

# Addressing Unlicensed Marijuana Cultivations & Unlawful Transfer

CPC CA 18-00033; 18-00033; 18-0163

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# Package of ordinance language

Addressing public safety & grey and black market activity

## Unlicensed cultivations - zoning

Proposing language to clarify existing zoning ordinance, making unlicensed grows in non-residential zones explicitly illegal

## Unlicensed cultivations - criminal

Proposing language to the criminal code that complements the zoning code language prohibiting marijuana cultivation unless in compliance with zoning regulations

## Unlawful transfer language

Proposing language to broadly address the scope of criminal code language regarding the unlawful transfer of marijuana to fully encompass all prohibited activity

# Unlicensed Cultivations in COS

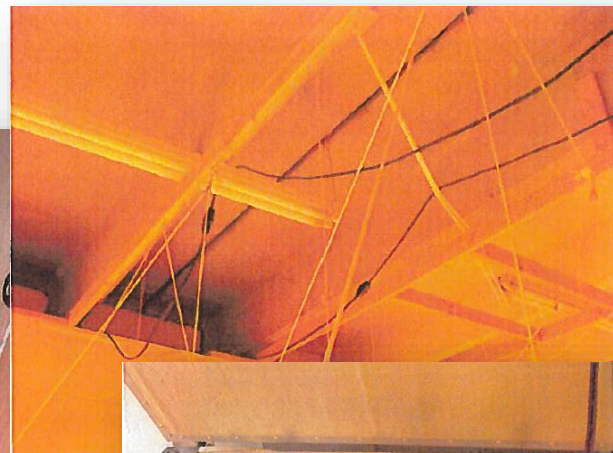
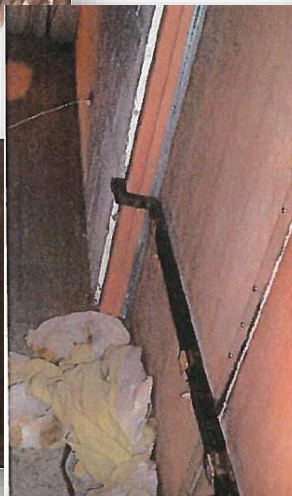
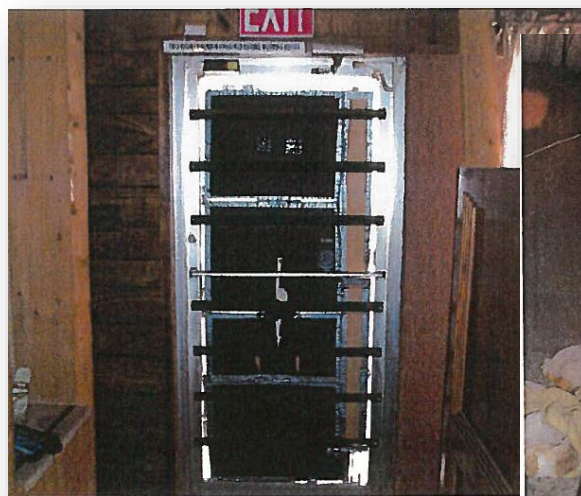
Addressing public safety & grey and black market activity

Began seeing in  
2017 & continue  
to find them

Estimate at least  
30 in COS

Occur in small &  
large commercial  
spaces

Plant counts  
vary from  
tens to  
hundreds



# Unlicensed Cultivations in COS

Addressing grey and black market activity – cont'd

## Public Safety

- First responder and neighboring structure safety impacted by hazards and obstacles including blocked & barred exits; overloaded circuits; improperly stored, unpermitted hazardous materials
- Quantities grown exceed cultivation amounts determined by local law, undermining efforts to prevent black market diversion

## Public Health

- Unlicensed cultivations do not adhere to same testing standards as licensed, regulated industry
- Pesticides, mold, insects (e.g. spider mites) may infect the product, negatively impacting the health of those using the product

## Public Interest

- Unlicensed cultivations create an uneven playing field for those dispensaries working to operate within the confines of the law
- Grows can also damage and devalue commercial and other non-residential property spaces

# Current City Zoning Code

Clarifying language as tool for addressing grows



Unlicensed cultivations in non-residential zones are already considered illegal under current City Zoning Code, Section 7.2.108 - prohibiting land uses that are not specifically permitted or allowed under a similar use determination



Explicitly addressing the unlicensed cultivation of marijuana in non-residential zones equips Colorado Springs Police, Fire and Planning Departments with an additional and *specific* tool with which to enforce zoning code

Additionally, having supporting criminal code will strengthen efforts to address illegally grown marijuana

# Other Jurisdictions Regulating Grows

Several other jurisdictions do not allow unlicensed cultivation in non-residential zones, including:

Centennial

Lone Tree

Douglas County

Cripple Creek

Greeley

Longmont

Commerce City

Monument

Golden

Brighton

Greenwood Village



# Proposed Language – Zoning

City Code Section 7.3.205L

Modifies Section 7.3.205L (Additional Standards for Specific Land Uses) by revising subsection 3 with the following language that makes it explicitly illegal:

***To grow, cultivate, or process marijuana or medical marijuana unless in conformance with the requirements contained in subsections 7.2.302(C)(22), 7.3.105(P), and 7.3.205(M).***

Current section 3 will become section 4, etc.



# Proposed Language – Cont'd

## City Code Sections – 7.2.302(C)(22) – Defining facility in commercial zone

**MEDICAL MARIJUANA FACILITY (MMJ Facility):** An establishment **licensed by the City of Colorado Springs and the State of Colorado** for the growth, cultivation, acquisition, manufacture, storage, dispensing or sale of medical marijuana or medical marijuana infused products. The following are considered medical marijuana facility use types:

a. **Medical Marijuana Center (MMC):** An establishment for the storage, dispensing and/or sale of medical marijuana or medical marijuana infused products.

b. **Medical Marijuana Infused Products Manufacturer (MMIPM):** An establishment for the manufacture and storage of medical marijuana infused products. MMIPMs shall be classified by the Manager, in consultation with the City Fire Marshal, in accord with the following land use types:

(1) **Medical Marijuana Infused Products Manufacturer - Nonhazardous (MMIPM - NH):** Any MMIPM location that does not exceed reasonable fire and life safety risks, or does not otherwise meet the definition of a MMIPM - HZ. Examples of MMIPM - NH land use classifications may include, but are not limited to, the use of super/subcritical CO<sub>2</sub> extraction processes, cooking or baking facilities.

(2) **Medical Marijuana Infused Products Manufacturer - Hazardous (MMIPM - HZ):** Any MMIPM location that presents fire and life safety risks by utilizing oil extraction processes through the use of pressurized flammable gas, flammable or combustible liquids, and other processes. Examples of MMIPM - HZ land use classifications may include, but are not limited to, the use of butane, propane, acetone, naphtha, alcohol, etc., during the manufacturing process.

c. **Optional Premises Cultivation Operation (OPCO):** An establishment for the growth, cultivation, and storage of medical marijuana.

\*Bold added for emphasis



# Proposed Language – Cont'd

## City Code Section – 7.3.105(P) – Personal, residential cultivation

Personal Cultivation Of Marijuana And Medical Marijuana: Pursuant to Colorado Constitution article XVIII, sections 14 and 16, patients, caregivers, and persons over twenty one (21) years of age may lawfully grow a limited amount of marijuana. No more than twelve (12) medical marijuana plants, marijuana plants for personal use, or any combination thereof, with one-half ( $\frac{1}{2}$ ) or fewer being mature, flowering plants can be grown in a single residential unit or an accessory structure to a single residential unit, regardless of the number of patients, caregivers, or persons over twenty one (21) years of age, or any combination thereof, that reside in the residential unit. These activities are allowed as accessory uses in all residential zone districts or residential units so long as:

1. No marijuana is dispensed, except to registered patients pursuant to Colorado Constitution article XVIII, section 14;
2. No marijuana or medical marijuana infused products are manufactured or sold;
3. No marijuana or medical marijuana is cultivated outdoors;
4. No signs regarding medical marijuana are displayed;
5. No more than one caregiver cultivating medical marijuana resides in the dwelling unit;
6. A ventilation and filtration system ensures odors from the cultivation activities are not detectable by a person with a typical sense of smell from any adjoining lot, parcel, tract, public right of way, building unit or residential unit;
7. Marijuana and medical marijuana plants are grown in an enclosed and locked space;
8. All personal cultivation of marijuana and medical marijuana shall be limited to an area of one hundred fifty (150) square feet for a single-family dwelling detached or seventy five (75) square feet for all other dwelling unit types and accessory structures;
9. The person growing, cultivating, or processing marijuana or medical marijuana within a residential or accessory structure owned by another person or entity obtains the written consent of the property owner. The written consent of the property owner must be furnished to any requesting City official. If the person growing, cultivating, or processing marijuana or medical marijuana does not provide the City official with the written consent of the property owner, the City may inform the property owner of the marijuana or medical marijuana related activities occurring on the property; and
10. The residential unit or accessory structure shall be and remain at all times in compliance with all applicable City regulations including, but not limited to, Zoning, Building, Housing and Fire Codes. (Ord. 94-107; Ord. 01-42; Ord. 02-98; Ord. 02-125; Ord. 02-153; Ord. 03-74; Ord. 03-127; Ord. 03-157; Ord. 06-161; Ord. 09-70; Ord. 09-80; Ord. 10-42; Ord. 10-107; Ord. 11-19; Ord. 12-76; Ord. 14-8; Ord. 16-52)



# Proposed Language – Cont'd

## City Code Sections – 7.3.205(M) – Standards for MMJ operations

Medical Marijuana Facility (MMJ Facility): A medical marijuana facility shall be subject to the following additional standards:

1. The MMJ facility is prohibited within a residential zone district or dwelling unit, to the extent the facility is not subject to an exception pursuant to subsection [7.3.105P](#) of this article.
2. The MMJ facility must hold valid local and State medical marijuana business licenses and local and State sales tax licenses, as applicable.
3. On premises use, consumption, ingestion, or inhalation within an MMJ facility is prohibited.
4. The MMJ facility shall install, maintain and operate an adequate ventilation and filtration system that ensures odors are not detectable by a person with a typical sense of smell from any adjoining lot, parcel, tract, public right of way, building unit or residential unit.
5. A medical marijuana center (MMC) shall be located no less than one thousand feet (1,000') from any public or private elementary, middle, junior high or high school, or a residential childcare facility or a drug or alcohol treatment facility. This minimum distance shall be measured from the nearest portion of the building used for the medical marijuana center to the nearest property line of the school, residential childcare facility or drug or alcohol treatment facility using a route of direct pedestrian access.
6. City Council specifically finds and determines that it is in the best interests of the public health, safety and welfare to forego zoning enforcement action against those MMJ facilities located within the office residential (OR) or office complex (OC) zone districts that: a) otherwise complied with the City's application procedure found in chapter 2, article 2, part 1 of this Code, and b) are subsequently granted State and local medical marijuana business licenses. So long as these qualified MMJ facilities obtain and maintain State and local medical marijuana business licenses at the locations identified in the application, the City will forego any adverse zoning enforcement action related to that MMJ facility use in the OR or OC zone.

This zoning enforcement forbearance only applies to the identified and qualified MMJ facilities owned or operated by the person or entity identified in the preapplication and shall not run with the land. Should these identified MMJ facilities cease operations for any period of time in the facilities' current OR or OC zone, the City shall enforce zoning restrictions against the reestablishment of, or any expansion of any existing MMJ facility, or any proposed new MMJ facility seeking to locate in any OR or OC zone. No MMJ facility located in an OR or OC zone district shall be declared a legal nonconforming use or be granted any "grandfathered" land use rights.

# Proposed Language

## City Code Section 9.7.211

A. It is unlawful for a person to knowingly cultivate, grow, or produce a marijuana plant or knowingly allow a marijuana plant to be cultivated, grown, or produced on land that the person owns, occupies, or controls.

B. Regardless of whether the marijuana plant(s) are for medical or recreational use, it is unlawful for a person to knowingly cultivate, grow, or produce more than twelve (12) marijuana plants, with one-half (1/2) or fewer being mature, flowering plants, on or in a residential property; or to knowingly allow more than (12) marijuana plants, with one-half (1/2) or fewer being mature, flowering plants to be cultivated, grown, or produced on or in a residential unit.

C. It shall be an affirmative defense to a violation of this section:

1. That the person is lawfully cultivating medical marijuana pursuant to a license issued the City of Colorado Springs and State Colorado;
2. That the person is lawfully cultivating marijuana and/or medical marijuana in compliance with the Zoning Code.

D. A defendant raising an affirmative defense pursuant to subsection C shall provide written notice to the Court and prosecuting attorney not less than fourteen (14) days prior to trial.

BE. \*\*\*

GF. \*\*\*

**This language tracks the language in Colorado Revised Statutes 18-18-406, aligning the City's ordinance with state law in this area.**

# Unlawful Transfer of Marijuana

Broadening language regarding transfer of marijuana in criminal code

## Current Language

Current Section 9.7.212 Unlawful Transfer of Marijuana only prohibits transfers of marijuana without remuneration, weakening law enforcement efforts to capture illegal activity.

## Opportunity

Proposed language will better align local language with state language. The result will be a stronger platform for capturing and prosecuting illegal activity.

# Proposed Language – Criminal Code

## City Code Section 9.7.212 Unlawful Transfer of Marijuana

Modifies Section 9.7.212B (Unlawful Transfer of Marijuana) by revising section B with the following language that makes it explicitly illegal:

***B. Except as authorized by Part 1 of Article 2 of Chapter 2, it is unlawful for a person to knowingly dispense, sell, distribute, or possess with intent to manufacture, dispense, sell, or distribute not more than four ounces of marijuana or more than two ounces of marijuana concentrate; or attempt, induce, attempt to induce, or conspire with one or more other persons, to dispense, sell, distribute, or possess with intent to manufacture, dispense, sell, or distribute not more than four ounces of marijuana or not more than two ounces of marijuana concentrate***

BC. \* \* \*

GD. \* \* \*



# Questions?