

Marijuana Plant Count Operations Primer

City of Colorado Springs

MMJ (business, caregiver, residential) and RMJ (personal and Recreational). In all listed cases, “6 plants” means no more than 3 of the 6 plants (or half) can be flowering plants at any time. In all listed cases, outdoor cultivation is also prohibited (plants must be in an enclosed and secured/locked space, and not visible to the public).^{1,2}

Plant Count Quick Reference Chart:

Cultivation Operation Type	Maximum Plant Count
RMJ – Personal (residential zone)	6 plants per person over 21 year old; max of 5 unrelated individuals per dwelling unit ^{2,3}
RMJ – Personal (non-residential)	Not currently regulated (co-ops)
RMJ – Retail sales/cultivation (Retail Marijuana Establishment)	Prohibited/banned in City Limits ⁴
RMJ – Marijuana Consumption Clubs (MCC)	Although similar use interpretation as “social clubs,” an MCC is not currently regulated (draft regulations pending), however strict interpretation of A64 appears to prohibit cultivation, production, and sales with this activity. ⁵
MMJ Caregiver (residential)	36, no more than one caregiver per residential unit. ⁶
MMJ Caregiver (non-residential)	Not currently limited, based on authorized patient count; 99 maximum combined total effective 1/1/2017 ⁷
Licensed MMJ Business: OPC-MMC	Not limited, based on authorized patient count, tiered licensing levels at MED. ⁸
Licensed MMJ Business: OPC-MIP	500 plant maximum, unless authorized waiver from MED ⁹

MEDICAL MARIJUANA (MMJ)

Amendment 20, passed in November, 2000, authorizes *Medical* Marijuana cultivation and sales. The Colorado Department of Public Health and Environment (CDPHE) issues patient registry identification cards (aka “Red Cards”) to individuals who have a physician recommendation for treatment and use of Medical Marijuana for certain chronic or debilitating diseases or conditions. Generally, a patient is allowed to grow and possess up to 6 plants and up to 2 ounces of refined MMJ product, however a physician may recommend a higher (extended) plant and ounce count that may be deemed required to treat the patient’s debilitating condition.

Essentially, this and the resulting enabling statutes and regulations (local and state codes) divides authorized activities into the Medical Marijuana Business Licensing model and the Primary-Caregiver (“Caregiver”) model. These models are mutually exclusive (one cannot operate as both).¹⁰ The patient may cultivate their own plants or designate either a licensed MMJ Center (dispensary) or Caregiver to cultivate plants. A “Red Card” holder may purchase MMJ product from any licensed MMJ Center.

Medical Marijuana Business operations is a dual jurisdictional licensing program with both State (Colorado Department of Revenue – Marijuana Enforcement Division: MED) and Local (City of Colorado Springs) regulatory authority. This allows licensed individuals/companies to cultivate (OPC license), manufacture (MIP license), and sell (MMC license) Medical Marijuana products to patients validly registered with the CDPHE or to the patient’s caregiver. An MMJ licensee may only cultivate 6 plants per patient registered to the Center, or the maximum extended plant count per individual patient as recommended by a physician. City of Colorado Springs zoning code includes a requirement that odors are not detectable beyond an MMJ facility. Medical Marijuana Infused Product Manufacturers (MIP) who also have a cultivation license to provide product to the MIP, are limited to 500 plant maximum, unless the State MED has granted a waiver based on specified criteria.

Caregiver Medical Marijuana operations are under the regulatory authority of the Colorado Department of Health and Public Environment (CDPHE). A “Primary Care-giver” means a person, other than the patient and the patient’s physician, who is eighteen years of age or older and has significant responsibility for managing the well-being of a patient who has a debilitating medical condition.¹¹ Currently, Caregivers are not required to register with the MED, however the recent passage of Senate Bill 15-014 requires registration with the MED and other restrictions, such as plant count maximum, but is not effective until 1/1/2017. A Caregiver may only have a maximum of 5 patients, and may only cultivate 6 plants per patient registered to the Caregiver or, as with the MMJ licensee, the maximum extended plant count per individual patient as recommended by a physician (beginning 1/1/2017, up to a maximum combined total of 99 plants for all 5 allowed patients). City of Colorado Springs zoning code includes a requirement that if the Caregiver operates in a residential zone, the Caregiver may only cultivate a maximum of 6 plants per patient for no more than 5 patients, plus 6 if the Caregiver is also a patient, and only one Caregiver per dwelling unit is permitted. Therefore, if the Caregiver cultivates more than 36 plants, they are interpreted to be a similar use to licensed MMJ facilities and must be in appropriately zoned parcels and comply with the odor mitigation requirement.

RECREATIONAL/RETAIL MARIJUANA (RMJ)

Amendment 64, passed in November, 2012, authorizes Recreational/Retail Marijuana cultivation and sales. Amendment 64 and the resulting enabling Statutes and Regulations essentially separate activities into three categories of (1) Retail sales, cultivation, product manufacturing, and/or marijuana testing, (2) Personal recreational possession and use, and (3) Industrial Hemp activities. The City Council has banned all Retail Marijuana Establishments/businesses in the city limits, however the personal recreational use provisions are legal/authorized.

INDUSTRIAL HEMP

Amendment 64, passed in November, 2012, also authorizes certain defined hemp cultivation and processing activities. Hemp (less than 0.3% THC content) is **NOT** classified as marijuana, is separately regulated only by the Colorado Department of Agriculture, and the above restrictions do not apply. Local zoning limits Hemp cultivation to agricultural zones, however there currently is neither prohibition on outdoor cultivation nor prohibition on odors being detectable beyond the facility. Hemp cultivators cannot represent that hemp, hemp oil, or any derivative of a hemp plant constitutes retail marijuana or medical marijuana.¹²

1. Colo. Const. Art. 18, § 14: (4)(a)(II) No more than six marijuana plants, with three or fewer being mature, flowering plants that are producing a usable form of marijuana.
2. Colo. Const. Art. 18, § 16: (3)(b) Possessing, growing, processing, or transporting no more than six marijuana plants, with three or fewer being mature, flowering plants, and possession of the marijuana produced by the plants on the premises where the plants were grown, provided that the growing takes place in an enclosed, locked space, is not conducted openly or publicly, and is not made available for sale.
3. City Code § 7.2.201: FAMILY: As used in this Zoning Code, an individual, two (2) or more persons related by blood, marriage, adoption, or similar legal relationship, or a group of not more than five (5) persons who need not be so related, plus domestic staff employed for services on the premises, living together as a single housekeeping unit in one dwelling unit. The definition of "family" shall apply regardless of whether any member of such group receives outside services for mental, emotional, or physical disability.
4. City Code § 2.3.109: Unlawful Acts: (D) It shall be unlawful for any person to operate a retail marijuana establishment within the City of Colorado Springs.
5. Colo. Const. Art. 18, § 16: (3)(c) [shall not be an offense to] Transfer of one ounce or less of marijuana without remuneration to a person who is twenty-one years of age or older [emphasis added].

C.R.S. § 18-18-102(31) "Remuneration" means anything of value, including money, real property, tangible and intangible personal property, contract rights, choses in action, services, and any rights of use or employment or promises or agreements connected therewith.

Colo. Const. Art. 18, § 16: (4)[Lawful Operation]

(b) Possessing, displaying, or transporting marijuana or marijuana products; purchase of marijuana from a marijuana cultivation facility; purchase of marijuana or marijuana products from a marijuana product manufacturing facility; or sale of marijuana or marijuana products to consumers, if the person conducting the activities described in this paragraph has obtained a current, valid license to operate a retail marijuana store or is acting in his or her capacity as an owner, employee or agent of a licensed retail marijuana store [emphasis added].

(c) Cultivating, harvesting, processing, packaging, transporting, displaying, or possessing marijuana; delivery or transfer of marijuana to a marijuana testing facility; selling marijuana to a marijuana cultivation facility, a marijuana product manufacturing facility, or a retail marijuana store; or the purchase of marijuana from a marijuana cultivation facility, if the person conducting the activities described in this paragraph has obtained a current, valid license to operate a marijuana cultivation facility or is acting in his or her capacity as an owner, employee, or agent of a licensed marijuana cultivation facility [emphasis added].

On May 28, 2014, Peter Wysocki, Planning Director, clarifies that marijuana/cannabis consumption clubs are interpreted as a similar use to "membership clubs." Council directed Planning Staff to craft an ordinance to regulate marijuana/cannabis consumption facilities.

6. City Code § 7.3.105 (P) Medical Marijuana Exception - Patient Or Primary Caregiver: A patient who is in possession of a Colorado State issued registry identification card may grow a maximum of six (6) plants and possess medical marijuana for their medical use only in accord with Colorado Constitution article XVIII, section 14. A person designated as the primary caregiver for no more than five (5) patients may grow and possess a maximum of six (6) medical marijuana plants per patient for their patients' medical use in accord with Colorado Constitution article XVIII, section 14. These activities are allowed as accessory uses in all residential zone districts or residential units so long as:

1. No medical marijuana is dispensed, except to registered patients;
 2. No medical marijuana infused products are manufactured or sold;
 3. No medical marijuana is cultivated outdoors;
 4. No signs regarding medical marijuana are displayed; and
 5. No more than one caregiver per dwelling unit is permitted.
7. C.R.S. § 25-1.5-106 (8.6)(b) A primary caregiver shall not cultivate more than ninety-nine plants. Only a medical marijuana business licensed and properly authorized pursuant to article 43.3 of title 12, C.R.S., may cultivate more than ninety-nine plants. The primary caregiver is not allowed to grow additional plants until he or she is licensed by the state licensing authority (effective 01/01/2017).
 8. C.R.S. § 12-43.3-901 [Unlawful Acts] (4)(e) To possess more than six medical marijuana plants and two ounces of medical marijuana for each patient who has registered the center as his or her primary center pursuant to section 25-1.5-106(8)(f), C.R.S.; except that a medical marijuana center may have an amount that exceeds the six-plant and two-ounce product per patient limit if the center sells to patients that are authorized to have more than six plants and two ounces of product. In the case of a patient authorized to exceed the six-plant and two-ounce limit, the center shall obtain documentation from the patient's physician that the patient needs more than six plants and two ounces of product.
 9. C.R.S. § 12-43.3-404 (9)(a) A medical marijuana-infused products licensee may not have more than five hundred medical marijuana plants on its premises or at its optional premises cultivation operation; except that the director of the division that regulates medical marijuana may grant a waiver in excess of five hundred marijuana plants based on the consideration of the factors in paragraph (b) of this subsection (9).
 10. C.R.S. § 12-43.3-104 (8) "Medical marijuana center" means a person licensed pursuant to this article to operate a business as described in section 12-43.3-402 that sells medical marijuana to registered patients or primary caregivers as defined in section 14 of article XVIII of the state constitution, but is not a primary caregiver.

C.R.S. § 25-1.5-106 (e) (I) (A) In order to be a primary caregiver who cultivates medical marijuana for his or her patients or transports medical marijuana for his or her patients, he or she shall also register the location of his or her cultivation operation with the state medical marijuana licensing authority, and provide the registration identification number of each patient to the state licensing authority. A person may not register as a primary caregiver if he or she is licensed as a medical marijuana business as described in Part 4 of Article 43.3 of Title 12, C.R.S., or a retail marijuana business as described in Part 4 of Article 43.4 of Title 12, C.R.S. An employee, contractor, or other support staff employed by a licensed entity pursuant to Article 43.3 or 43.4 of Title 12, C.R.S., or working in or having access to a restricted area of a licensed premises pursuant to Article 43.3 or 43.4 of Title 12, C.R.S., may be a primary caregiver.

11. C.R.S. § 25-1.5-106 (2) (d.5) "Primary Caregiver" means a natural person, other than the patient or the patient's physician, who is eighteen years of age or older and has significant responsibility for managing the well-being of a patient who has a debilitating medical condition. A primary caregiver may have one or more of the following relationships...

C.R.S. § 25-1.5-106 (2)(e.5) "Significant responsibility for managing the well-being of a patient" means that the caregiver is involved in basic or instrumental activities of daily living. Cultivating or transporting marijuana and the act of advising a patient on which medical marijuana products to use and how to dose them constitutes a "significant responsibility".

12. C.R.S. § 6-1-105. Deceptive trade practices. (1) A person engages in a deceptive trade practice when, in the course of the person's business, vocation, or occupation, the person: (hhh) knowingly represents that hemp, hemp oil, or any derivative of a hemp plant constitutes retail marijuana or medical marijuana unless it fully satisfies the definition of such products pursuant to section 12-43.4-103 (15), C.R.S., or section 12-43.3-104 (7), C.R.S.