

# Medical Marijuana Task Force Proposed Ordinances

April 11, 2016  
City Council Work Session  
Councilmember Larry Bagley, Chair  
Peter Wysocki, Director of Planning and  
Community Development  
Commander Sean Mandel, CSPD  
Sarah B. Johnson, City Clerk



# Background



- Late 2015, Council received numerous constituent complaints and reports of possible illegal activities, and City staff reports of public safety concerns
- Since 2000, marijuana industry has evolved, and existing City ordinances have not kept pace
- City Council adopted Ordinance 15-79, 6-month moratorium, effective November 23, 2015
  - Medical Marijuana Task Force appointments confirmed November 24, 2015
  - Moratorium ends May 25, 2016
- Task Force briefed Council on its recommendations at the March 21, 2016 Council work session

# Residential Cultivation Plant Limitations



Currently 36 plants permitted in Zoning Code

## Task Force Recommendation

- 12 plants total
- 150 sq. ft. growing area per dwelling or SFR (single family residential) lot
- Growing in enclosed, locked space
- Odor mitigation required
- City may inform landlord that grow activities occurring
- Criminal penalty under the City Code for MMJ grows over 12 plants in a residence
- Excessive growth results in significant destruction to homes, neighborhoods and property values

## Residential Marijuana Grows: *The New Meth Houses?*

There are aspects of Colorado's marijuana laws about which every homeowner should be aware. Unlike laws in other states that have legalized marijuana possession and use, Colorado's state laws do not restrict or limit how much marijuana can be grown in a private residence. This has led to a proliferation of large-scale marijuana grow operations in hundreds of homes throughout the state. These grow operations usually cause extensive damage to the houses they're in.

### **Let's Do the Math...**

There are 8,200 medical marijuana patients in Colorado with physician recommendations to grow 50-99 plants. If each patient grew only 50 plants, that's 410,000 marijuana plants. From each plant, they'd likely harvest one pound per plant every 90 days. That's 1,640,000 pounds of harvested marijuana per year. One ounce of marijuana equals roughly 60 joints. A pound of marijuana equals roughly 960 joints.

In 2000, Amendment 20 legalized medical marijuana for patients with certain health conditions. As of January 2016, there are 107,798 registered medical marijuana patients in the state, according to the Colorado Department of Public Health and Environment (CDPHE). More than 90 percent cite muscle spasms or severe pain as the condition that qualifies them for medical marijuana. Medical marijuana patients can purchase marijuana at state-licensed dispensaries, obtain it from private caregivers who grow their plants for them, or they can grow it themselves. Amendment 20 limited each medical marijuana patient to six plants – unless a physician recommends more.

According to CDPHE, of the 107,798 registered medical marijuana patients, roughly 8 percent – or more than 8,200 patients – have physician recommendations for 50 to 99 marijuana plants. Nothing in the state's laws prohibit them from growing those plants in a private residence. Legislation passed last year will limit private caregivers and medical marijuana patients to growing 99 plants on their own, effective January 2017 (SB 15-0014). Similarly, in 2012, Amendment 64 made it legal for any Colorado resident to grow up to six plants. Again, nothing in state law prohibits growing those plants in a private residence.

Furthermore, if a number of adults live in the same residence, they can justify growing up to six plants each. If a resident

grows plants for others, such as family members or friends, he can justify having numerous plants as well. There is no mechanism at the state level to document or regulate home grows, even large ones.

Some local municipalities have passed ordinances limiting the number of plants that can be grown in private residences. The plant count limits vary widely and are often difficult for local authorities to effectively enforce.

Indoor marijuana plants can grow to heights of six feet or more and yield more than a pound of harvested marijuana every 90 days. Growing them requires specific conditions that require high levels of power and water consumption, as well as drainage of chemical-laden waste water. Grow rooms must be maintained at temperatures between 71 and 80 degrees Fahrenheit. At certain times during the growing cycle, plants must remain under high-power grow lights 24 hours per day.

Fertilizers and pesticides – sometimes harsh ones – are required to grow robust and healthy plants. At certain times in the growing cycle, each plant can require up to three or more gallons of water per day.

Local police departments often receive calls from neighbors about marijuana grow houses. Common complaints include strong odors, excessive noise from industrial air conditioning units, blown transformers, and heavy vehicle traffic.

Marijuana grows cause extensive damage to the homes they're in. Moisture, condensation, and molds spread throughout the residence. Often, growers cut holes in floors and exterior walls in order to run ventilation tubes. Growers often tamper with electrical systems in order to supply multiple high-powered grow lights and industrial air conditioning units. Many times, these alterations are done by tenant growers with little regard for fire risk or the home's structural integrity. This is an increasing concern for first responders. Altered electrical systems with loose and entangled wires, flammable fertilizers and chemicals, explosives such as propane and butane, or holes cut into sub-floors for venting all pose clear hazards to firefighters or police responding to the residence in an emergency situation.

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**Signs of a grow house:**

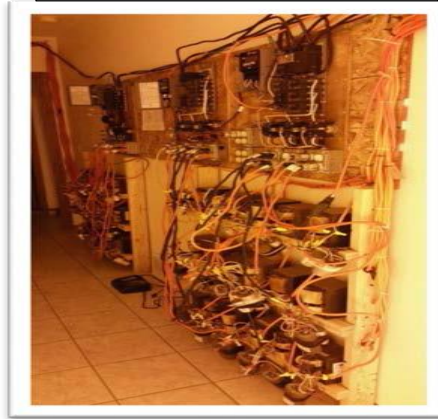
- Strong odor
  - Blocked windows
  - Mold and condensation on exterior
  - Extra AC units
  - Venting tubes and/or holes cut through exterior
- 

While growing large numbers of marijuana plants within residential grows can fall within the parameters of state law, it presents significant potential risk to the occupants, first responders, homeowners, and neighbors. Unfortunately, just like the meth houses of the 1990s, many of these homes will be rendered uninhabitable.

100 pounds of processed marijuana In a Colorado grow house



Altered electrical system In a Colorado home grow



Marijuana grow house in Larkspur



Venting cut into floor of a Colorado grow house



Basement grow in Colorado residence



Mold damage in marijuana grow house

# Zoning – Medical Marijuana Centers (Dispensaries)



## Current

Permitted use by right in:

PBC, C5, C6, PIP1, PIP2, M1, M2, FBZ

## Task Force Recommendation

No change

# Zoning - Medical Marijuana Optional Premises Cultivation

("Commercial" Grow Operations, more than 12 plants)



## Current

Permitted use by right in:

PBC, C5, C6, PIP1, PIP2, M1, M2, FBZ

## Task Force Recommendation

Permitted use by right in:

M1 and M2

Conditionally permitted in:

PBC, C5, C6, PIP1, PIP2, FBZ



# Zoning - Medical Marijuana Optional Premises Cultivation

("Commercial" Grow Operations, more than 12 plants)



## Staff's Initial Recommendation to Task Force

Permitted only in M1 and M2 as use by right

Similar use to "crop production", not "commercial greenhouse"

# Zoning - Medical Marijuana Optional Premises Cultivation

(“Commercial” Grow Operations, more than 12 plants)



## City Code Definitions:

**CROP PRODUCTION:** The raising and harvesting of tree crops, row crops, or field crops on an agricultural or commercial basis...

**COMMERCIAL GREENHOUSE:** The growing of horticultural and floricultural specialties, such as flowers, shrubs, or trees intended for ornamental or landscaping purposes. This definition may include accessory retail sales under certain conditions. Typical uses include wholesale plant nurseries and greenhouses for plants grown on site.

# Zoning – Medical Marijuana Infused Product Manufacturer



## Current

Permitted use by right in:

PBC, C5, C6, PIP1, PIP2, M1, M2, FBZ

## Task Force Recommendation

Establish two definitions:

- (1) Hazardous
- (2) Non-hazardous

# Zoning – Medical Marijuana Infused Product Manufacturing



## Task Force Recommendation

### Hazardous

Permitted use by right in M1 and M2

### Non-hazardous

Permitted use by right in:

M1 and M2

Conditionally permitted in:

PBC, C5, C6, PIP1, PIP2, FBZ

# Zoning – Medical Marijuana Infused Product Manufacturing



Non-Hazardous : Any MMIPM location that does not exceed reasonable fire and life safety risks, or does not otherwise meet the definition ... Examples of MMIPM – NH land use classifications may include but are not limited to the use of super/subcritical CO2 extraction processes, cooking or baking facilities.

Hazardous: 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 ...the use of Butane, Propane, Acetone, Naptha, Alcohol, etc., during the manufacturing process.

# Zoning – Medical Marijuana Infused Product Manufacturing



## Staff's Initial Recommendation to Task Force

Permitted only in M1 and M2

Consistent with the purpose and intent of industrial districts

Similar to “general industrial” definition

Not a bakery, which is defined as a “restaurant”

Potential life/safety impacts in commercial districts

# Zoning – Separation Requirements



## Current

400 feet from public or private elementary, middle or high school, residential childcare facility, or drug or alcohol treatment facility

## Task Force Recommendation

1,000 feet

## Other Considerations (staff recommendation)

1,000 feet from residentially used or zoned properties

1,000 feet from detention facilities

# Zoning – Other Requirements



- Mirror the licensing requirements
- Air ventilation and odor mitigation
- New buildings, exterior modifications, building expansion will require development plan review regardless if conditional use



# Zoning Considerations for Grow Operations & MMIPS



- Best fit the purpose and intent of M1 and M2 zoning districts
  - Compatibility with adjoining land uses
  - Excessive odor, smoke, hazards and other objectionable influences
- Not consistent with the purpose of FBZ, PBC, C5 and C6 zoning districts, which are intended for:
  - Retail and mixed use commercial uses supportive of residential uses or nearby neighborhoods
  - Regional commercial centers
  - Customer and neighborhood interaction
  - Active, interactive and engaging

# Zoning Considerations for Grow Operations & MMIPS



- Create uninviting, sterile and “vacant” appearance
- Negative perception may discourage neighborhood service businesses from locating in shopping centers
- Impacts on redevelopment and neighborhood vitality
- Impacts to identified Economic Opportunity Zones
- Negative perception by primary employers/high tech/corporate office uses
- More challenging business recruitment and retention

# Zoning Considerations for Grow Operations & MMIPS



- MMJ operations reinvest in shopping centers that otherwise would remain vacant
- Generate little traffic and noise
- Over-concentration if limited to too few zoning districts
- Relatively inconspicuous operations

# Conditional Use Process



- Submittal of application with city planning
- Optional neighborhood meeting(s)
- Direct notification to property owners (500 or 1,000 feet)
- Planning Commission public hearing and final action
- Planning Commission can place conditions it deems necessary to mitigate impacts
- Planning Commission action appealable to City Council

# Legal Non-Conforming Uses



- Can continue to operate
- Can perform regular maintenance/repairs
- Expansion of the use within the building cannot exceed 50% of the non-conforming use
- Building cannot be enlarged or structurally altered
- If use is discontinued for more than a year, it cannot be re-instated
- If damaged, it can be repaired if the cost of the repairs is less than 50% of the replacement cost
- Uses that require conditional use shall be presumed to have the conditional use approval

# Medical Marijuana Business Licensing

April 11, 2016

Sarah B. Johnson



# MMJ Business License Summary



- Dual Jurisdictional Licensing Program
  - State: Colorado Department of Revenue – Marijuana Enforcement Division (MED) (C.R.S. § 12-43.4, and 1 C.C.R. 212-1)
  - Local: City of Colorado Springs (City Code § 2.3, Part 1, City Code § 2.1, and MMJ Rules)
- Licensed MMJ businesses may cultivate, manufacture, and sell Medical Marijuana (for patient use only)
  - Medical Marijuana Center (MMC)
  - Medical Marijuana Optional Premises Cultivation (OPC)
  - Medical Marijuana Infused Product Manufacturer (MIP)
- 135 MMCs in COS (26% of the 517 MMCs in Colorado)
- Does NOT include MMJ Caregiver activities or personal use

# City MMJ Licensing Code



- City Code and Rules are supplementary to State Statute and MED Regulations
  - MED Goals :
    - Keeping MJ out of hands of person under 21 years of age
    - Preventing involvement of criminal element or enterprises
    - Preventing diversion to other states from regulated environment/businesses
- In concert with MMJ Statute and Rules, City MMJ Code and Rules are, in part, an effort to provide guidelines for “clear and unambiguous compliance” in this highly regulated business model



# Proposed City MMJ Code Changes



Only two basic changes of MMJ Code at this time:

- 2.2.108 (A) and (C)(1): Streamlining resolution of uncontested violations (again, in the effort to achieve compliance)
- 2.2.109 (A): Additions to codify existing interpretations and policies of State MMJ Code and Rules, and adds clarification for certain unlawful acts.

# Proposed City MMJ Code Changes



- Unlawful Acts additions to 2.2.109(A):
  - Specifies that violations of State MMJ Code and Rules are also unlawful acts of City MMJ Code and Rules (A and #1).
  - Clarifies existing requirement for disclosure of new investments or managers, or any State MED actions (#7, #8, #23).
  - Prepares MMJ code for potential future limitations on advertising practices, including consistency with medicinal use of MMJ (#9, #10).
  - Specifies allowed hours of operation (#13, #14).
  - Specifies disclosure for hazardous v. non-hazardous MIP processes (in concert with zoning and fire code), and that changes require prior approval (#15, #16).
  - Specifies what an MMC can or cannot sell – only MMJ and non-consumable cannabis related products (#17, #18).
  - Clarifies existing requirement for the patient to be in the licensed premises (no drive-up windows) and that MMJ cannot be visible to the public (#19, #20).
  - Clarifies that that there can be no outdoor grows, and odor violations are subject to disciplinary action against the licensee, in concert with zoning code changes. (#21).
  - Clarifies existing requirement for compliance with building and fire code.

# Proposed City MMJ Code Changes



## Steps after approval of MMJ Code Changes:

- Subsequent administrative MMJ rule making process through the City Clerk's Office, with applicable stakeholder input, will detail the process and reporting of code changes and additions.
- New/updated application forms and packets based on code changes and disclosure requirements to be available by effective date of ordinance.
- Future and ongoing discussions on MMJ advertising practices and MMJ fee structure analysis may result in additional recommended action by City Council.



Questions?