

RESOLUTION NO. 27-16

A RESOLUTION ESTABLISHING CRITERIA FOR DETERMINING "LAWFUL OPERATION" OF MARIJUANA CONSUMPTION CLUB FACILITIES PRIOR TO SEPTEMBER 22, 2015, AND AUTHORIZING NOTICE OF EXPIRATION OF AMORTIZED NON-CONFORMING LAND USE

WHEREAS, City Code section 7.2.107 specifies that "it shall be unlawful to use any building, structure, or land . . . except in conformity with the requirements established in the zone district in which said structure, building, or land is located and in accord with the provisions of this Zoning Code"; and

WHEREAS, pursuant to City Code section 7.2.108, on May 28, 2014 the Planning and Community Development Manager issued a "similar use determination" related to marijuana consumption clubs (attached and incorporated as "Exhibit A"); and

WHEREAS, the Manager's similar use determination required that "[a]ll standard review procedures [of the City's Planning and Community Development Department] shall apply [to marijuana consumption clubs]"; and

WHEREAS, the Manager's similar use determination permitted or conditionally permitted marijuana/cannabis consumption clubs in the same zoning districts as "(membership) club[s]", as defined by the City's Zoning Code; and

WHEREAS, marijuana consumption club facilities present unique health, safety, welfare and quality of life issues to public; and

WHEREAS, on September 22, 2015, the City Council of the City of Colorado Springs enacted a moratorium on the establishment of any new marijuana consumption club facilities within the City limits; and

WHEREAS, the City Council directed City staff to study the impacts of marijuana consumption club facilities to determine whether additional land use, zoning, or other regulations are necessary to protect and preserve public health, safety and welfare; and

WHEREAS, City staff developed land use, zoning and licensing regulations for marijuana consumption club facilities; and

WHEREAS, the City Planning Commission reviewed the proposed land use and zoning regulations and forwarded a recommendation to City Council; and

WHEREAS, licensing requirements were also recommended by City staff and established as part of the ordinance presented to the City Council; and

WHEREAS, during the period of the moratorium numerous marijuana consumption club facilities operated in the City; and

WHEREAS, the City Council banned the establishment of any new marijuana consumption club facilities and allowed for an amortization period of eight (8) years (“Amortization Period”) for existing clubs operating within the Manager’s similar use determination to cease operations; and

WHEREAS, the Amortization Period ends on March 22, 2024; and

WHEREAS, prior to 5:00 p.m. on April 29, 2016, any existing marijuana consumption club facility wishing to continue operations during the Amortization Period must apply for a license from the City Clerk; and

WHEREAS, as a condition of licensure, individual marijuana consumption club facilities must substantiate compliance with the provisions of the Zoning Code prior to September 22, 2015; and

WHEREAS, during the Amortization Period, licensed marijuana consumption club facilities may be operating in locations where they are leasehold tenants; and

WHEREAS, the City Council deems it in the public interest to inform property owner-landlords of the expiration of the Amortization Period and the inability of tenants to lawfully continue the operations of marijuana consumption club facilities within the City.

**NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF COLORADO SPRINGS**

Section 1. City Council finds that the Manager of the Planning and Community Development Department may utilize, but shall not be limited to consideration of, the following criteria for determining whether an individual marijuana consumption club facility was lawfully operating prior to the September 22, 2015 moratorium on the establishment of new marijuana consumption club facilities within the City:

A. The marijuana consumption club facility substantiates through a lease or other written documentation that it had legal possession over the premises and was operating as a marijuana consumption club facility prior to September 22, 2015; and

B. The marijuana consumption club facility demonstrates through a lease or other written documentation that it maintained continuous legal possession

and operated continuously as a marijuana consumption club facility within the premises for which it seeks licensure between September 22, 2015 and the date on which it applies with the City Clerk for a license; and

C. The marijuana consumption club facility provides a copy of any City or State issued sales tax license, as applicable or required; and

D. The marijuana consumption club facility demonstrates that it exists in a zoning district in which it is permitted or conditionally permitted through the Manager's similar use determination; and

E. The marijuana consumption club facility demonstrates that prior to September 22, 2015 it complied with all standard review procedures and received all required approvals of the Community Development Department and other City departments and agencies; and

F. The marijuana consumption club facility demonstrates that prior to September 22, 2015 it complied with all standard review procedures and received all required approvals of the Pikes Peak Regional Building Department; and


G. The marijuana consumption club facility demonstrates that it has complied with the terms and conditions of a final development plan or final subdivision plan as required by City Code section 7.9.101.

Section 2. Compliance with all of the factors listed in Section 1 above is a prerequisite for the approval of any license for the operation of a marijuana consumption club facility.

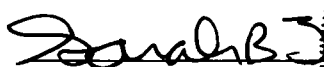
Section 3. Appeals of the Manager's determination of lawful operation of marijuana consumption club facilities as contemplated under this resolution shall be filed and heard in accord with the City's Zoning Code.

Section 4. The Manager, upon the written request of a licensee who operates a marijuana consumption club facility upon leased premises, shall provide notice to such licensee's landlord of the expiration of the Amortization Period. Such written request may be made not earlier than one hundred eighty (180) days prior to the expiration of the Amortization Period and shall set forth the name and mailing address of the landlord. The Manager's notice to the landlord shall be sent by first class, U.S. Mail, with a copy to the licensee. No failure of the Manager or City to send the notice, nor any failure of delivery of the notice to the landlord, shall have any effect upon the expiration of the Amortization Period or the unlawfulness of continued operation of such facility.

DATED at Colorado Springs, Colorado, this 22<sup>nd</sup> day of March, 2016.

  
Council President

ATTEST:

  
Sarah B. Johnson, City Clerk





INTEROFFICE MEMORANDUM

**Date:** May 28, 2014  
**To:** LUR and DRE Staff  
**From:** Peter Wysocki, Director  
**Subject:** Marijuana/Cannabis Consumption Clubs

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In denying City Administration's appeal of the Planning Commission's approval of Studio A64's appeal of the Notice and Order to cease the operation of the facility, the City Council interpreted that Studio A64 is a similar use to a *social club*, which falls under the parent definition of a *(membership) club*.

*CLUB (Membership): A use providing meeting, recreational, or social facilities for a private, nonprofit or noncommercial association, primarily for use by members and guests, excluding uses with the chief activity being a service customarily carried on as a business.*

- a. Recreational Clubs: A club providing indoor and/or outdoor athletic facilities, with or without social facilities. Typical uses include health clubs, country clubs, nonprofit recreation or community centers.*
- b. Social Clubs: A club providing social or meeting facilities. Typical uses include private social clubs and fraternal organizations.*

The definition does not stipulate that there must be a fee charged for the membership. Studio A64 happens to charge a nominal fee, although the City Council did not stipulate or otherwise ruled that a fee must be charged for the membership or specify terms of the membership.

Based on City Council's action, marijuana/cannabis consumption facilities are permitted or conditionally permitted in zoning districts where *(membership) clubs* are permitted. All standard review procedures shall continue to apply. Marijuana/cannabis consumption facilities are not to be interpreted as *hookah bars*.

The Council directed staff to craft an ordinance to regulate marijuana/cannabis consumption facilities.