

Disclaimer:**LYON COUNTY - Med MJ Ordinance**

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BILL NO. 13-04**ORDINANCE NO. 567**

SUMMARY: An ordinance adopting Lyon County Code Title 10, Chapter 1, Part 3, Paragraph D, and amending Lyon County Code Title 10, Chapter 1, Part 3, Paragraph C, regarding the Prohibition of medical marijuana establishments as a matter of land use throughout the unincorporated areas of Lyon County.

TITLE: An ordinance adopting Lyon County Code Title 10, Chapter 1, Part 3, Paragraph D, and amending Lyon County Code Title 10, Chapter 1, Part 3, Paragraph C, regarding the Prohibition of medical marijuana establishments as a matter of land use throughout the unincorporated areas of Lyon County; and other matters properly relating thereto.

THE BOARD OF COUNTY COMMISSIONERS OF LYON COUNTY, NEVADA DOES HEREBY ORDAIN:

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 be professional in appearance.

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.

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.

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

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.

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.

Whereas, the mere fact that a local law imposes restraints that the state law does not impose does not establish a conflict.

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

Whereas, regulations related to the sale and distribution of substances controlled by state and federal law are necessitated by the large geographic size 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.

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 Buyers' Cooperative*, 121 S. Ct. 1711 (2001)).

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.

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.

Section 1: Lyon County Code Title 10, Chapter 1, Section 3, Part D is hereby adopted to read as follows:

10.01.03 D. Medical Marijuana Establishments. Notwithstanding any other provision of this Code, medical marijuana establishments are not allowed, and shall be unlawful as a permitted use, special use or accessory use in any zone throughout the unincorporated areas of Lyon County.

“Medical marijuana establishment” shall have the same definition as in Section 8.3 of SB 374, and as may be amended.

Medical Use of Marijuana. This prohibition is not intended to interfere with the individual rights of persons to the medical use of marijuana as permitted by Chapter 453A of the Nevada Revised Statutes.

Section 2: Lyon County Code Title 10, Chapter 1, Section 3, Part C is hereby amended to read as follows (***Change is in italics and bold***):

C. Use Classifications: The following shall prevail:

1. The express enumeration in this title of a particular class of building or use in any district shall be determined a prohibition of such building or use in all other districts unless so specified.
2. Uses not specifically included in any land use district and not specifically excluded therefrom by this title may be included in that district as determined by the commission if such uses are similar to and not more obnoxious than the uses specifically included or if such uses are accessory to uses which are specifically included.
3. The commission may reclassify a use when such reclassification does not violate the intent of this title and provided the commission publishes newspaper notification and holds at least one public hearing thereon.
- 4. Consistency with State and Federal Law. Notwithstanding any other provision of this Title, any land use, activity or establishment that contravenes either state or federal***

law, or both, is prohibited.

Section 2. If any section, paragraph, sentence or phrase of this ordinance or portion thereof is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such holding shall not invalidate the remaining parts of this ordinance.

Section 3. All ordinances, parts of ordinances, chapters, sections, subsections, clauses, phrases or sentences contained in the Lyon County Code in conflict herewith are hereby repealed.

Section 4. This ordinance shall be in full force and effect from and after its passage, approval and publication as required by law.

PROPOSED THIS _____ day of _____, 2013.

PROPOSED BY Commissioner _____.

PASSED on the ___3___ day of ___October___, 2013.

AYES:

NAYS:

ABSENT:

ABSTENTIONS:

BOARD OF LYON COUNTY
COMMISSIONERS

CHAIRMAN

Attest:

County Clerk

THIS ORDINANCE shall be in full force and effect from and after the _____
day of _____, 2013.