

1 **NEVADA COUNTY PLANNING COMMISSION**
2 **NEVADA COUNTY, CALIFORNIA**

3
4 **MINUTES** of the meeting of March 11, 2021, 1:30 p.m., Board Chambers, Eric Rood
5 Administration Center, 950 Maidu Avenue, Nevada City, California via remote
6

7
8 **MEMBERS PRESENT:** Commissioners Duncan, Coleman-Hunt, Greeno, Ingram Spencer, and
9 Mastrodonato.

10
11 **MEMBERS ABSENT:** None.

12
13 **STAFF PRESENT:** Planning Director, Brian Foss; Principal Planner, Tyler Barrington; Deputy
14 County Counsel, Rhetta VanderPloeg; Deputy County Counsel, Douglas Johnson; Building
15 Director, Craig Griesbach; Code and Cannabis Compliance Program Manager , Jeff Merriman;
16 Administrative Assistant, Shannon Paulus.

17
18
19 **PUBLIC HEARINGS:**

- 20
21 1. Cannabis Administrative Enforcement Ordinance Amendments Page 1, Line 42
22 PLN21-0048; ORD21-1
23

24 **STANDING ORDERS:** Salute to the Flag - Roll Call - Corrections to Agenda.

25
26 **CALL MEETING TO ORDER:** The meeting was called to order at 1:30 p.m. Roll call was
27 taken.

28
29 **CHANGES TO AGENDA:** None.

30
31 **PUBLIC COMMENT:** Members of the public shall be allowed to address the Commission on
32 items not appearing on the agenda which are of interest to the public and are within the subject
33 matter jurisdiction of the Planning Commission, provided that no action shall be taken unless
34 otherwise authorized by Subdivision (6) of Section 54954.2 of the Government Code. None

35
36 **COMMISSION BUSINESS:** None

37
38 **CONSENT ITEMS:** None

39
40 **PUBLIC HEARING:**

41
42 **PLN21-0048; ORD21-1.** A Public Hearing to consider a recommendation to the Board of Supervisors to
43 adopt an Ordinance (ORD21-1) for text amendments to Section L-II 3.30 and Section L-II 5.23 to Chapter
44 II Zoning Regulations of the Land Use and Development Code regarding Cannabis Cultivation and
45 Administrative Enforcement in all zoning districts in the unincorporated areas of Nevada County.
46 **RECOMMENDED ENVIRONMENTAL DETERMINATION:** CEQA Statutory Exemption
47 15060(c)(2), 15061(b)(3), 15308,15321, and 15378(b)(5). **PLANNER:** Brian Foss, Planning Director
48

49 Planning Director Foss introduced himself, Project Manager Jeff Merriman of Code and Cannabis
50 Compliance, and Building Director Craig Griesbach to the Commission. He provided background and
51 context of the proposed amendments and further introduced Deputy County Counsel Doug Johnson.

52

53 Counsel Johnson read into the record modification to Exhibit B, Section I: Denial, Suspension, and
54 Revocation of Permits of the draft ordinance to include at the end of subsection 2. “The Permitting
55 Authority’s decision to deny the renewal of an ACP may be appealed to the Hearing Body as described in
56 Section L-II 5.23 of this Chapter”, at the end of subsection 3 to include “The Permitting Authority’s decision
57 to suspend an ACP may be appealed to the Hearing Body as described in Section L-II 5.23 of this Chapter”,
58 and at the end of subsection 4 to include “The Permitting Authority’s decision to revoke an ACP may be
59 appealed to the Hearing Body as described in Section L-II 5.23 of this Chapter”, for additional clarification.

60

61 Program Manager Jeff Merriman of Code and Cannabis Compliance introduced himself and gave his
62 presentation, providing an overview of administrative enforcement and proposed changes, clarifications,
63 review processes, accountability, penalty caps, and transition periods.

64

65 Building Director Craig Griesbach introduced himself to the Commission and summarized the primary
66 goals of the amendments, including voluntary compliance. He gave Staff’s recommendation that the item
67 be found exempt pursuant to Sections 15060(c)(2), 15061(b)(3), 15308 and 15321 and recommend
68 that the Board of Supervisors adopt the Ordinance (ORD21-1) to amend Chapter II of Title 3 of
69 the Nevada County Land Use and Development Code. He offered to answer any questions.

70

71 Chair Duncan thanked Program Manager Merriman and Director Griesbach for their presentation and asked
72 for questions from the Commission.

73

74 Commissioner Greeno asked about the \$25,000 cap on building code violations.

75

76 Program Manager Merriman clarified that it was concerning any violations of County Code. He stated that
77 most violations were building related and outlined the fee schedule.

78

79 Commissioner Greeno clarified that those violations accumulated and did not cap at \$25,000.

80

81 Program Manager Merriman answered that was correct.

82

83 Chair Duncan asked for additional questions.

84

85 Commissioner Mastrodonato asked about having a future hearing body and what that would look like.

86

87 Program Manager Merriman answered that it was currently being researched. He stated that it could be
88 done in several ways and could possibly be made up of internal staff. He added that the hearing body would
89 be made up of multiple members who would hear the appellants argument and would make a decision
90 instead of having a single hearing officer.

91

92 Commissioner Mastrodonato clarified that it would be County staff or employees, not members of the
93 public or neighbors.

94

95 Program Manager Merriman answered that was correct. He stated that the models they had seen included
96 County staff from different departments.

97

98 Commissioner Mastrodonato asked if the current process was administered by a single person, an attorney.

99

100 Program Manager Merriman answered that was correct.

101

102 Chair Duncan asked if using staff was for ease of pulling the committee together and making prompt
103 decisions.
104
105 Program Manager Merriman said that was part of the reason for choosing that model. He added that using
106 County staff was less expensive for the County and the appellant.
107
108 Chair Duncan asked if the appeals would be noticed to the community.
109
110 Program Manager Merriman answered that they were currently public and would remain so.
111
112 Commissioner Coleman-Hunt asked about what sort of input and process was used in developing these
113 changes.
114
115 Director Griesbach answered that several organizations had been involved, including the Nevada County
116 Cannabis Alliance, the Nevada County Contractors Associations, the Nevada County Association of
117 Realtors, several stakeholders, and customers throughout the process.
118
119 Commissioner Coleman-Hunt asked about the Cannabis Advisory Commission.
120
121 Director Griesbach answered that the CAG was not currently active, however several members of the CAG
122 were part of the outreach process.
123
124 Commissioner Ingram Spencer asked for clarification on the extension of time.
125
126 Director Griesbach clarified that the extension of time was in regard to the sunset date of the transition
127 period within the original Ordinance, which would be May of this year. Due to the challenges everyone had
128 faced within the last year due to the COVID-19 Pandemic, they were requesting an extension of that sunset
129 date to next year.
130
131 Commissioner Ingram Spencer clarified that it was for the entire program and not to specific violations.
132
133 Director Griesbach answered that was correct.
134
135 Chair Duncan opened public hearing at 2:00 p.m.
136
137 Mark Schaefer introduced himself to the Commission. He offered his support to extending the transition
138 period as an excellent idea. He voiced his concern about the definition of “responsible party”, stating that
139 the language was very broad and unclear. He understood that contractors would be liable just as an applicant
140 would be. As a contractor he felt he would be held liable if one of his clients were to go off course and not
141 adhere to the provisions. He asked for clarity on that. He also brought up Item E, stating it was also very
142 broad. He brought up an example of someone using a property as an Air BnB, and if they would be
143 responsible for any code violations on the property. He felt the language could be clarified and tightened
144 and did not apply to all contractors. He further commented on the fines and how they would affect people
145 attempting to go through the permitting process. He stated that those going through the permitting process
146 would not consider the \$25,000 fine as insignificant. He felt that should be redone so it only applied to
147 illegal grows.
148
149 Chair asked for additional questions.
150
151 Diana Gamzon of the Nevada County Cannabis Alliance introduced herself to the Commission. She
152 explained their mission statement and values, as well as who they represent and the effects of the cannabis
153 industry on jobs in the area. She offered the Alliances support for the extension of the transition period. She
154 further applauded the County for maintaining the goal of compliance through education and outreach before
155 imposing fines and penalties. She stated this was essential in building trust. She asked that examples be

156 made of egregious illegal cannabis farms which harmed the community and environment. She stated there
157 were still many large farms who were causing damage, and an example needed to be made of them to
158 express to the greater community that those were not welcome here. She added that those illegal operations
159 were shedding a bad light on those who were trying to do the right thing. She further stated that they were
160 pleased to see the language of the hearing body updated and would like to see that change at the earliest
161 convenience to insure fair and impartial hearings. She also supported that the \$1,000 per day fine should
162 be reserved for those illegally cultivating, while legal cannabis cultivators follow the same fine structure as
163 all other legal businesses in the County. She thanked the Commission for the opportunity to comment.

164
165 As no one else came forward to provide comment, Chair Duncan closed public comment at 2:09 p.m.

166
167 Chair Duncan asked for staff to address the concerns raised.

168
169 Program Manager Merriman asked Counsel Johnson to address Mr. Schaefer's questions.

170
171 Counsel Johnson stated that the intention of the definition in Exhibit A was to cast a wider net so that the
172 person actually responsible for any violations could be held accountable. Regarding the penalty of \$1,000
173 per day, he stated that was pulled from State law and was supported by Health and Safety Code. He added
174 it was a common fine structure in other jurisdictions as well. Concerning the hearing officers versus a
175 hearing body, he clarified that the hearing officers currently under contract with the County were neutral
176 third-party attorneys with specialization in land use matters and were neutral third-party fact finders.

177
178 Director Griesbach added for context that the County has several cases in which people were essentially
179 trespassing and illegally grading on someone else's property, for which the responsible party would be the
180 property owner. They would like to hold the right people accountable in those situations. He added that
181 those who were in the process of becoming permitted were generally not fined, as it was the policy in the
182 Community Development Agency to work with applicants to become complaint.

183
184 Chair Duncan asked for additional questions. She also asked if Director Foss would weigh in.

185
186 Director Foss answered that it was up to the Commission to deliberate to see if they wanted to make any
187 clarifications or modifications to the item.

188
189 Commissioner Greeno asked if the fine structure was consistent across all industries or if it was different
190 for cannabis and violations therein.

191
192 Counsel Johnson answered that the fine structure was standardized across industry and was pulled directly
193 from State Law and Administrative Enforcement provisions provided by State Legislature. He added that
194 those penalty amounts changed occasionally, and typically differentiated if they were Building violations
195 or Health and Safety Code violations; it was not dependent on cannabis. He added that Health and Safety
196 Code did allow jurisdictions to impose other civil penalties in addition to other administrative penalties.

197
198 Chair Duncan asked if it would be an inducement if the fines would not be applied to illegal operators
199 versus legal operators.

200
201 Director Griesbach answered that if they are a permitted farmer then there was really no worry that they
202 would receive fines in the first place. He explained that it was the policy within CDA to work with those
203 who were making the effort to become complaint.

204
205 Program Manager Merriman added that the penalties were appealable, and that someone could contest them
206 if they felt they were unjust or not applicable.

207
208 Commissioner Mastrodonato wondered if there was a way to add that language into the Ordinance. He
209 added that it troubled him that a \$25,000 penalty for an illegal grow could be considered as a cost of doing

210 business. He understood that an appeal could be filed, however that process could also be burdensome and
211 expensive for the appellant. He asked if the Commission could either formulate language or recommend
212 that the Board formulate language to separate fees for those going through the approval process versus
213 those illegally cultivating.

214
215 Director Griesbach stated that staff could look into that intent.
216

217 Director Foss said that if it was the pleasure of the majority of the Commission it could be part of the
218 recommendation to add language that differentiated the fine structure between those in process and those
219 who have not entered the process. He added that coming up with that language on the fly would be difficult,
220 as staff would need to work with Counsel.

221
222 Chair Duncan asked Counsel Johnson if that was legal.
223

224 Counsel Johnson answered that it would need to be very specific standards inserted into the code, and that
225 the point of due process was that fines and penalties would be equally applied. He said it may be possible,
226 however it would have to be carefully drafted so not to run afoul of any equal protections. He added that
227 the ordinance did account for an extension of the transition period, and as a general rule enforcement staff
228 had prosecutorial discretion. He said that staff tried to work with applicants and cultivators to do education
229 and outreach first before moving on to fines and penalties. He added that they could depend upon that to
230 achieve the same goal instead of hard wiring it into the Ordinance.

231
232 Commissioner Greeno stated that he appreciated the legal process to comply. He said that if they had a
233 differential code enforcement structure it would run afoul of being able to enforce on someone who was in
234 the process but still breaking the law egregiously. He stated that the way the proposed Ordinance read would
235 provide staff or the hearing body with the discretion to decide what laws were being broken.
236

237 Counsel Johnson answered that was a fair statement.
238

239 Chair Duncan asked Counsel if it was an easy path forward.
240

241 Counsel Johnson answered it was something that could be looked at but would require research and
242 discussion.
243

244 Chair Duncan asked the Commission how they felt about asking staff to look into it.
245

246 Commissioner Coleman-Hunt stated she was in favor of staff developing the language. She said that anyone
247 in business needed to have some certainty, and she was uncomfortable with the idea of discretion as some
248 staff could be lenient while others were stricter. She was in favor of having clarity and of having a
249 distinction made between existing permitted growers, people in the transition process, and those growing
250 illegally.

251
252 Commissioner Ingram Spencer stated that staff had put a tremendous amount of work into this, however
253 she did not feel that it would hurt to have Counsel review the proposed differentiation. She further
254 commented that she would consider Mr. Schaefer as a consultant and not a contractor.
255

256 Counsel Johnson asked for direction from the Commission on differentiation. He added that teasing out the
257 definition would create a burden on staff, however he was seeking direction from the Commission.
258

259 Commissioner Greeno stated that breaking the law was breaking the law, and he did not see a differentiation
260 of someone breaking the law while licensed versus breaking the law while not licensed. He said making the
261 repercussions different from those within the process would open significant liability for the County.
262

263 Director Griesbach added that discretion is what allowed staff to be able to work with people and be able
264 to make the best decisions based on the project. He added that there were applicants who submitted nearly
265 two years ago who have never been permitted and have been cultivating illegally. He felt that trying to
266 differentiate may open the door for more people to apply with no intent to permit.

267
268 Commissioner Ingram Spencer agreed with Commissioner Greeno that breaking the law was breaking the
269 law, and that those issues regardless of being licensed would need to be addressed appropriately and
270 resolved.

271
272 Commissioner Mastrodonato added that the County had discretion and a discretionary process and felt that
273 the process could be trusted. His intent when he brought this up was to add a simple sentence that the
274 County had discretion in applying remedies. He asked if the discretionary language was in the Ordinance.

275
276 Chair Duncan asked if it was a possibility for the fine to be capped unless the grower was not legal, to
277 which there could be an additional penalty. She stated that it was quite an eye opener that a \$25,000 fine
278 could be considered an insignificant cost or a cost of doing business for an illegal grower.

279
280 Counsel Johnson pointed out that staff did not have a duty to enforce which was were staff derived their
281 discretion to invoke penalties and to work with people. If the proposal was to levy an additional fine against
282 folks who were within the system and remove the cap for those outside of the system would result in the
283 same outcome as differential treatment.

284
285 Chair Duncan asked if the fines were significant enough to make those who were illegal come into
286 compliance.

287
288 Counsel Johnson deferred to staff, however it seemed that the cap was a barrier to enforcement. He said
289 that the \$25,000 cap for some could be considered a cost of doing business that could be recouped quickly
290 and easily by the illegal grower, who could then continue cultivating illegally.

291
292 Commissioner Greeno added that this was to the detriment to those cultivating legally.

293
294 Program Manager Merriman mentioned that over the last several years they have had several instances of
295 those in the process who had grown in excess of 10,000 square feet which then goes into the black market.
296 He said that \$25,000 is insignificant when considering that amount of cannabis. He said that even though
297 they were in the process, the cap would limit staff's ability to hold them accountable.

298
299 Chair Duncan clarified that those in process would mean those who have paid an application fee.

300
301 Program Manager Merriman answered that was a variable that was hard to narrow down. They had
302 applicants who had applied and never returned, which was the worst-case scenario, and others who made
303 progress on a monthly basis.

304
305 Commissioner Greeno stated for arguments sake that there were those who were permitted to grow an acre
306 but were growing 5 additional acres and an acre of their neighbor's land. He asked if they should not be
307 held egregiously responsible for that.

308
309 Chair Duncan stated that would be taking advantage of the situation.

310
311 Commissioner Coleman-Hunt said that this was difficult to discuss because it was abstract. She said that
312 she was confused about the hearing process and asked if the grower had the opportunity to appeal and if
313 that was when the hearing process would take place.

314
315 Program Manager Merriman answered that was correct, the penalties could be appealed before a hearing
316 body. He added that they would also have appeal rights if an Administrative Development Permit were

317 denied. He said that fines and penalties really were the last resort, and that they would likely start with the
318 land use entitlement which already had an appeal process.

319
320 Chair Duncan thanked everyone for great discussion. She said that if anyone wanted to make a change to
321 the Ordinance that would need to be considered. She further stated that there were already changes based
322 on the presentation by Counsel, so the action going forward would be as amended at the public hearing.

323
324 Director Foss answered that was correct.

325
326 Chair Duncan asked for a motion.

327
328 Commissioner Ingram Spencer pointed out that any action taken today would be reviewed by the Board of
329 Supervisors, and they would have the ultimate say. She also stated that any individuals who made comment
330 today would have additional opportunity to comment with the Board.

331
332 Chair Duncan also clarified that today's actions were recommendations to the Board.

333
334 **Motion by Commissioner Ingram Spencer** to recommend that the Board of Supervisors find the
335 project categorically exempt pursuant to Sections 15060(c)(2), 15061(b)(3), 15308 and 15321.
336 **Second by Commissioner Greeno Motion carried on a roll call vote 5/0.**

337
338 **Motion by Commissioner Ingram Spencer** to recommend that the Board of Supervisors adopt
339 the attached Ordinance (ORD21-1) amending Chapter II of Title 3 of the Nevada County Land
340 Use and Development Code *as amended at the public hearing as read into the record by Counsel.*
341 **Second by Commissioner Greeno. Motion carried on a roll call vote 5/0.**

342
343 Discussion ensued regarding upcoming Commission meetings and ongoing project statuses.

344
345 **Motion by Commissioner Mastrodonato; second by Commissioner Duncan to adjourn.**
346 **Motion carried on voice vote 5/0.**

347
348 There being no further business to come before the Commission, the meeting was adjourned at
349 2:53 p.m. to the next meeting scheduled for March 25, 2021, in the Board of Supervisors
350 Chambers, 950 Maidu Avenue, Nevada City.

351
352
353 Passed and accepted this 8th day of April , 2021.

354
355 Brian Foss (by sp)
356 Brian Foss, Ex-Officio Secretary