

CNMI Cannabis Commission

Meeting Minutes September 30, 2019

Opening

The third meeting of the CNMI Cannabis Commission was called to order by Chairwoman Nadine Deleon Guerrero at 10:08 a.m. on September 30, 2019, in the SAA Conference Room of the Juan A. Sablan Memorial Building.

Present

Nadine Deleon Guerrero, Commissioner representing Saipan*
Matthew Deleon Guerrero, Commissioner representing Saipan*
Valentino Taisacan Jr., Commissioner representing Northern Islands*
Journie Hofschneider, Commissioner representing Tinian*
Thomas Songsong, Commissioner representing Rota (via teleconference)*
Joseph Deleon Guerrero, Special Advisor on Cannabis Industry for the Office of the Governor
Gilbert Birnbrich, Legal Counsel for the Office of the Governor

Note: All references to “members” include all five Commissioners*

Approval of Agenda

The agenda was unanimously approved as distributed.

Roll Call/Determination of Quorum

All Cannabis Commissioners were present. A quorum was established.

Public Comment

No public comments were made to the Commission.

Old Business

Response from Attorney General regarding Cannabis Commission’s request for assistance of legal counsel

- AG has agreed to provide legal counsel; however, the process will be different and provide notice in advance.
- When the Commission posts a public meeting notices, we will submit a Legal Services Request form to AG.
- G. Birnbrich confirmed that when regulations are publishable, by law, the AG already has to review the material before it is permitted to be published. He suggested including legal counsel in meetings to obtain preliminary advice to avoid the Commission going through the work only to have the AG reject the content. Chairwoman Deleon Guerrero (“Chairwoman”) affirmed that this is currently the approach the Commission is actively taking.

- Vice Chairman Deleon Guerrero (“Vice Chairman”) asked G. Birnbrich for clarification surrounding AG’s limitations providing the Commission advice. G. Birnbrich confirmed they may assist as long as they are not asked to assist in breaking criminal law. He further provided the example of how he is assisting the Commission with advising of the procedure of a meeting, how to adopt regulations, etc.
- Vice Chairman gave the example of Homegrown Marijuana and how counsel would not be able to support the regulation that permits individuals to grow marijuana at home. In these instances, G. Birnbrich said our (the Commission) option is to seek outside counsel for advice, if necessary. However, in the case of a lawsuit, AG must be involved unless AG gives authorization for alternative counsel. He also mentioned that attorneys in Oregon and Colorado do not have any problems with providing advice.

Commission Bylaws -- Discussion and adoption

- The Commission agreed to review the draft bylaws line-by-line together.
- Chairwoman confirmed that she did not make many changes to Vice Chairman’s draft regulations other than adding a table of contents, named Articles and inserted duties (of the Commission board members) in there.

Article I: Name

- Discussion occurred surrounding the name of the CNMI Cannabis Commission (formal reference, per the Act). Members agreed that short-hand reference in the regulations will be, the “Commission”. Members also discussed the use of “Cann Comm”.
- Vice Chairman clarified that for the purpose of the CNMI Cannabis Commission Bylaws, all references to the CNMI Cannabis Commission would be hereinafter referred to in the document as the “Commission”.
- Chairwoman requested Secretary Hofschneider (“Secretary”) to note the decision to update the draft bylaws to reflect this decision, prior to forwarding the final draft to AG for review.

Article II: Creation of CNMI Cannabis Commission

- Chairwoman advised that she added “The Commission was established pursuant to Public Law 20-66 and was amended in Public Law 21-5”; all members agreed.

Chairwoman called recess at 10:27 a.m. and called the meeting to order at 10:56 a.m.

Article III: Powers and Duties

- Special Advisor, Joe Guerrero (“SA”) recommended to strike the following section as legislation includes conflicting provisions that requires future amendment: *(f)The Commission shall not regulate the personal cultivation of marijuana.* All members agreed; sub-section letters would have to be re-lettered appropriately with the

changes. SA also expressed the need to explicitly the Commission has the authority to regulate HMR.

- Members identified the need to create a subsection to include the Commission’s authority over fees (application and renewal).
- Members discussed the highlighted section after (p) regarding the development of an education curriculum piece for Homegrown Marijuana Registry (“HMR”) applicants to enroll in. Members agreed to strike all sections highlighted (between (p) and before the heading of Article IV) until the regulations are complete; however, keep the following sections:
 - Develop an educational curriculum piece for HMR applicants to enroll in prior to issuance of permit by the Commission;
 - Update such such curriculum as necessary to meet population demands;
 - Monitor and study federal laws, regulations and policies regarding cannabis
- Members discussed using a declaration for HMR applicants to agree they will adhere to the terms and conditions of the permit and authorize the Commission to conduct HMR inspections.

Article IV: Commissioners

- Members agreed to change (a)(1) to reflect legislation, adding: *Provided that one of the three members appointed by the Governor shall be a voter from the Northern Islands and selected by the Northern Islands’ Mayor.*

Article V: Qualifications of Commissioners

- In regard to (f), members discussed whether HMR is a license or permit; all agreed that the HMR should be a permit as the legislation does not include HMR under license classes.
- Vice Chairman asked if we needed to amend the bylaws to prohibit Commissioner family members from HMR; Secretary clarified that once the regulations reference HMR as a permit, and includes the authority to revoke the permit, there would be no reason to add a section prohibiting Commissioner family members from applying.

Article VI: Terms of Office

- Members agreed to amend the last sentence of section (a) to “however, each member shall serve no more than two (2) terms” and strike the highlighted paragraph under Article VI, but leave (b).
- Members discussed the definition of “term” (the time the member serves as a Commissioner, regardless of duration”) and determined that if a Commissioner for example, had a four-year term and left two years into the term, the replacement Commissioner would serve the remaining two years, concluding the four-year term.

Article VII: Removal of a Commissioner For Cause Only

- Members agreed to amend (b) to correct the referenced subsection as follows: “subsection (3)” should be “ subsection (e)” (of Article V).

Article VIII: Compensation

- No changes.

Article IX: Employment of Commission

- No changes.

Article X: Election of Officers

- No changes.

Article XI: Delegation of Officers

- Members agreed to add subsection (h) stating that the Chairman/woman is the expense authority for the Commission and that he/she may delegate this authority. e.g. Managing Director
- The legislation currently does not include the Chair as the expense authority; For now we will include this subsection in the bylaws and Governor will have to provide a letter to delegate expense authority to Chairwoman.
- Under the heading “Delegation to Secretary” (b), amend the first sentence to: Stores all pertinent meeting minutes for shared access by all commissioners. The members agreed to create a folder on Google Drive to store the minutes.
- Chairwoman asked G. Birnbrich if the minutes should come from the Chair or can it go through Secretary for issuance. G. Birnbrich confirmed that it must be issued through Chairwoman.

Article XII: Quorum

- Chairwoman asked G. Birnbrich if the two Saipan Commissioners and the Northern Island Commissioners met together, whether it would be a quorum. SA recommended we raise this question with the AG legal counsel.
- Secretary requested clarification regarding subsection (b). Members discussed and confirmed that as long as the meeting was held in the CNMI (some members are present in person), other Commissioners shall be deemed present if they attend telephonically or via videoconference.

Chairwoman called recess at 11:45 a.m. and called the meeting to order at 11:59 a.m.

Article XIII: Meetings

- Members discussed the requirement for meetings at least once a month.

- Vice Chairman recommended we specify which meetings are regular meetings and special meetings (such as this one) which are held from time to time. Whereas the regular meetings are scheduled monthly with some flexibility regarding the exact day/week it is held each month.
- G. Birnbrich read the legislation regarding regular meetings and suggested the Commission publish a notice with the AG Registrar that advises of the monthly Commission meetings. We can provide notice of each meeting date a year in advance, for example. He confirmed that we would still have to issue a notice of meeting 72 hours in advance, regardless of notifying the Registrar.
- Vice Chairman clarified the legislation for reduced compensation if a Commissioner misses a meeting and was not excused.
- Members agreed to meet on the third week of each month and to indicate on agendas and minutes if the meeting is regular or special.
- Members discussed subsection (g) and the definition of “continuance”. G. Birnbrich explained that a person could ask for an agenda item to be continued (perhaps in adjudication) to the following meeting. Members questioned whether or not to change the requirement for two (2) calendar days to 72 hours and it was decided to leave it as is.
- Under “Recessed Meetings”, subsection (a) amend to say that you can only recess for 24 hours, not “as the Commission may designate”.
- Under “Investigative Hearings”, SA raised the concern of whether or not allowing on Commissioner to conduct investigative hearings would be perceived as being bias. G. Birnbrich clarified that there may be cases where one Commissioner is appropriate. E.g. The Managing Director conducts an investigation for fact finding/info seeking.
- Members agreed to strike “Public Meetings” and replace it with “General Meetings” and amend to say they are to be held once a month.
- SA recommended that we should add that the meetings will conform with the Open Government Act (OGA).
- Members agreed to strike any reference to “Special Meetings” and replace it with “Emergency Meetings”
- G. Birnbrich clarified that “Emergency” constitutes a result of a natural disaster (E.g. fire, flood) but also leaves it open to where there is a need for expedited action by the government. He will run it by the AG office. Chairman/woman would call the meeting and 2/3 of members (at least 4 out of the 5 Commissioners) would have to vote to determine an emergency exists.
- Members agreed to strike subsection (d).

Article XIV: Voting

- Members discussed subsection (a) and clarified that recording votes, does not have to include members names; however, we should indicate how many objections, if any. SA then suggested we should leave subsection (b) as is because knowing who

objected could affect public in the future. E.g. Something impacting Tinian and Rota, it would be good to know that Tinian and Rota objected.

- Vice Chairman pointed out that this section does not include what constitutes a positive vote e.g. percentage of members, simple majority. Members agreed to add a new subsection (e) to add “simple majority” (of those present and voting constitutes approval) and (f) “abstain vote” (these do not count). First calculate quorum, then it is a simple majority of those present and voting. G. Birnbrich mentioned that the only time a member should be abstaining from voting is if there is a conflict of interest.
- SA explained that you have a tied vote, it does not constitute an affirmative action and is basically considered defeated.
- Members do not want proxy voting.
- Vice Chairman suggested we leave it for the Members to change as necessary.

Article XV: Adoption and Amendment of Bylaws

- No changes.

Chairwoman called recess at 1:30 p.m. on September 30, 2019 and will reconvene October 1, 2019 at 9:00 a.m. Chairwoman called the meeting to order at 9:09 a.m. on October 1, 2019. Lilian Tenorio, Deputy Attorney General joined the meeting.

Article XVI: Travel and Subsistence

- All travel is subject to CNMI Code Title 1, Division 7, Chapter 4, 7407 (1CMC 7407).
- Members agreed to strike the highlighted under this section.

Article XVII: Ethical Conduct, Conflict of Interest

- Members agreed to strike content and replace with adopting CNMI ethics code citation (Title 1, V.8 part 4).

Article XVIII: Limitation on Powers and Duties

- The Commission itself has no power to purchase, own, sell, or possess any marijuana items.

Article XIX: Managing Director

- No changes.

Article XX: Subpoenas

- L. Tenorio questioned the Secretary’s authority to subpoena. She will look into this and get back to the members.

Article XXI: Resolution and Minutes

- Members agreed that the resolution book can be electronic and records can be held electronically.

Article XXII: Appearances

- No changes.
- SA asked L. Tenorio if there will be a Commission counsel. She advised that she would look into it and get back to the members.

Side note by Secretary: Add a subsection for refunds within the regulations.

Article XXIII: Selection of Committees

- Members agreed to strike paragraphs 2, 4, 5 and 6.
- Chairwoman/Chairman has the discretion to appoint committees. L. Tenorio clarified that the Commission can vote (majority) and override the Chairwoman/Chairman.

Article XXIV: Service of Notices in General

- Members discussed whether we should require applicants to have an email for correspondence to be sent to.
- Secretary questioned what Gaming Commission does for sending notices of cancellation and suspension or any confidential information sent to licensees; whether it is certified or not.
- Members decided that email is required. A disclaimer can go on the application to put the onus on the applicant/licensee to be accountable for monitoring and function of their email. The fee would be the cost of sending physical mail (stamps).

Article XXV: Employment and Termination of Commission Employees

- No changes.

Article XXVI: Information and Filings

- Members agreed that Commission staff hours (internal) are 8:00 a.m. to 5:00 p.m. and business hours (for the public) will be left for the Managing Director (MD) to determine.

Article XXVII: Official Record, Fees for Copies

- Secretary asked how we would receive fees. SA advised that we would have to meet with Finance to set up protocols for license fees to go to the Commission's account (separate from Bank of Guam). Secretary then asked about satellite offices on the islands outside of Saipan for the public to be able to pay fees. SA clarified that people in Rota and Tinian can pay their treasury and it can be transferred to the Commission's account.

Article XXVIII: Communications/Notice to Commission

- No changes.

Article XXIX: Public Information Office

- Members agreed that the Chairwoman/Chairman, MD or his/her designee is the official spokesperson for the Commission.

Article XXX: Filing of Petitions and Applications

- No changes.

Chairwoman called recess at 10:16 a.m. and called the meeting to order at 10:25 a.m.

Homegrown Marijuana Registry (HMR) Regulations -- Discussion and implementation of mandating and educational piece

- Vice Chairman clarified that the content of the draft regulations for HMR came from law and Oregon Cannabis Regulations.
- G. Birnbrich asked if we had a card machine; Vice Chairman advised that Governor Torres has offered for the Commission to use the retired BMV card machines. Chairwoman wrote a letter to request this formally and recommends that members visit the BMV. Chairwoman also raised the concern about storing applicant's information securely, how we will procedurally implement this registry, and accept revenue. Chairwoman clarified that the MD is lead on implementation; however, if necessary, due to timing, members may have to take lead until the MD is hired and ready to take over.
- Vice Chairman confirmed that we will be sending the regulations to AG for sufficiency as it pertains to the law.

HMR #1

- Members agreed to strike "first".
- Secretary raised that we need to have the definitions approved with the roll out of HMR regulations. Vice Chairman recommended we only include definitions that apply to HMR for the time being; members agreed.
- Chairwoman asked if we are required to call the registry Homegrown Marijuana Registry or if we could call it something else. Vice Chairman clarified that we could call it something else if we clarified it in the regulation. After discussion, members agreed that referring to the registry as "Homegrown Marijuana Registry" is accurately describes what is permitted if approved (to grow marijuana in one's home).

HMR #2

- For 2 (a), Secretary recommended that "information" needs to be more specific i.e. (date of birth); Or instead of asking for all resident's date of birth, ask specific questions on the form such as, "Do any minors reside at the household where you

will be growing?” and, “Do any individuals residing at the household also hold HMR cards?”.

- Members discussed the requirements for (e) Proof of right to occupy the premises; in the case of leases, G. Birnbrich confirmed that it would be acceptable to have some evidence in the agreement, amendment, or something from the landlord that permits the tenant to grow at the residence. L. Tenorio clarified that we need a signed rental agreement to show that the person is lawfully in possession of the property and permission to grow (per law).
- Members agreed to merge (f) with (b) in the application ask a question such as, “Are you taking measures to ensure the plants are inaccessible to minors?” and add a declaration for applicants to swear by.
- Members agreed to add check boxes to the application for applicants to consent for the Commission to inspect their household/cultivation site. L. Tenorio confirmed she would have to review whether or not we are authorized to do this. Members discussed recourse if applicants choose to not check the boxes to permit the Commission and determined the application would be incomplete.
- Members discussed that we need to add the authority into the regulations to be able to revoke HMR permits.
- SA read the law and clarified that we can approve a HMR card to “qualified persons” which means the Commission can determine if they are qualified or not.

HMR #3

- No changes.

HMR #4

- Members discussed the requirement for card holders to report changes to the Commission.
- Members discussed that commercial rules regarding distance (500 m) does not apply to HMR. SA requested legal counsel to confirm whether or not a permit is a license and decide whether any provisions mentioning “license” includes HMR. L. Tenorio is going to review that and get back to the members.

HMR #5

- SA raised the concern about the requirement for the Commission to issue the HMR card the same day the application is received. Members agreed that this would be administratively unreasonable (lack of resources).
- L. Tenorio asked Vice Chairman to review Oregon’s rules around requiring an email address.

Homegrown Marijuana Privileges; Prohibitions

#1

- Members discussed if a household can have more than one persons growing at a household site; however, the site cannot at any time have 6 mature and 12 immature plants at a time. Example: 3 individuals reside in the same household, all with HMR cards, but at no time can the household exceed 6 mature and 12 immature plants.
- G. Birnbrich raised the fact that cultivation sites cannot overlap other sites.
- Members further discussed that we did not specify there can only be one cultivation site and not split up for example. E.g. 3 mature plants at household and 3 at the ranch; then SA clarified the law says “or”. Household **or** cultivation site (ranch); 1 cultivation site per card.
- Vice Chair raised that we currently do not reference cultivation site in the regulations. We need to ensure that any reference to “household” we need to refer to “cultivation site”.
- Members agreed to strike subsection (c) as we are not able to speak to medical marijuana at this time. In regard to the number of ounces permitted, Commissioner Songsong provided information regarding the varying sizes and weights of different types of marijuana plants. The law states 8 ounces of “usable” (harvested) marijuana.
- L. Tenorio left the meeting at this time.
- Members discussed the amount of product you are able to have in possession. SA brought up the fact that we may be asked questions regarding how people can abide by the amount of useable marijuana you are able to have in possession, and the number of mature plants you can have. SA gave the example of staggering the growth of the plants as an option for the public. Vice Chairman reminded we are not able to provide advice to the public on how to cultivate.
- Secretary raised the fact that the law does not include a limit to how many times we can gift marijuana; however, it was later found that a person can gift only 1 ounce of usable marijuana at any given time. (i.e one ounce per day)
- Commissioner Songsong mentioned that there are curing processes that include the usable marijuana sitting for 3 months at a time to improve quality which means the usable marijuan could start accumulating. Members discussed that due to limit restrictions, if people want specific quality of marijuana that for example cures, they will have to wait to purchase from commercial. Members agreed to keep this law in mind should it be reviewed in the future and consider amendments to the statute.
- SA found another section in the law that supported the Commission inspecting HMR household/cultivation sites; we are bound to create data to review progress/patterns of the public’s growing behaviors.
- Secretary raised the idea that there could be one inspector that covers all islands in regard to compliance and education and perhaps work with Agriculture. This could help provide the public peace of mind in regard to the Commission’s intent.
- Members discussed section (d) specifically around minors having access to a “key”; that it should read something similar as, “persons under 21 years of age do not have means to access the marijuana products.”.

- Members agreed to strike out (f) because (f) and (e) are the same.
- Commissioner Taisacan (Secretary) had to leave at this time.
- Members discussed (g) “solid form” and examples of what might constitute solid as we have not defined it yet. Vice Chairman clarified that there are 3 types of marijuana products: edible, drinkable, topical. Members agreed to review and discuss this subsection again at a later date.

#2

- No changes as it is law.

New Business

Report out on September 25, 2019 meeting with House Cannabis Committee

- Discussion on proposed budget
- Review for submittal to House Committee for consideration
- Chairwoman tasked Treasurer and Vice Chairman to work on the budget with SA.

JVA for Managing Director

- Discussion of Applicants
- Possible deadline extension
- Chairwoman called the meeting into **executive session** to discuss the applicants for Managing Director and procedures. Members decided to close the deadline as posted. Chairwoman requested a hiring committee to be formed and a decision was made for all members to participate in the MD selection.
- Members agreed to add an executive session to the following meeting agenda for the purposes of the members to review each applicant and determine a short-list for interviews.

FAQ Info Sheet: What is currently allowed under the law

- Discussion and Adoption
- Chairwoman established a committee to work on the HMR FAQ sheet: SA, Chairwoman and Secretary.

Motion made by Vice Chairman M. Deleon Guerrero to amend the agenda to include organizational housekeeping measures e.g name, logo

- Motion passed by Commission.
- Commissioner M. Deleon Guerrero to take lead on Commission name.
- Commissioner J. Hofschneider to take lead on development of Commission logo.

Adjournment

Chairwoman made a motion to adjourn the meeting; Secretary seconded it. All members voted to adjourn. Meeting was adjourned at 1:08 p.m. by Chairwoman N. Deleon Guerrero.