

Summary: An ordinance amending Title 4 and Title 10 of the White Pine County Code repealing all provisions of White Pine County's business licensing scheme unrelated to marijuana establishments and reorganizing the remaining provisions under Chapter 10.62 of the White Pine County Code.

TITLE:

PROPOSED ORDINANCE REPEALING ALL OF CHAPTER 4.01 OF THE WHITE PINE COUNTY CODE OTHER THAN THOSE PROVISIONS REGULATING MARIJUANA ESTABLISHMENTS AND REORGANIZING THE REMAINING PROVISIONS UNDER CHAPTER 10.62 OF THE WHITE PINE COUNTY CODE

Whereas, NRS 244 establishes the County's authority to regulate matters of local concern;

Whereas, NRS 244.335 establishes the County's authority to impose a license fee for revenue and regulation upon trades, callings, industries, occupations, professions, and businesses;

Whereas, NRS 453D.100(2)(d) establishes the County's authority to adopt and enforce local marijuana control measures pertaining to zoning and land use for marijuana establishments; now,

Therefore, the Board of County Commissioners of the County of White Pine, State of Nevada, does AMEND and otherwise ordain that sections of the White Pine County Code specified below shall read as follows:

10.62.10. DEFINITIONS:

1. A "marijuana establishment" shall have the meaning ascribed to it by NRS 453D.030.
2. A "licensee" is any person or entity granted a license by White Pine County to operate a marijuana establishment within White Pine County, but outside the incorporated Ely city limits.
3. The terms used in this chapter not specifically defined herein shall have the meanings ascribed to them by the Nevada Revised Statutes, the Nevada Administrative Code, the State of Nevada Department of Taxation Regulation LCB file no. R092-17 (effective February 27, 2018), and the White Pine County Code.

10.62.020. GENERAL RESTRICTIONS:

No marijuana establishment may operate within White Pine County, but outside the incorporated Ely city limits, unless it complies with applicable State law, code, or regulation, and the White Pine County Code.

10.62.030. SPECIFIC RESTRICTIONS:

A. Restrictions:

1. A marijuana establishment must be licensed by both the State and White Pine County prior to operation.
2. A marijuana establishment shall not be considered a “home occupation” within the meaning of chapter 17.72 of the White Pine County Code.
3. A marijuana establishment shall prohibit the use or consumption of marijuana on its premises.
4. A marijuana establishment shall prohibit anyone under the age of eighteen (18) on its premises.
5. A marijuana establishment shall prohibit marijuana activities including, without limitation, cultivating, growing, processing, storage, displaying, or selling from being conducted outdoors.
6. A marijuana establishment shall provide to White Pine County annually and upon demand, proof of its gross sales for purposes of complying with this chapter.
7. A person who possesses, cultivates, processes, or transports marijuana plants or marijuana produced by such plants for personal use in excess of the amount permitted by Nevada Revised Statutes 453D.110(2) shall be subject to a one thousand dollar (\$1,000.00) fine for each plant or each plant’s produced marijuana for each day

the person possesses, cultivates, processes, or transports such marijuana plants or marijuana produced by such plants.

8. A person who possesses, uses, consumes, purchases, obtains, processes, or transports more than one (1) ounce of marijuana other than concentrated marijuana, or more than one-eighth (1/8) of an ounce of concentrated marijuana not regulated by Nevada Revised Statutes 453D.110(2), shall be subject to a one thousand dollar (\$1,000.00) fine for each ounce of marijuana other than concentrated marijuana, or each one-eighth (1/8) of an ounce of concentrated marijuana in excess of the amount allowed by law for each day the person possesses, uses, consumes, purchases, obtains, processes, or transports such marijuana or concentrated marijuana.

9. A marijuana retail store shall operate only between the hours of eight o'clock (8:00) A.M. and eight o'clock (8:00) P.M. daily.

10. A marijuana establishment shall install and maintain an air filtration system sufficient to ensure that the smell of marijuana and/or of any byproduct created by the establishment's operation does not radiate beyond the establishment's boundaries.

11. A marijuana establishment must post signage at the establishment which is readily visible to the public stating:

- a. That the use, cultivation, or distribution of marijuana is a violation of Federal law.
- b. That consumption of marijuana on the premises is prohibited.
- c. That no one under the age of eighteen (18) years is permitted on the premises.

10.62.040. ZONING:

A. A marijuana establishment may operate only pursuant to special use permit in districts designated Industrial Park (I-P-1).

B. In addition, all marijuana establishments must be located a distance of at least one thousand feet (1,000') from any property line of a parcel that has an established

public or private school, and shall not be located within three hundred feet (300') of any property line of a parcel that has any other established community hospital, facility or clinic at the time of commencement of operation of the marijuana establishment.

10.62.050. INSPECTION:

A. Submission of an application for a license to operate a marijuana establishment within White Pine County, but outside the incorporated Ely city limits, pursuant to this chapter, constitutes consent for entry to and reasonable inspection of the applicant's marijuana establishment by the County with or without notice.

B. White Pine County, acting through its agents such as the Sheriff, the Building Inspector, the Public Health Officer, or any other agent so designated by the County, may enter and inspect any building or premises at any time, with or without notice, to:

1. Ensure or secure compliance with any provision of the White Pine County Code or State law, code or regulation;
2. Prevent a violation of any provision of the White Pine County Code or State law, code or regulation; or
3. Conduct an unannounced inspection of a marijuana establishment in response to an allegation of noncompliance with the White Pine County Code or State law, code or regulation.

C. The County and its agents may:

1. Inspect and examine all premises wherein marijuana is manufactured, sold, tested, or distributed;
2. Inspect all product, equipment, supplies or documents or records in any form, in, upon or about such premises;
3. Summarily seize and remove from such premises any marijuana or marijuana products, and impound any equipment, supplies, documents or records in any form, for the purpose of examination and inspection;
4. Demand access to and inspect, examine, photocopy and audit all papers, books and documents or records in any form of any applicant or licensee, on his or

her premises, or elsewhere as practicable, and in the presence of the applicant or licensee, or his or her agent, respecting the gross income produced by any marijuana establishment, and require verification of income, and all other matters affecting the enforcement of the policy or any of the provisions of the White Pine County Code or State law, code or regulation; and

5. Demand access to and inspect, examine, photocopy and audit all papers, books and records of any affiliate of a licensee whom the County knows or reasonably suspects is involved in the financing, operation or management of the licensee. The inspection, examination, photocopying and audit may take place on the premises of the affiliate or another location, as practicable, and in the presence of the affiliate or its agent.

10.62.060. PREVENTION OF UNAUTHORIZED ACCESS TO MARIJUANA AT MARIJUANA ESTABLISHMENT:

A. A marijuana establishment operating within White Pine County, but outside the incorporated Ely city limits, must have security procedures, systems and equipment in place consistent with the White Pine County Code and State law, code or regulation.

B. A marijuana establishment operating within White Pine County, but outside the incorporated Ely city limits, shall provide the White Pine County Sheriff's Office with real-time security monitoring of its facility, including at the point of sale, and shall provide the White Pine County Sheriff's Office with copies of stored security information for review upon request, consistent with the White Pine County Code and State law, code or regulation.

10.62.070. DISPOSAL OF WASTE:

A. A marijuana establishment operating within White Pine County, but outside the incorporated Ely city limits, shall:

1. Store, manage and dispose of all solid and liquid waste and wastewater generated during the processing of marijuana or production or sale of marijuana products in accordance with the White Pine County Code and State and local laws and regulations; and

2. Render waste containing marijuana unusable before the waste leaves the marijuana establishment.

B. An applicant for a license to operate a marijuana establishment pursuant to this chapter shall submit a plan showing the proposed method and procedures of marijuana waste disposal for consideration by the White Pine County Board of County Commissioners, prior to issuance of a license. A marijuana establishment shall thereafter submit an annual report regarding marijuana waste disposal to the Board of County Commissioners.

10.62.080. LICENSE REQUIRED:

It shall be unlawful for any person or entity to operate a marijuana establishment within White Pine County, but outside the incorporated Ely city limits, without first applying for and obtaining a license as hereinafter set forth.

10.62.090. DELEGATION OF SHERIFF'S DUTY TO COUNTY CLERK:

In an effort to conserve County resources, the White Pine County Sheriff delegates and the County Clerk accepts the business licensing duties assigned to the Sheriff by Chapter 364 of the Nevada Revised Statutes.

10.62.100. APPLICATION FOR LICENSE TO OPERATE MARIJUANA ESTABLISHMENT:

A. Form: All applications for licenses under this chapter, unless otherwise specified herein, shall be made to the White Pine County Clerk, in writing, upon blank forms provided in the Clerk's Office. A license to operate a marijuana establishment

shall be granted only upon approval of the White Pine County Board of County Commissioners.

B. Required Information: Each applicant shall make signed statements of the following:

1. The nature or type of the business;
2. The address where the business will be carried out;
3. The date that the business will begin operation;
4. The full name of the applicant;
5. If a partnership, the full name of each member thereof;
6. If a corporation, the state of incorporation.
7. If a license is sought by person or partnership doing business under a fictitious name, such name must also be set forth in the application.
8. Any information required in an application to obtain a State license to operate if the applicant intends to operate a "marijuana establishment" as defined by Nevada Revised Statutes 453D.030.
9. Whether the applicant has been issued a license by the State of Nevada to operate a marijuana establishment.

10.62.110. APPLICATION/LICENSE FEES:

An application fee in the amount of fifteen thousand dollars (\$15,000.00) for each marijuana establishment to be operated within White Pine County, but outside the incorporated Ely city limit, shall be paid at the time of application. All application fees shall be paid to the White Pine County Treasurer.

10.62.120. ANNUAL LICENSE FEES:

A. In addition to an application fee, an annual license fee in the amount of three percent (3%) of the marijuana establishment's gross revenue shall be paid annually in advance of the annual renewal date of one year from the date the initial license was obtained. All annual license fees shall be paid to the White Pine County Treasurer.

B. The annual license fee of three percent (3%) of a marijuana establishment's gross revenue is a new fee and is needed for the purpose of offsetting the impact that marijuana, a controlled substance which is illegal under Federal law, has on the health, safety, and welfare of White Pine County.

C. The annual license fee of three percent (3%) of a marijuana establishment's gross revenue imposed by this chapter shall be assigned as follows:

1. One percent (1%) shall be used to fund local law enforcement efforts related to the regulation of marijuana;

2. One percent (1%) shall be used for the operation, maintenance, and improvement of any community recreational facilities located in White Pine County; and

3. One percent (1%) shall go into the General Fund to offset the impact that marijuana, a controlled substance which is illegal under Federal law, has on the health, safety, and welfare of White Pine County.

**10.62.130. EXCLUSION OF CERTAIN GROSS REVENUE/
RECORDKEEPING/AUDIT:**

A. The annual license fee imposed on a marijuana establishment by this chapter excludes from its gross revenue any tax on fuel or on retail sales which is collected by the marijuana establishment.

B. The proprietor of the marijuana establishment shall maintain adequate accounting records and supporting documentation for determining the sums relevant to this chapter.

C. Any audit of the amount due from the marijuana establishment shall not include any period for the licensing of the business ending more than three (3) years before the date of the audit, unless the marijuana establishment has been operating without such a license or the auditor has reason to believe that the marijuana establishment has made a fraudulent or material misstatement of its revenue.

D. A proprietor of a marijuana establishment whose establishment has been audited within the meaning of this chapter shall be able to obtain a review of the results of the audit to the extent practicable, as follows:

1. The auditor must disclose the results of the audit to the proprietor, discuss any relevant issues that have not previously been resolved and attempt to resolve those issues.
2. If those issues are not resolved through compliance with subsection (D)(1) of this section:
 - a. The proprietor may prepare documentation of those issues and submit the documentation with a copy of the final audit report to an Administrative Officer responsible for the enforcement of this chapter; and
 - b. Require the Administrative Officer:
 - (1) Within seven (7) days after receiving the documentation, to acknowledge that receipt; and
 - (2) Within thirty (30) days after receiving the documentation, to respond to the proprietor regarding those issues.
3. If those issues are not resolved through compliance with subsection (D)(2) of this section, the proprietor may require:
 - a. The Administrative Officer to submit the documentation to the Chief Administrative Officer of the administrative agency responsible for the enforcement of this chapter and notify the proprietor that the matter is being reviewed by the Chief Administrative Officer; and
 - b. The Chief Administrative Officer, within sixty (60) days after receipt of the documentation by the Administrative Officer pursuant to subsection (D)(2) of this section, must review the documentation and inform the proprietor of his or her decision regarding the resolution of those issues.

4. If the proprietor is not satisfied with the resolution of those issues pursuant to subsection (D)(3) of this section, the proprietor may appeal the matter to the Board of County Commissioners.

5. If the proprietor is not satisfied with the resolution of those issues pursuant to subsection (D)(4) of this section, the proprietor may, except as otherwise provided in this paragraph, appeal the matter to the Justice Court. If the amount in controversy exceeds the jurisdiction of the Justice Court, or if the Justice Court makes a determination adverse to the proprietor, the proprietor may appeal the matter to the District Court.

6. The administrative agency and its officers, and the auditing agency and its auditors, as contemplated by this chapter, may be delegated their respective duties, to the extent allowed by law, by majority vote of the Board of County Commissioners at any regular or special meeting lawfully convened.

10.62.140. STATE LICENSE REQUIRED:

A marijuana establishment must obtain any and all applicable State licenses required for its operation prior to the issuance of a license under this chapter. Failure to obtain or maintain any such State license shall render any license issued by White Pine County void. If County approval or issuance of a County license is a condition precedent to State licensure, the applicant shall obtain the requisite State license prior to operation.

10.62.150. FICTITIOUS BUSINESS NAME:

A. Any marijuana establishment operating or intending to operate under a fictitious name shall complete and submit to the White Pine County Clerk a Certificate of Business: Fictitious Firm Name form. A filing fee of twenty dollars (\$20.00) shall be paid to the White Pine County Treasurer at the time of filing or upon a change of the fictitious name of the business.

B. Expiration Of Certificate: A certificate filed with the White Pine Count Clerk pursuant to NRS 602.010 expires five (5) years after the date of filing.

C. Expiration Of Renewal Certificate: A renewal certificate filed with the White Pine County Clerk pursuant to NRS 602.035 expires five (5) years after the date of filing.

10.62.160. DISPLAY OF LICENSE:

Every license issued under this chapter and by the State of Nevada shall be posted by the licensee in a conspicuous place in his or her place of business during the entire term for which the license was issued.

10.62.170. FAILURE TO PAY LICENSE FEE:

Failure to pay the required license fee on its due date shall constitute a violation of this chapter, and in addition to criminal liability provided herein, shall be grounds for the assessment of a one thousand (\$1000.00) late fee. Failure to pay the required license fee and any assessed late fee within sixty (60) days of the due date of the license fee shall result in automatic revocation of the license.

10.62.180. TRANSFERABILITY/ASSIGNABILITY:

No license shall be assignable or transferable, nor authorize any person or entity other than those named therein to operate a marijuana establishment, nor shall such license authorize the operation of a marijuana establishment at any other address or location than those named therein.

10.62.190. DENIAL/REVOCATION/SUSPENSION:

The White Pine County Commission may by majority vote, at any regular or special meeting lawfully convened, deny granting a license or suspend, revoke, withdraw or discontinue any license granted under the provisions of this chapter whenever the Commission has reason to believe that the marijuana establishment proposed by the applicant, his or her servants or employees, or conducted thereunder by the licensee, his or her servants or employees, violates or fails to comply with any provision of this chapter; violates or fails to comply with the laws, codes, or regulations of the State or

of the White Pine County Code or; is, or may be a nuisance or detrimental to the public health or to the peace and morals of White Pine County.

10.62.200. REFUNDS:

No licensee shall be entitled to a refund of any portion of the fee paid for any reason, including, but not limited to, suspension, revocation, withdraw or discontinuation of the license, whether imposed or voluntary.

10.62.210. CRIMINAL PENALTY:

Any person who fails to comply with or violates any provision of this chapter shall be deemed guilty of a misdemeanor, punishable up to six (6) months in the County Jail and/or a one thousand dollar (\$1,000.00) fine for each violation.

10.62.220. CIVIL PENALTY:

A. In addition to any criminal punishment as may be imposed by this chapter, any violation of the White Pine County Code or State law, code, or regulation, may result in the revocation of any license issued pursuant to this chapter and may result in the forfeiture of any and all property to the extent permitted by State law. The civil penalties provided for in this chapter are intended to be cumulative and in addition to any criminal fines or punishments imposed.

B. The conviction and punishment of any person pursuant to this chapter shall not excuse or exempt such person from the payment of any license and/or late fee due or unpaid at the time of such conviction and nothing herein shall prevent a criminal prosecution for any violation of the provisions of this chapter.

C. The amount of any license and/or late fee imposed by this chapter shall be deemed a debt to the County, and any person or entity operating a marijuana establishment without a license to do so shall, in addition to any criminal penalty arising from this chapter, be subject to an action in the name of the County in any

court of competent jurisdiction for the collection of the amount of the fees imposed by this chapter. All costs of such an action shall be assessed to and borne by the person or entity operating a marijuana establishment in violation of the White Pine County Code.

10.62.230. SEVERABILITY:

If any provision of this chapter is held to be invalid, such invalidity shall not affect the remaining provisions of this chapter and each such provision shall be declared to be severable.

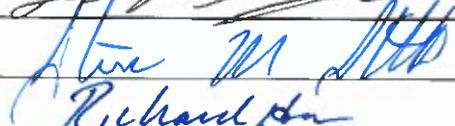
This Ordinance shall take effect from and after passage, approval, and publication.

PROPOSED on the 23rd day of January, 2019.

PROPOSED by COMMISSIONER Travis Godon.

PASSED on the 13th day of February, 2019.

Votes:

Yay: 


Nay: _____

