

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

**THURSDAY, JANUARY 21, 2016  
CITY HALL COUNCIL CHAMBERS  
107 NORTH NEVADA AVENUE  
COLORADO SPRINGS, COLORADO 80903**

**CHAIRMAN PHILLIPS CALLED THE MEETING TO ORDER AT 8:33 A.M.  
THE MEETING ADJOURNED AT 4:20 P.M.**

**PRESENT:**

Markewich  
Henninger  
Gibson  
Donley  
Phillips  
Shonkwiler  
Walkowski  
McDonald  
Smith

**ABSENT:**

Henninger (afternoon session)

**ALSO IN ATTENDANCE:**

Mr. Peter Wysocki, Planning and Development Director  
Mr. Marc Smith, City Senior Corporate Attorney

**UNFINISHED BUSINESS CALENDAR**

| ITEM NO.  | PROJECT DESCRIPTION  |
|---|--|
| <b>ITEM 4.A:</b><br><b>CPC CA 15-00145</b><br>(Legislative)<br><br><b>PLANNER:</b><br>Peter Wysocki | An ordinance amending Part 3 (Land Use Types and Classifications) of Article 2 (Basic Provisions, Definitions and Land Use Types and Classifications) and Part 2 (Commercial Districts) of Article 3 (Land Use Zoning Districts) of Chapter 7 (Planning, Development and Building) of the Code of the City of Colorado Springs, 2001, as amended, pertaining to marijuana consumption club facilities. |

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

**UNFINISHED BUSINESS CALENDAR**

**DATE:** February 18, 2016  
**ITEM:** 4.A  
**STAFF:** Peter Wysocki, Planning Director  
**FILE NO.:** CPC CA 15-00145  
**PROJECT:** Marijuana Consumption Clubs

**STAFF PRESENTATION:**

Peter Wysocki, Planning Director gave a Power Point Presentation. Mr. Wysocki handed out a map of M-1 and M-2 zone districts. Stated they want to be in harmony with what the county does and not conflict but be as compatible as possible; the county restricts clubs and has stricter rules for medical marijuana than the city.

**Questions of Staff:**

Questions were asked by commissioners about mental health facility being in the 1,000 foot buffer; what the amortization would look like; how many clubs currently exist; are there licenses for other type of social clubs; if density had been considered; why the choice of M-1/M-2 zoning; locations of clubs throughout the city; if military bases had given options; how the county has banned clubs

Councilman Don Knight gave an update to Mr. Wysocki's presentation

- History, moratorium and possible conditional use and how clubs are permitted use in various areas with no notification to neighbors and zones for possible uses.
- Regarding the ban – 2 questions – ban new ones and what is done about existing ones – this will be handled by Council as 2 separate questions.
- Amortization of 5 years (Sundown Clause).
- Clubs have sales in order to make a profit. Council has opted out and sales in the city. Not ready for sales, do not have the regulations in place for it. Want clubs to conform with the law and why they are looking at a ban.
- Item will be heard at the work session on 2/22/16 – no public comment is allowed at work sessions, but to give citizens opportunity to voice concerns there will be a town hall after the regular meeting on 2/23/16; First reading of the ordinance will be March 8, 2016, second reading March 22, 2016 – this date is the end of the 6 month moratorium.

Commissioners had follow up questions for Councilman Knight

- Studio 64 model was no sales; other clubs after that had sales;
- Licensing will have to monitor for no sales or trading; if infused products are present, they can be shared as there is nothing given in return.
- Licensing could inspect at any time.
- What are other municipalities doing about clubs – most are banned.
- Possible support for a conditional use process.
- .Questions to how clubs can sell when illegal and why it isn't enforced
- Clubs deny selling, called something else like enumeration

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

- Code needs to be clear of what is allowed to help police have arrest power and attorneys prosecution power
- As a city we can do more restrictive rules than the State Constitution, but not less restrictive.
- Has Sundown Clause been applied to any other type of business
- Examples were cited of amortization in Boulder so it could be possible to have 5-10 year amortization since there could be a precedent
- Information about Club 64 is the only club that followed the rules
- Questions raised if company that are industrial would move to Colorado Springs if the clubs were restricted to M-1/M-2 zone
- M-1/M-2 zone were thoroughly looked at along with other zones as what would be best zone district for this type of use

**Supporters of the application:**

None

**Opponents of the application:**

None

**Additional Questions of Staff:**

- Question is this type of use could be in Form-Based Zone – it would not be permitted in this zone district due to not FBZ not allowing any industrial type uses but ultimately it's a council decision
- With regard to amortization – what was the allowable number of years deemed by the courts; research indicated the longer you go the more opportunity you give the business owner to amortize that investment over time. Amortization has not been done on this type of use. Ultimately the number of years will be council's decision.

**DECISION AND DECISION OF THE PLANNING COMMISSION:**

Commissioner Smith said if in an M-1/M-2 and employees in these industrial areas would be more likely to use the marijuana is not a valid. The more valid reason is if not in M-1/M-2 then where. This leaves the only option available is Option 3. The economic benefit of it is outweighed by other companies that want to come to here as well as the military institutions, so economic benefit is invalid. Taking of property is perhaps a valid reason but council will deal with that. He believes there will be selling and trading going on in the clubs no matter what is done. He will be ready to make a motion for Option 3.

Commissioner Henninger said he sees this as a very specific situation. They are being asked to fit an item in a zone where all of items have not been enacted or are not in place. So that makes it hard for to him to have a discussion or decision on it. M-1/M-2 are not appropriate and neither are other zones; there is not a zone that is compatible with type of use and do not have the regulations in place to manage this type of use. So he is leaning and encouraging everyone to select Option 3.

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

Commissioner McDonald said she is going to vote in favor of Option 3. Since we've opted out of recreational sales the clubs are not appropriate and there is no way for them to be sustainable without the sales. The zoning is a nice idea but it comes back to with no recreational sales allowed in our city she didn't see how the clubs have a functioning place here. So she will vote for Option 3.

Commissioner Walkowski said he would be in support of Option 3. There are too many uncertainties regarding the entire issue – licensing, medical marijuana task force is still working on their agenda; conditional use permit for public input would be good but there would be continual conditional use permits coming in if they voted for Option 2 and would become problematic; the business model of the consumption clubs has problems with it; the enforcement of it as well as good points were raised regarding the M-1/M-2 zoning. So due to all these uncertainties he would be voting for Option 3.

Commissioner Markewich said with the options before them he didn't believe there is one good option so he thought he would be voting No for Option 1, 2 and 3. He didn't feel any of them were acceptable. If it came before them with a C-5/C-6 with conditional use and strong licensing requirements he could be amenable to something like that. The land use process is not the best way to handle this, the licensing process it would be a better way to do it. He cannot support any of the options at this time.

Commissioner Donley said his thoughts were similar to Commissioner Markewich. He firmly supports a conditional use process to get it approved. He strongly opposes putting it in M-2 zone. There is a shortage of land for that type of land use activity now. The 1,000 foot buffer is excessive. The building may need to be free-standing. Bottom line this is a licensing issue and it has to be enforced. He is opposed to Option 1, 2, and 3.

Commissioner Shonkwiler said it seemed most everyone is for Option 3 and if so he will vote for that. He didn't feel licensing was the complete answer and Amendment 64 has not been the answer either it comes down to the federal government has chosen not to enforce federal laws in Colorado. His concern is if Option 3 is chosen the 5 years would not be enforceable by the courts he thinks 8 years would be for enforceability and asked for direction from Mr. Marc Smith. Mr. Smith said if the commission offered 8 or 10 years to council that would be appropriate. Commissioner Shonkwiler asked if there was severability. Mr. Smith said there was severability in the code. Also the licensing part is proposed either way so there is some control over the property. Mr. Smith also said as drafted there is a requirement in the zoning code that these things need to be licensed prior to May 31, 2016. This may not be enough time to process the application so as this goes through the process the Clerk may offer a little different recommendation as far as that goes in the zoning code when it gets in front of Council. But the way it's drafted all those unlawful things will apply during the application process.

Commissioner Gibson said she would be looking at Option 3 as well. After hearing information provided today Option 3 is probably the best. She would like to add mental health facilities and treatment centers to it.

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

Commissioner Phillips said he heard Studio 64 worked that they were following the rules and the other clubs were the ones that didn't want to follow the rules so the regulations are the biggest piece of it. Regarding the land use and putting them in these zones which are primarily in the south end of town, we are trying to build up that area and put more businesses in that area, so that could be a hindrance in this area. He agrees with Commissioner Donley and Markewich that we have don't have good options out of any of the options presented.

Mr. Marc Smith added regarding Commissioner Gibson's comments, under the ban ordinance there is no 1,000 foot separation because these things will be legal non-conforming and the proposal for the ban is not to grant and additional licenses except for those that meet the requirements and lawfully exist. We can provide the input to Council that under the M-1/M-2 that, that is something they should consider. But under Option 3 that really doesn't apply because there would be no buffer but on 1 and 2 they could offer her suggestion.

Mr. Wysocki said before there is a motion and vote he asked for their input on what's lawful and what's unlawful and how we process the licensing.

Commissioner Phillips said medical marijuana can help veterans and if they have some place they can go that would be ideal. But with what is presented before them, they do not have any good options.

Commissioner Markewich asked for clarification for Options A and B regarding lawfulness – Option A was the more restrictive and require them to meet more requirements and Option B gave more flexibility. So if Option 3 were to pass then would encourage Council to choose the less restrictive Option B for those businesses on an ongoing basis.

Commissioner Shonkwiler stated he respected the service records of all present and he wanted it noted there was nothing in the ordinance that prohibited people from accessing medical marijuana.

Commissioner Donley said with reference to Options A and B he sees his role as dealing with land use and offering opinions on licensing part is outside his prevue.

Motion by Commissioner Henninger, seconded by Commissioner McDonald to recommend a ban on the establishment of new marijuana consumption clubs, staff recommends approval of the ordinance contained in Option 3, amending Section 302 (Definitions of Use Types) of Part 3 (Land Use Types and Classifications) of Article 2 (Basic Provisions, Definitions) and Section 205 (Additional Standards for Specific Land Uses) of Part 2 (Commercial Districts) of Article 3 (Land Use Zoning Districts) of Chapter 7 (Planning, Development and Building) of the Code of the City of Colorado Springs 2001, as amended, pertaining to marijuana consumption club facilities. Motion Passed: 6-3

February 18, 2016

Date of Decision

Planning Commission Chair