support thereof.

[24]25. "Vending businesses" means all businesses that provide coin operated machines or honor trays to the public or to another business.

Section II: Title 4, Chapter 4.04, Section 4.04.020 of the Carson City Municipal Code is hereby amended as follows:

4.04.020 - Fees and exemptions from fees.

1. Upon application for a new business license, the applicant shall pay a nonrefundable \$25.00 application fee to cover the costs of the review and processing of the application.
2. Unless otherwise provided herein, the following nonrefundable periodic fees are imposed on the following kinds of business licenses:

Independent contractors	\$42.60 per year
Out of town businesses	\$79.90 per year
Contract office business	\$95.90 per year
Home occupation business	\$63.85 per year
Hobby-Supplemental income business	\$26.60 per year

Contractors	\$78.75 per year
All other business	\$63.85 per year
Short-term business licenses	\$22.70 per day or \$113.50 per month
Special Event Permit	\$53.25 per day plus \$2.15 per vendor per day
<u>Medical Marijuana Dispensary</u>	<u>\$25,000 per year</u>
<u>Medical Marijuana Cultivation Facility</u>	<u>\$20,000 per year</u>
<u>Medical Marijuana Production Facility</u>	<u>\$15,000 per year</u>
<u>Medical Marijuana Testing Laboratory</u>	<u>\$5,000 per year</u>

3. Unless otherwise provided herein, the following fees are imposed on the following kinds of business licenses in addition to any other fees specified:

Commercial rentals (leased bldgs or suites)	\$0.55 per thousand square foot, annually
Billboard and off-premises signs	\$426.60 per year per side
Devices operated by coin, token or currency:	
Amusement devices (movie/game rental kiosks)	\$13.10 per device annually
Vending machines (food, candy, drinks, cigarettes, etc.)	\$6.20 per machine annually

4. In addition to the business license fee, apartments, storage units, RV parks, motels, hotels, trailer parks, promotional businesses and rental businesses (excluding commercial rentals which are charged annually by the square foot) shall be charged an additional \$2.15 per rental unit per year.

5. Except as otherwise provided herein, no business license fee is imposed on any institution, corporation, organization or association organized for charitable, eleemosynary, or civic purposes. No part of any receipts received by any such institution, corporation, organization or association may be used for the private gain of any person except employees. Such a person shall pay \$21.70 per day plus \$2.15 per vendor per day for special events.

6. The fee for on-going special events held in Carson City, held pursuant to all permits required by the CCMC, is \$319.14 per 4 month period or any part thereof.

7. A person who holds a special event within a permanent structure on the premises for which he or she holds a license is not subject to the \$53.25 per day special event fee but shall

pay the \$2.15 per day per vendor fee in addition to the full-year license.

Section III: Title 4, Chapter 4.04, Section 4.04.031 of the Carson City Municipal Code is hereby amended as follows:

4.04.031 - Square footage fees.

The following additional fees shall be assessed on the total square footage of each business:

0 sq. ft. to 1999 sq. ft.	\$13.00
2000 sq. ft. to 2999 sq. ft.	\$32.25
3000 sq. ft. to 4999 sq. ft.	\$64.70
5000 sq. ft. to 7499 sq. ft.	\$96.90
7500 sq. ft. to 9999 sq. ft.	\$129.45
10,000 sq. ft. to 24,999 sq. ft.	\$194.65
25,000 or more sq. ft.	\$259.20

2. The fees imposed by this section do not apply to: contract office businesses, home occupation businesses, hobby-supplemental income businesses, short-term businesses, special events, independent contractors, out-of-town businesses, [øf] contractors, unless the contractor has a commercial location with more than 1999 square feet, **or Medical Marijuana Dispensaries, Cultivation Facilities, Production Facilities or Testing Laboratories.**

Section IV: Title 4, Chapter 4.04, Section 4.04.040 of the Carson City Municipal Code is hereby amended as follows:

4.04.040 - Fees for employees.

1. The following additional fees shall be assessed based on the average number of full time equivalent employees who may reasonably be anticipated to be employed during the license period including the proprietor:

Up to and including the first 100 employees	\$6.15 per employee
Over 100 employees	\$2.85 per employee

2. For contractors the fees imposed pursuant to this section shall include only those who support the contracting business and does not include seasonal construction workers.

3. The fees imposed by this section do not apply to: contract office businesses, home

occupation businesses with no employees, hobby-supplemental income businesses, short-term businesses, special events, independent contractors, [and] out-of-town businesses, or Medical Marijuana Dispensaries, Cultivation Facilities, Production Facilities or Testing Laboratories.

SECTION V: Title 4, Chapter 4.04, Section 4.04.120 of the Carson City Municipal Code is hereby added as follows:

4.04.120 – MEDICAL MARIJUANA ESTABLISHMENTS – APPLICATION FOR LICENSE AND ADDITIONAL REGULATIONS

1. **Since the use, cultivation, distribution, production, possession and transportation of marijuana remains illegal under Federal law, and marijuana remains classified as a Class I controlled substance by both Nevada and Federal law, those involved with Medical Marijuana Establishments may still be prosecuted under the Federal Controlled Substance Act (“CSA”) regardless of whether the Medical Marijuana Establishment is in compliance with state law or has received a license to operate a Medical Marijuana Establishment in Carson City. This section is intended to implement NRS 453A and to establish criteria for the issuance of licenses that are a prerequisite for the exemption from state prosecution provided for in NRS 453A. A license issued pursuant to this section does not provide any exception defense or immunity to any person in regard to any potential criminal liability the person may have for the production, distribution or possession of marijuana under Federal law. Carson City does not have the authority to, and nothing in this section is intended to, authorize, promote, condone or aid the production, distribution or possession of marijuana in violation of any application law, including, without limitation, the CSA.**
2. **By accepting a Medical Marijuana Establishment license issued pursuant to this code, the licensee and its owners, managers, agents, employees and affiliates:**
 - a. **Waive and releases Carson City, its officers, elected officials, employees, attorneys and agents from any liability from injuries, damages or liabilities of any kind that result from any arrest or prosecution of establishment owners, operators, employees, clients or customers for a violation of state, or federal laws, rules or regulations.**
 - b. **Jointly and severally agree to indemnify, defend and hold harmless Carson City, and any of its elected or appointed officers, agents, employees or attorneys from any and all claims, demands, actions, damages, decrees, judgments, attorney fees, costs and expenses which may be asserted against Carson City, or such elected or appointed officers, employees or attorneys arising out of or in any manner connected with the Medical Marijuana Establishment that is the subject of the license, including, without limitation, any injury, loss or damage, including claims arising from bodily injury, personal injury, sickness, disease, death, property loss of damage or any other loss of any kind whatsoever arising therefrom. The licensee’s duty to defend and indemnify Carson City hereunder shall apply regardless of Carson City’s active or passive fault. The licensee’s duty to defend Carson City is absolute and shall arise as soon as any demand or claim is asserted against Carson City and is not conditions upon a finding**

of fault of the licensee. Carson City is entitled to choose the attorney assigned to defend against the claims and the licensee shall immediately pay all defense fees and costs charged by the attorney selected by Carson City.

3. A separate application and license is required for each Medical Marijuana Establishment registration certificate for operation within Carson City. A person or entity operating more than one type of Medical Marijuana Establishment must apply for and receive a separate license for each type of Medical Marijuana Establishment they seek to operate within Carson City.
4. The license requirements set forth in this section shall be in addition to, and not in lieu of, those requirements outlined in Section 4.04.110 above, and any other licensing and permitting requirements imposed by any other law, code or ordinance not specifically addressed in this chapter. Each application for a Medical Marijuana Establishment business license shall include:
 - a. A complete and accurate copy of the application and all accompanying documents filed with the Division of Public and Behavioral Health of the Department of Health and Human Services of the State of Nevada pursuant to NRS 453A.322 to apply for a Medical Marijuana Establishment certificate.
 - b. A copy of the provisional registration certificate issued by the Division of Public and Behavioral Health of the Department of Health and Human Services of the State of Nevada for operation of a Medical Marijuana Establishment.
 - c. A copy of the Special Use Permit Notice of Decision with conditions of approval from the Community Development Department, Planning Division pursuant to Title 18.04 Use Districts, Sections 18.04.135, 18.04.140 and 18.04.150 and Title 18.16 Development Standards, Division 1.20 Medical Marijuana Establishments. This shall also include a letter outlining each condition of approval with a response addressing how each condition has been satisfied.
 - d. A completed, signed and notarized acknowledgment statement from the licensee and the property owner that the licensee, and the owner of the property upon which the Medical Marijuana Establishment is located, understands applicable federal laws, any guidance or directives issued by the U.S. Department of Justice, the laws of the State of Nevada and the laws and regulations of Carson City applicable thereto concerning the operation of a Medical Marijuana Establishment. The written statement shall also acknowledge that any violation of any laws of the State of Nevada or of Carson City, or any activity in violation of any guidance or directives issued by the U.S. Department of Justice, in such place of business, or in connection therewith, or the commencement of any legal proceeding relating to such medical marijuana establishment by federal authorities, may render the permit and such license subject to immediate suspension or revocation.

- e. A completed, signed and notarized acknowledgment statement from the licensee that the licensee, and its owners, managers, agents and employees and affiliates jointly and severally agree to indemnify, defend and hold harmless Carson City, and any of its elected or appointed officers, agents, employees or attorneys from any and all claims, demands, actions, damages, decrees, judgments, attorney fees, costs and expenses which may be asserted against Carson City, or such elected or appointed officers, employees or attorneys arising out of or in any manner connected with the Medical Marijuana Establishment that is the subject of the license, including, without limitation, any injury, loss or damage, including claims arising from bodily injury, personal injury, sickness, disease, death, property loss of damage or any other loss of any kind whatsoever arising therefrom. The licensee's duty to defend and indemnify Carson City hereunder shall apply regardless of Carson City's active or passive fault. The licensee's duty to defend Carson City is absolute and shall arise as soon as any demand or claim is asserted against Carson City and is not conditions upon a finding of fault of the licensee. Carson City is entitled to choose the attorney assigned to defend against the claims and the licensee shall immediately pay all defense fees and costs charged by the attorney selected by Carson City.
5. Confidential Information. The records regarding Medical Marijuana Establishments received by Carson City are confidential to the same extent that such records would be deemed confidential if provided to the Division of Public and Behavioral Health of the Department of Health and Human Services of the State of Nevada pursuant to NRS 453A.700 and Section 134 and 135 of the regulations outlined in LCB File No. R004-14 effective April 1, 2014 and any subsequent amendments or supplements thereto. Such confidential records are not subject to subpoena, discovery, or subject to inspection by the general public to the same extent, and with the same exceptions as provided in NRS 453A.700 and Section 134 and 135 of the regulations outlined in LCM File No. R004-14 effective April 1, 2014 and any subsequent amendments or supplements thereto. Notwithstanding this section, Carson City may release the confidential information to the Division of Public and Behavioral Health of the Department of Health and Human Services of the State of Nevada, employees of Carson City to perform official duties of Carson City, and to any local, state or federal law enforcement agencies as required to perform law enforcement responsibilities of such agencies.
6. Immediate revocation of business license, without hearing. In addition to the provisions of Title 18 of this code, the business license for a Medical Marijuana Establishment shall be immediately revoked upon one or more of the following events occurring. There is no hearing before the Board of Supervisors for immediate revocation pursuant to this subsection. Immediate revocation pursuant to this subsection is subject to judicial review.
- a. Notification that the Division of Public and Behavioral Health of the Department of Health and Human Services of the State of Nevada has surrendered, suspended or revoked the registration certification for a Medical Marijuana Establishment;

- b. Failure to maintain a valid and current Division of Public and Behavioral Health of the Department of Health and Human Services of the State of Nevada registration certificate.

SECTION VI:

Business License fees related to Medical Marijuana Establishments shall be reviewed by the Board of Supervisors one year from the date this Ordinance is adopted. The Business License fees may or may not be adjusted at that time after impact of the business on the community is known.

SECTION VII:

No other provisions of Title 4 of the Carson City Municipal Code are affected by this ordinance.

PROPOSED on _____, 2014.

PROPOSED BY Supervisor _____

PASSED _____, 2014.

VOTE:

AYES:

NAYS:

ABSENT:

ROBERT L. CROWELL, Mayor

ATTEST:

ALAN GLOVER, Clerk-Recorder

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