

SUMMARY: An ordinance prohibiting medical marijuana establishments in any zoning district within the unincorporated portions of Elko County, including any unincorporated towns.

BILL NO. J

ORDINANCE NO. 2014-10

THAT A NEW SECTION 16, OF CHAPTER 8, OF TITLE 4 BE ADDED TO THE ELKO COUNTY CODE TO PROHIBIT MEDICAL MARIJUANA ESTABLISHMENTS AS DEFINED BY NEVADA REVISED STATUTES 453A.116 IN ANY ZONING DISTRICT WITHIN THE UNINCORPORATED AREA OF ELKO COUNTY AND WITHIN THE UNINCORPORATED TOWNS IN ELKO COUNTY, AND ALL OTHER MATTERS PROPERLY RELATED THERETO.

WHEREAS, the Nevada Legislature adopted SB374 during the 2013 Session, and Section 10.5 of the legislation requires that medical marijuana establishments be located in accordance with local governmental ordinances on zoning and land use; and

WHEREAS, on April 1, 2014, a number of amendments to NRS Chapter 453A concerning the medical use of marijuana have come into effect; and

WHEREAS, these amendments, among other things, will permit medical marijuana establishments to operate in the State of Nevada, subject to certain statutory and regulatory requirements; and

WHEREAS, NRS 453A.116 defines "medical marijuana establishment" to mean: (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 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

WHEREAS, medical marijuana establishments will be required to be registered with the Division of Public and Behavioral Health of the Department of Health and Human Services in order to operate without being subject to prosecution under State law; and

WHEREAS, pursuant to NRS 453A.322 (5), the Division of Public and Behavioral Health of the Department of Health and Human Services may not register a medical marijuana establishment without proof of licensure or a letter from the applicable local governmental authority certifying that the proposed medical marijuana establishment is in compliance with zoning restrictions; and

WHEREAS, existing Nevada law provides immunity from state and local prosecution for possessing, delivering and producing marijuana in certain limited amounts for patients with qualifying medical conditions; and

WHEREAS, the Board of County Commissioners recognizes the rights of qualifying individuals to grow, possess, and use marijuana for medical purposes as provided by the Medical Use of Marijuana law adopted by the Nevada legislature in 2001; and

WHEREAS, the County may make and enforce within its boundaries all local, police, sanitary, zoning and other ordinances and regulations not in conflict with general laws; and

WHEREAS, preemption of the County's authority will not be implied when the legislative scheme either permits or recognizes local regulation. SB 374 explicitly provides in Section 10.5 that a county may enact zoning restrictions; and

WHEREAS, the mere fact that a local law imposes restraints that the state law does not impose does not establish a conflict; and

WHEREAS, there is legal uncertainty between federal laws and Nevada laws regarding medical marijuana establishments. The United States Supreme Court has held that the federal Controlled Substances Act validly prohibits local cultivation, and use of marijuana under all circumstances (Gonzales v. Raich, 125 S. Ct. 2195 (2005)) and the federal Controlled Substances Act prohibits marijuana use, distribution and possession, and that no medical necessity exception exists to these prohibitions (United States v. Oakland Cannabis Aiycri ' Cooperative, 121 S. CL 1711 (2001)); and

WHEREAS, cities and counties in other states that have permitted the establishment of marijuana dispensaries and related facilities have witnessed an increase in crime, such as burglaries, robberies and sales of illegal drugs in the areas immediately surrounding such facilities; and

WHEREAS, regulations are further needed to protect the public, health, safety and welfare of residents, children, and businesses from harmful secondary effects of certain types of land use and such regulations are necessary and proper and consistent with the guidelines set forth in NRS 278.250; and

WHEREAS, zoning is a field covered by local regulation and there is significant local interest that may differ from one locality to another; and

WHEREAS, regulations related to the sale and distribution of substances controlled by state and federal law are necessitated by the large geographic size and rural nature of the county, the limited resources of the county, and the close proximity of residential, school, park and religious uses to commercial and industrial uses in each community in the county; and

WHEREAS, the County has a long tradition of applying strict land use standards to protect the unique land use zones and communities in Elko County and, in some cases, Elko County has banned certain types of retail and industrial uses.

NOW THEREFORE, Elko County desires to enact zoning restrictions precluding medical marijuana establishments in all zoning districts within the unincorporated areas of Elko County and in all the unincorporated towns in Elko County.

THE BOARD OF COUNTY COMMISSIONERS OF THE COUNTY OF ELKO DOES ORDAIN:

Section 1: That a new Section 16 by added to Title 4, Chapter 8 of the Elko County Code as follows: