



# STAFF REPORT

**Report To:** Board of Supervisors

**Meeting Date:** June 15, 2017

**Staff Contact:** Lee Plemel, Community Development Director

**Agenda Title:** For Possible Action: To adopt a Resolution amending Resolution No. 2017-R-23 to exclude from the moratorium application submittal from existing MME cultivation, product manufacturing, and distribution facilities that qualify to apply for a license pursuant to the Nevada Tax Commission's Temporary Regulations under LCB file No. T002-17. Resolution No. 2017-R-23 extended the moratorium adopted by Ordinance No. 2017-3 for a period of 60 days from the expiration date of July 21, 2017, to the new expiration date of September 19, 2017, 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 Board of Supervisors passed a moratorium on the acceptance of applications for new marijuana establishments on January 19, 2017. The proposed Resolution would exclude existing, operational medical marijuana cultivation and product manufacturing facilities as well as qualifying wholesale distributors from the moratorium and allow them to obtain a business license in Carson City to sell and transport wholesale marijuana products.

**Agenda Action:** Resolution

**Time Requested:** 10 minutes

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## **Proposed Motion**

I move to adopt Resolution No. 2017-R-\_\_ amending Resolution No. 2017-R-23 to exclude from the moratorium application submittal from existing MME cultivation, product manufacturing, and distribution facilities that qualify to apply for a license pursuant to the Nevada Tax Commission's Temporary Regulations under LCB file No. T002-17.

## **Board's Strategic Goal**

Safety

## **Previous Action**

The Board of Supervisors adopted Ordinance No. 2017-3 on January 19, 2017, enacting a 180-day moratorium on the processing of any new marijuana establishment applications.

The Board of Supervisors approved a Resolution on June 15, 2017, extending the moratorium to September 19, 2017.

## **Background/Issues & Analysis**

The approval of this Resolution would allow existing, operational medical marijuana cultivation and product manufacturing facilities as well as qualifying wholesale distributors begin selling and transporting wholesale marijuana products pursuant to the State's temporary regulations. The existing businesses qualifying under the proposed exemption are one cultivation facility, one product manufacturing facility, one combination cultivation and product manufacturing facility, and one wholesale distributor.

The Resolution also affirms the continued moratorium on all other types of new marijuana establishments. Staff will continue to pursue applicable ordinances related to the final regulations for marijuana establishments in Carson City as directed by the Board of Supervisors.

If you have any questions regarding this item, contact Lee Plemel at 283-7075 or lplemel@carson.org.

**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:

Is it currently budgeted?  Yes  No

Explanation of Fiscal Impact: N/A

**Alternatives**

Do not adopt the Resolution to amend the moratorium.

**Attachments:**

1) Resolution

**Board Action Taken:**

Motion: \_\_\_\_\_

1) \_\_\_\_\_

Aye/Nay

2) \_\_\_\_\_

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\_\_\_\_\_

\_\_\_\_\_  
(Vote Recorded By)

RESOLUTION NO. 2017-R-\_\_\_

A RESOLUTION AMENDING RESOLUTION NO. 2017-R-23 TO EXCLUDE FROM THE MORATORIUM APPLICATION SUBMITTAL FROM EXISTING MME CULTIVATION, PRODUCT MANUFACTURING, AND DISTRIBUTION FACILITIES THAT QUALIFY TO APPLY FOR A LICENSE PURSUANT TO THE NEVADA TAX COMMISSION'S TEMPORARY REGULATIONS UNDER LCB FILE NO. T002-17. RESOLUTION NO. 2017-R-23 EXTENDED THE MORATORIUM ADOPTED BY ORDINANCE NO. 2017-3 FOR A PERIOD OF 60 DAYS FROM THE EXPIRATION DATE OF JULY 21, 2017, TO THE NEW EXPIRATION DATE OF SEPTEMBER 19, 2017, ON THE ACCEPTANCE AND PROCESSING OF PLANNING OR OTHER APPLICATIONS FOR CONSTRUCTION OR OPERATION OF NEW MARIJUANA ESTABLISHMENTS.

WHEREAS, effective January 22, 2017, by Ordinance No. 2017-3, a moratorium was 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; and

WHEREAS, 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, and also excludes the submittal of applications from existing MME cultivation, product manufacturing, and distribution facilities that qualify to apply for a license pursuant to the Nevada Tax Commission's temporary regulations under LCB File No. T002-17; and

WHEREAS, the moratorium commenced upon the effective date of Ordinance No. 2017-3, and terminates at the close of business 180 calendar days from the date of the effective date of the 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; and the Ordinance allows one extension, of a period of no greater than 60 days, which 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; and

WHEREAS, The Carson City Board of Supervisors declared the 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 extend moratorium as provided 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 60 days, from July 22 to September 19, 2017, in order 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;

WHEREAS, if any section, subsection, subdivision, paragraph, sentence, clause or phrase in this resolution, 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 resolution. 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.

WHEREAS, 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.

**NOW, THEREFORE, BE IT RESOLVED** that the Carson City Board of Supervisors hereby extends the moratorium adopted by Ordinance No. 2017-3 for a period of 60 days from the expiration date of July 21, 2017, to the new expiration date of September 19, 2017, on the acceptance and processing of planning or other applications for construction or operation of new marijuana establishments, excluding the submittal of applications from existing MME cultivation, product manufacturing, and distribution facilities that qualify to apply for a license pursuant to the Nevada Tax Commission's temporary regulations under LCB File No. T002-17.

Upon motion by Supervisor \_\_\_\_\_, seconded by Supervisor \_\_\_\_\_, the foregoing Resolution was passed and adopted this \_\_ day of \_\_\_\_\_, 2017 by the following vote:

VOTES: AYES: Supervisors \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

VOTES: NAYS: Supervisors \_\_\_\_\_  
\_\_\_\_\_

ABSENT: Supervisors \_\_\_\_\_

\_\_\_\_\_  
Robert L. Crowell, Mayor

ATTEST:

\_\_\_\_\_  
Susan Merriwether, Clerk-Recorder

RESOLUTION NO. 2017-R-23

A RESOLUTION EXTENDING THE MORATORIUM ADOPTED BY ORDINANCE NO. 2017-3 FOR A PERIOD OF 60 DAYS FROM THE EXPIRATION DATE OF JULY 21, 2017, TO THE NEW EXPIRATION DATE OF SEPTEMBER 19, 2017, ON THE ACCEPTANCE AND PROCESSING OF PLANNING OR OTHER APPLICATIONS FOR CONSTRUCTION OR OPERATION OF NEW MARIJUANA ESTABLISHMENTS.

WHEREAS, effective January 22, 2017, by Ordinance No. 2017-3, a moratorium was 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; and

WHEREAS, 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; and

WHEREAS, the moratorium commenced upon the effective date of Ordinance No. 2017-3, and terminates at the close of business 180 calendar days from the date of the effective date of the 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; and the Ordinance allows one extension, of a period of no greater than 60 days, which 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; and

WHEREAS, The Carson City Board of Supervisors declared the 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 extend moratorium as provided 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 60 days, from July 22 to September 19, 2017, in order 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;

WHEREAS, if any section, subsection, subdivision, paragraph, sentence, clause or phrase in this resolution, 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 resolution. 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.

WHEREAS, 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.

**NOW, THEREFORE, BE IT RESOLVED** that the Carson City Board of Supervisors hereby extends the moratorium adopted by Ordinance No. 2017-3 for a period of 60 days from the expiration date of July 21, 2017, to the new expiration date of September 19, 2017, on the acceptance and processing of planning or other applications for construction or operation of new marijuana establishments.

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RESOLUTION NO. 2017-R-23

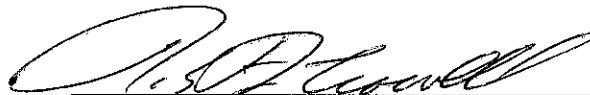
Upon motion by Supervisor Lori Bagwell, seconded by Supervisor Karen Abowd, the foregoing Resolution was passed and adopted this 15<sup>th</sup> day of June, 2017, by the following vote:

AYES: Supervisor Lori Bagwell  
Supervisor Karen Abowd  
Supervisor Brad Bonkowski  
Supervisor John Barrette  
Mayor Robert Crowell

NAYS: None.

ABSENT: None.

ABSTAIN: None.



ROBERT L. CROWELL, Mayor

ATTEST:

  
SUSAN MERRIWETHER, Clerk - Recorder