

**CITY OF COLORADO SPRINGS PLANNING COMMISSION
RECORD-OF-DECISION**

UNFINISHED BUSINESS CALENDAR

DATE: February 20, 2014

ITEM: 4

STAFF: Peter Wysocki

FILE NOS.: CPC AP 14-00002

PROJECT: Appeal of Notice and Order - Club A64

Commissioner Markewich disclosed that during his site visit he had a conversation with the appellant, Mr. Stark, but did not discuss the item. They only discussed procedures of the City Planning Commission.

STAFF PRESENTATION

Mr. Peter Wysocki, City Planning and Development Director, briefly reviewed the process and background. If City Code does not state a specific use is allowed as a conditional or permitted use, then the use is deemed not allowed. The appellant argues that his use should be categorized as a social club. The Code defines social or membership clubs and they are identified as non-profits or those of non-association. Staff believes the use, Studio A64, is a commercial business and does not fall under a non-profit use. Studio A64 claims that it provides social and artistic activities, and its sole use is not for the consumption of medical marijuana. If the appeal is approved, then a determination must be made as to which use currently listed in the City Code this falls under.

Commissioner Phillips inquired of the difference between this use and a tobacco facility or hookah bar. Mr. Marc Smith, stated there are exceptions depending upon what a facility is selling. For example, cigar bars are required to have a certain percentage of tobacco sales to allow smoking on-premise.

Commissioner Markewich requested the definition of a cigar bar read into the record.

Commissioner Donley suggested looking at the definition of a hookah bar because it allows consumption of tobacco or herbs.

Commissioner Gonzalez requested clarification of a club or membership where alcohol is served. Mr. Wysocki stated it would fall under the definition of a club, or under the broader definition of a civic use.

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Zone uses are categorized into use types (residential, commercial, civic, industrial, etc.). A membership club would fall under a civic use type umbrella.

Commissioner Ham inquired of the director's parameters to grant uses versus restricting them. Mr. Wysocki stated the director is authorized to grant non-use variances to building setbacks, building heights, etc. A use variance requires Planning Commission action to allow a use not permitted in that zone. The Planning Director is authorized to make similar use determinations if a use does not have a clear definition in the City Code. Code Enforcement was made aware of the use and alerted the Planning Dept. to determine if it were an allowed use, then Code Enforcement decided to issue a Notice and Order.

Commissioner Gonzalez inquired of the appellant's argument that it should be defined as a social club. Mr. Smith stated a variance or similar use determination is not required under this appeal. The Planning Commission needs to determine if the Notice and Order was issued correctly and if the use should be permitted.

Commissioner Gonzalez referenced Form-Based Code Section 2.5.3 that lists only a few prohibited uses, of which this use is not mentioned. Mr. Wysocki stated he would research that.

Commissioner Markewich read the definition of a hookah bar that is an establishment providing for sale and on-site consumption of smoke flavored tobacco or herbs.

APPELLANT PRESENTATION

1. Mr. Charles Houghton, attorney representing Studio A64, stated this use has been operating since February 2013. Knowing this use was not specifically allowed in the City Code, the use was created to sell non-alcoholic beverages while enjoying art classes, listening to live music, and an agreement of strict rules for on-site consumption of marijuana only for those with medical marijuana cards. A non-profit status would probably not be granted to this business because medical marijuana is still federally illegal. Smoking marijuana is ancillary to all other activities of the membership club. He commended City Staff for the quick responses and communicating the process. Mr. Houghton felt this use fits under an allowable use within the form-based zone district (FBZ), such as an Elks lodge membership club. Amendment 64 limits the use of recreational marijuana to private places.

Commissioner Markewich inquired why a conditional use application was not submitted. Mr. Houghton felt this use fit within the parameters of the existing code and did not need to apply for a variance or conditional use.

2. Mr. K.C. Stark stated this is not a profit business. It is a club that supports the arts, and marijuana is not sold on-premise. Other drugs and alcohol are not permitted for sale or allowed on-site. The City issued his business two sales tax licenses during February 2013. He felt that if it were illegal, then he would've been denied the licenses. He tried to find a location that would not offend surrounding neighbors.

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Commissioner Markewich inquired of any operation similar to his within the State of Colorado. Mr. Stark stated his is the first that he is aware of.

Commissioner Shonkwiler inquired of the membership. Mr. Stark stated the age requirement is 21 unless someone can prove they are a medical marijuana card holder at least 18 years of age.

- 3 Mr. Ken Brady, owner of the building, stated Mr. Stark approached him last year, has tried to abide by the law, and has been a good tenant.

CITIZENS IN FAVOR OF APPEAL

1. Ms. Ingrid Henderson, senior of UCCS and local business owner, has post traumatic stress disorder (PTSD) and stated Studio A64 is a safe place for adults like her to be in a membership club.
2. Mr. Tim Cuyl, moved from Alabama six months ago, and related how medical marijuana has helped his medical conditions and finds comfort and relief in Studio A64.
3. Mr. Robert Thew felt it is wrong to approve sales tax licenses and try to revoke a business a year later. He is not a member, but felt it is their right to operate and felt it falls under the social club definition in the City Code.
4. Mr. Jack Doerfler, member of Studio A64, supported the appeal.
5. Mr. Greg Benson, artist and I.T. professional, and member of Studio A64, books the artists for Friday and Saturday nights. This club has allowed him to record an album and expand his talent. He is an armed forces veteran who served overseas and is a medical marijuana patient. He hopes the stigma of being just a marijuana club is removed; it's a club for the arts.
6. Ms. Nataya Gantz supported the club.
7. Ms. Sara Griffin supported Studio A64 and has never observed the sale of marijuana or any illegal activity.
8. Letters were submitted after printing of the agenda (Exhibit A).

CITIZENS IN OPPOSITION TO APPEAL

None

APPLICANT/APPELLANT REBUTTAL

1. Mr. Houghton displayed membership and identification cards to show the strict rules of the club (Exhibit B).
2. Mr. Wysocki stated this type of club does not fall under any definition currently in the City Code. Staff is coming to Planning Commission for a determination.

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Mr. Smith clarified that if there are questions that bring forth new information from the code enforcement officer, then the Planning Commission should allow the appellant to comment again.

STAFF REQUESTED TO SPEAK

Commissioner Markewich inquired if the sales tax license process consults with the Planning Dept. Mr. Smith stated he is not aware of anything that prompts review by the Planning Dept. or the City Attorney's Office because a license is based upon sales of tangible items.

Commissioner Shonkwiler requested to speak with Mr. Tom Wasinger, Code Enforcement Supervisor. Commissioner Shonkwiler inquired how he was notified of this use and issue. Mr. Wasinger stated it was generated through meetings with the Planning Dept. whereby it was found that this use was not permitted. Subsequently, an enforcement case was opened and a Notice and Order was issued. His office was told to open a case by City management possibly due to the media attention surrounding the new use. There was no citizen complaint. It was an internal-generated complaint, which may have come from an enforcement officer.

Commissioner Phillips inquired of his ventilation system. Mr. Stark stated his ventilation system recycles the air every 60 seconds.

DECISION OF THE PLANNING COMMISSION

Commissioner Ham thanked all for attending today's hearing. This is Planning Commission's first time addressing this issue too. The appellant has to prove that the criteria City Staff used was erroneous or unreasonable in their decision. He didn't feel staff was either. City Code is up to interpretation. He interpreted that this use doesn't fit under the prohibited uses within the FBZ district. It is almost impossible for Code scrubs to keep up with every possible use in the community. He was bewildered as to the sales tax licenses were issued in February 2013, but this Notice and Order wasn't issued until November 2013. He felt this use doesn't fit within a hookah bar definition.

Commissioner Markewich supported the use and felt the Code needs a provision to allow this type of use. He was conflicted because this use doesn't fit within a hookah bar definition nor within existing definitions. He suggested City Staff initiate a Code amendment to consider State law and proximity of these types of facilities.

Commissioner Phillips agreed with his fellow commissioners. He supported the use. He felt a lot of former military personnel that have PTSD may desire this type of club. He also supported a code amendment.

Commissioner Sparks felt this code definition is an unfortunate grouping of ambiguous words. She felt this use best fits within the social club definition of the City Code.

Commissioner Henninger applauded the applicant's efforts. He felt the FBZ criteria was not applicable because this is a city-wide issue that falls under the rest of the City Zoning Code criteria. He felt the

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applicant should've received approval or inquired of the City Planning Dept. before applying for the license. He felt this is not the appropriate venue to make this final use determination.

Commissioner Donley addressed the Code Enforcement process and felt it could be argued that staff is the complainant, which he found troubling. He determined the use did not qualify as a hookah bar. Comparatively, the City is constantly finding uses that don't fit into existing Code definitions. He referenced the 1980s video rental businesses that struggled to fit into existing zoning definitions. That use is now gone. He agreed with Commissioner Sparks' determination that this use best fits within a social club definition. Although this site is within the FBZ boundary, those use controls are forfeited. He felt the use is not restricted according to the FBZ guidelines, and he would rather make his decision based on that rather than a private club definition.

Commissioner Markewich inquired of use restrictions in the Form-Based Code (FBC). Mr. Smith stated FBC Section 2.5.3 lists prohibited uses. Those are not the only prohibited uses. The Planning Commission does not have authority over the FBC, but has authority over Notice and Orders and whether this one is appropriate.

Mr. Wysocki clarified uses listed in the FBC. As an example, civic uses are allowed under FBC Section 2, which are tied into the City Zoning Code definitions.

Commissioner Ham invited Mr. Houghton to speak. Mr. Houghton argued that there are uses that have come and gone, such as the video rental uses mentioned by Commissioner Donley. Just because there is not a "check box," a use is disallowed by the City. A similar use designation should be reviewed. If the Planning Commission believes this is a civic club, then this use should be allowed in the FBZ.

Mr. Wysocki clarified that the Sales Tax dept. does not "buckslip" their applications for review by other City departments. There was no single person identified as a complainant. There was a number of communications between City Police Dept., Planning Dept. and the City Attorney's Office.

Commissioner Gonzalez referred to the definition of a social club and concluded this use fits under that definition and meets the criteria for an appeal. He determined the appeal should be granted.

Moved by Commissioner Ham, seconded by Commissioner Phillips, to approve the appeal of **Item 4-File No. CPC AP 14-00002**, to overturn the Notice and Order based on the appeal criteria in City Code Section 7.5.906 and classify this use as a social club.

Commissioner Markewich directed staff to draft an ordinance to clearly define this use in the City Code. Mr. Wysocki stated for the sake of clarity, today's action needs to focus on this appeal only. The discussion of City Code amendments needs to be discussed at an Informal meeting.

Mr. Smith clarified that a use classification is not being requested by this appeal-only if the Notice and Order was issued correctly. The Planning Commission needs to reference specifically the criteria they did

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not agree with. The discussion can address what use they feel it meets, but a use classification is not on the table for decision.

Commissioner Ham withdrew his motion.

Moved by Commissioner Ham, seconded by Commissioner Phillips, to approve the appeal, **Item No. 4-File No. CPC AP 14-00002**, and no longer uphold the Notice and Order for 332 E. Colorado based on the appeal review criteria, specifically 7.5.906.B.4 (it was erroneous), and that this use is best defined as a social club for private use. Motion carried 6-2 (Commissioners Shonkwiler and Henninger opposed and Commissioner Walkowski absent.)

February 20, 2014

Date of Decision

Edward Gonzalez, Planning Commission Chair

DRAFT

2959 Electra Dr. South
Colorado Springs, CO 80906
February 19, 2014

City Planning Commission
City of Colorado Springs
30 S. Nevada, Suite 105
Colorado Springs, CO 80903

RE: CPC AP 14-00002

Dear Comissioners:

I am writing to express my support for Studio 64, the private cannabis club owned by K.C. Stark. Why must the city threaten with shut down an existing business that is contributing to the community? Why can't the city find a permitted zoning designation under which Studio 64 can continue to operate? I suspect it is because of one word: marijuana, and that is the only reason.

With all the bars that we have in this town which are licensed by the city, why can't we have a place where cannabis users can congregate legally? And these bars cause a lot of problems in the community with drunkenness, obnoxious people, assaults, etc. at 2 AM when they let out. No commotion like that has ever occurred at Studio 64 to my knowledge.

I am a medical marijuana patient who is a member of Studio 64, and I have attended events at the club. It is a nice environment where like-minded cannabis users can congregate, hear music, attend meetings and classes, and share their common interests.

I have never encountered any obnoxious people at Studio 64, felt uncomfortable for my safety or been harassed in any way. The club is a well-run, safe environment. People who consume cannabis need a place to congregate, just as people who drink alcohol need bars to go out to for socialization, etc. Some cannabis users cannot consume it in their homes, especially if they have children or live in federally-subsidized housing. Studio 64 acts as a hub and provides a valuable service for the cannabis community.

Amendment 64, which passed by 5,000 votes in Colorado Springs, and is now the law in the State of CO, states that marijuana should be regulated like alcohol. To deny a permit to a private cannabis club while allowing zoning for liquor-selling establishments to flourish does not seem like equal regulation.

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Exhibit: A
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In Colorado we have the right to consume and possess cannabis, and K.C. Stark's Studio 64 offers us a meeting space where we can enjoy our constitutional rights and mingle with like-minded cannabis enthusiasts.

I urge you not to close down Studio 64, rather to find a designation under which it can continue to operate legally. If bars and liquor stores can be regulated in Colorado Springs, so can cannabis clubs. To do otherwise is quite simply discrimination.

Thank you for your consideration.

Sincerely,

Cyndy Kulp

2959 Electra Dr. S.
Colorado Springs, CO 80906
February 15, 2014

Intake Department
ACLU of Colorado
303 E. 17th Ave., Ste 350
Denver, CO 80203-1256

Dear ACLU:

I am writing to you to express my concern about two anti-marijuana ordinances that the City of Colorado Springs appears poised to adopt which I feel violate my rights as a medical marijuana patient in Colorado. Both ordinances were passed by the council by majority votes this past week on February 11th, 2014, and will be brought back, probably in two weeks, for 2nd reading prior to going to the mayor for his signature and becoming law.

I would like the ACLU to determine if these laws do violate patient rights, and if so, to represent me in stopping their enactment. As I understand them, the one ordinance prohibits anyone from carrying marijuana into a city-owned building, and the second one does the same thing at the Colorado Springs airport. A person found to be carrying marijuana (and they do not specify how the police will look for it) can be arrested and charged with trespassing, should he or she fail to surrender the marijuana or leave the premises. Fines can be imposed ranging from \$100-\$500 and marijuana can be confiscated.

As a medical marijuana patient, I am legally allowed to be in possession of two ounces. I do not feel that citizens should be required to surrender their medications just to enter a city building. The public owns these buildings, and we may be required to be there for several hours conducting business. For example, City Council Meetings often run for several hours, and the public must wait there until their item is called. Also, a person in the airport may be waiting for a flight to Denver, Pueblo or somewhere else inside Colorado. How can we be required to surrender our medication or be threatened with arrest and fines when we are legally allowed to possess marijuana in CO?

As you may know, the City of Colorado Springs, under the leadership of Mayor Steve Bach, has a very anti-marijuana bias. Last summer they opted out of retail sales apparently as allowed by Amend 64, despite the 5,000 vote margin in favor of the amendment among Colo. Springs voters.

Since then City leaders have come up with more punitive ways to prohibit marijuana. There are three examples that I want to mention in addition to the Opt Out from retail sales:

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Exhibit: A
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1) The City Planning Dept. is in the process of trying to close down a private social club called Studio 64, which has been open for the past 9 months and which pays sales tax to the city. At Studio 64 marijuana users pay a membership fee and bring their own cannabis to consume on the premises. The club also offers entertainment, classes and socialization. Now the city says it is a "zoning violation" and must be closed.

2) Recently, a City Council employee was fired by the Mayor, apparently for calling an airline to ask about their policy on marijuana without permission from the mayor.

3) Lastly, the new ordinances did not originate with the City Council, but were proposed by the City administration and drafted by City Police and the City Attorney, then brought to the council for action. Initially they called for stiffer penalties, including jail time, but the Council knew that was on shaky legal ground and stripped out those penalties.

These three examples further demonstrate the Mayor's agenda to stifle marijuana rights in Colorado Springs and recriminalize possession where he can. I feel that he and the other city leaders, have shown a pattern of intolerance for marijuana, and they seem to be punishing the voters for their pro-marijuana votes. I am concerned that these actions have gone too far, and are possibly violating our constitutional rights to possess and consume marijuana as well as to use it for medical conditions. These proposed ordinances are a misuse of the trespass charge, in my opinion, which was never designed to keep the public out of public buildings!

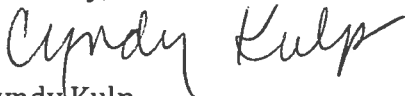
I have enclosed materials from the City Council Agenda for Feb. 11, 2014, the handouts pertaining to Items 15 A & B which is the discussion on these two ordinances including the drafts approved.

I have also enclosed news articles about the threatened closure of Studio 64 and the firing of the Council lobbyist, along with a copy of my Medical Marijuana card.

I would sincerely appreciate your review of these materials, and determination on if the ordinances that are proposed are legal under Colorado's marijuana laws.

Thank you for your assistance. If you have questions, I can be reached at (719) 634-0627 or via email at kulpc@aol.com.

Sincerely,


Cyndy Kulp

Koehn, Alayna

From: Meral Sarper <merally@gmail.com>
Sent: Wednesday, February 19, 2014 2:42 PM
To: Koehn, Alayna
Subject: Citizen input to be attached to minutes of hearing tomorrow 830 am

Hello,

Thank you for speaking with me on the phone and for your willingness to forward my comments to be heard tomorrow via the minutes , as I cannot attend.

" My name is Meral Sarper and I support Studio A64 and hope you will decide to keep this great community location open. Please consider the fact that we can exercise our right to "peacefully assemble " and by shutting it down on false grounds, then our inherent Bill of Rights are being violated. Also, as amendment 64 is now state law, to restrict possession and use on private grounds is unconditional . I hope you will consider these facts and realize this that medical cannabis patients like myself are counting on you.

On behalf of medical cannabis patients who count on Studio A64 to feel safe and to feel included,

Meral Sarper , Mechanical Engineering Senior Student at UCCS."

Cheers,

Meral Sarper

Have a great day. Make it Extraordinary!

merally@gmail.com

President of UCCS Students for Sensible Drug Policy

Intern for Pikes Peak Justice and Peace Commission (PPJPC)

Propulsion Academy Research Associate, NASA Marshall Space Flight Center 2011

Mechanical Engineering and Sustainable Development Undergraduate Student at UCCS

Linked In Profile : www.linkedin.com/in/meralsarper

