

Medical Marijuana Task Force Report

March 21, 2016

City Council Work Session

Councilmember Larry Bagley, Chair

Sarah B. Johnson, City Clerk

Peter Wysocki, Director of Planning and
Community Development



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 Membership



- Appointed by President, confirmed by City Council
 - Voting members:
 - Councilmember Larry Bagley
 - Jan Doran, CONO
 - Lynette Crow-Iverson, Colorado Springs Forward
 - John Harding, neighborhood representative
 - Dale Hecht, Green Pharm/Elevated Extractions
 - Charles Houghton, attorney
 - Tom Scudder, A Wellness Centers
 - Staff (non-voting):
 - City Clerk Sarah Johnson
 - Commander Sean Mandel, CSPD
 - City Attorney Wynetta Massey
 - Peter Wysocki, Planning & Development Director
 - Deputy Chief of Staff Bret Waters
 - Fire Marshal Brett Lacey
 - Brian Anderson, CSU

Task Force Charge



- ...study, develop, evaluate and review appropriate laws and regulations pertaining to marijuana businesses for presentation to the City Council...
- ...including but not limited to location and licensing criteria, fees, advertising, and other time, place, manner, and number regulations.

Task Force & Council Schedule



- Seven meetings between December 2015 and March 2016
- Proposed Council Schedule
 - Today – Task Force Report to City Council (March 23, 2016 is 120-day deadline imposed by Ordinance)
 - April 11, 2016 – City Council Work Session
 - Proposed Ordinance(s)
 - April 21, 2016 – City Planning Commission Regular Meeting
 - Ordinance(s) relating to zoning, land use
 - April 26, 2016 – City Council Regular Meeting
 - First Reading of Ordinance(s)
 - May 10, 2016 – City Council Meeting
 - Second Reading of Ordinance(s)
 - May 23, 2016 – Effective Date
 - May 25, 2016 – Moratorium Expires

Task Force Work



- Education & Background
 - Task force scope & direction
 - Amendments 20 & 64, state & City regulations, City ordinances
 - Medical marijuana business models, license and facility types
 - Zoning
 - Other jurisdictions:
 - El Paso County, Aurora, Denver, Longmont, Ft. Collins
 - Plant limits, zoning, separation distance, odor, enforcement, legal precedents
- Input from stakeholders
 - City staff (Clerk, PD, FD, DRE, City Attorney's Office, CSU)
 - Industry representatives
 - Caregivers & patients
 - Homeowners and neighborhood representatives
 - Businesses
 - Extensive public input via e-mail, public meetings, web

Task Force Discussion Items



- Illegal residential grows – why are they a problem?
 - Public and first responder safety
 - Neighbor concerns
 - Odors - filtration and ventilation
 - Utility issues
- Enforcement challenges
- Rights of caregivers, patients, homeowners, industry, public
- Possible restrictions on wattage, square feet in cultivation, plant counts (6 or 12 plants?), size, maturity?
- Zoning – conditional uses, legal non-conforming
- Permits and inspections
- Medical Marijuana Infused Product Manufacturers (MIPs) – Hazardous vs Non-Hazardous?
- Greenhouses
- Hours of operation
- Licensing
- Advertising

Zoning – Medical Marijuana Centers (i.e. 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
(i.e. “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 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 – 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 & MIPS



- 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

Zoning Considerations for Grow Operations & MIPS



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

Zoning Considerations for Grow Operations and MIPS



- 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

Home Grows — Plant Limitations



- Currently 36 plants permitted in Zoning Code
- Task Force Recommendation Reduce to 12 plants total
- 150 sq ft growing area for single family home
- Growing in enclosed, locked space
- Odor mitigation required
- City may inform landlord that grow activities occurring
- Also recommended criminal penalty under the City Code for MMJ grows over 12 plants in a residence

Medical Marijuana 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 Medical Marijuana 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

City Medical Marijuana Code Change Highlights



- Minor grammatical and reference corrections
- Streamlining resolution of uncontested violations (again, in the effort to achieve compliance)
- Unlawful Acts additions:
 - Clarifying existing interpretations and policies (no outdoor grows or drive up windows, not visible, modifications, etc.)
 - Specifying disclosure for hazardous v. non-hazardous MIP processes (in concert with zoning and fire code)
 - Specifying allowed hours of operation
 - Specifying what an MMC can or cannot sell
 - Odor mitigation requirements (in concert with zoning changes)
 - Setting up code for future action or restrictions on advertising, including the medicinal use of MMJ.

To be continued...



- 12-36 plants outside of residential zones
- “Co-op” grows & “gifting”
- Fees
- Utilities – electrical & water use
- Colocation (i.e. “gas & grass”)
- Odor
- Advertising
- Additional licensing
- Short-term rentals
- Moratorium – continue?