

# Ordinances Pertaining to Marijuana Consumption Clubs

City Council Meeting

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# Three Options for Zoning

- Option 1: permitted in industrial zones
- Option 2: conditional use industrial zones
- Option 3: not permitted, 5 year amortization

# Two Options for Licensing

- Licensing is proposed for all options
- Tied to decision on zoning
- Draft for industrial zoning
- Draft for prohibition during amortization

# Legal Framework

- November 2000: Amendment 20
- November 2012: Amendment 64
- 2013: City Council bans retail sales
- 2014: Studio A64 similar use determination

# Options for Regulation

- Six month moratorium
- Staff to provide options for regulation
- Zoning
- Licensing

# Void in Regulation

- No mention of clubs
- City regulation where there is a void
- Proposed legislation at the State level
- Proposal tied to licensing

# Proposal for Zoning Regulation

- Matter of local concern
- Health, safety and welfare
- Advance legitimate government interests
- Amortization: reasonable period of time

# Proposal for Licensing Regulation

- Safeguard the public
- Law enforcement interests
- Regulation similar to liquor





# Zoning Background

- The City currently does not have specific land use or licensing regulations pertaining to MJ consumption clubs
- MJ consumption clubs not specifically defined in City Code
- In 2014, the Planning Commission and City Council considered an appeal of zoning violation issued to Studio A64, a MJ consumption club located downtown
- Planning Commission granted the appeal to Studio A64 based on the determination that MJ consumption clubs are a similar use to private membership clubs
- Executive Branch appealed Planning Commission's decision to City Council
- City Council upheld Planning Commission's decision, affirmed the similar use determination and directed staff to prepare regulations
- MJ consumption clubs have been permitted by similar use determination in zoning districts that allow private membership clubs
- September 22, 2015, City Council adopted a 6-month moratorium on the establishment of new MJ consumption clubs

# Planning Commission Recommendation

- Establishment of any new marijuana consumption clubs within City limits should be prohibited
- Existing clubs that were lawfully operating pursuant to the similar use determination and prior to the moratorium are provided with a five (5) year amortization period and must cease operations no later than March 21, 2021
- All lawfully operating clubs must obtain a license for the duration of permitted operations
- Five (5) year amortization is new approach for the City and is untested by the City from a legal standpoint

# Planning Commission Recommendation

- 6 to 3 vote for banning new clubs
- Impacts to surrounding uses (and conversely the impacts existing uses may have on the clubs)
- Redevelopment
- [In] compatibility of uses
- Economic development and recruitment of high-tech industry
- Recent prohibition of such clubs in unincorporated areas of El Paso County
- A majority of the Commissioners felt that there is not a good location or zoning district for marijuana clubs



## Additional Planning Commission Comments

- Three Commissioners (Philips, Markewich, and Donley) felt that marijuana clubs should be permitted within the City
- Limiting the clubs to the M1 and M2 zoning districts is too restrictive
- Over-concentration if limited only to the M1 and M2 zoning districts
- M1 and M2 zoning districts are not appropriate given the purpose of the districts to serve industrial-type uses
- Clubs should be allowed in commercial districts
- Relatively low impact, if regulated

# Options

## Option 1:

- Marijuana consumption clubs permitted as a use by right only in M1 and M2 zoning districts
- A 1,000-foot separation from, schools, residential daycare centers, and drug or alcohol treatment facilities
- A 1,000-foot separation from residentially used or zoned properties
- 1,000-foot separations are measured by pedestrian access
- Requirement for an air filtration system
- Marijuana consumption facilities currently located in zoning districts other than M1 and M2, and were lawfully operating pursuant to the similar use determination established prior to the moratorium (September 22, 2015) would have “non-conforming development” status pursuant to City Code § 7.5.1201, et seq.
- All lawfully operating clubs must obtain a license pursuant to ordinances being developed in conjunction with the City Clerk’s Office

# Options

## Option 2:

- Marijuana consumption clubs are permitted as a conditional use in M1 and M2 zoning districts
- Requires a City Planning Commission hearing with the potential of an appeal to City Council
- All other standards same as Option 1

## Zoning Considerations for Options 1 and 2

- MJ consumption clubs 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 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

## Zoning Considerations, cont.

- 1000-foot separation from residential supports the placement of MJ clubs in M1 and M2 zoning districts
- In adopting the moratorium, the Council determined that MJ consumption clubs result in negative impacts to public health, safety and welfare – such uses are generally limited and located in M1 and M2 zoning
- Conditional Use review allows for a public hearing before the Planning Commission



# MCC Business License Summary

- MCC business licensees, as outlined, would be prohibited from transferring (with or without remuneration), cultivating, manufacturing, or storing any marijuana product on the licensed premises. MCC facilities would be required to operate by having patrons bring in and consume their own marijuana products outside of public view.
- Otherwise, substantially similar to other license types in the General Business License category.

# MCC Licensing Options

- Option 1:  
Reflects a City Council ban on Marijuana Consumption Clubs (MCC), with limited time licensing requirements for clubs currently operating under a “similar use” determination prior to the September 22, 2015 effective date of MCC Moratorium Ordinance 15-76, and is applicable and dependent on the related zoning ordinance to ban Marijuana Consumption Clubs.
- Option 2:  
licensing of both existing and new clubs, and is dependent on the related proposed zoning ordinances to either permit or conditionally permit Marijuana Consumption Clubs in specific zones. Option 2 contemplates allowing qualifying existing clubs to be in operation with new restrictions during review and action on the application, but new club applicants would not be able to be in operation until fully licensed.

# MCC License – Option 1

- Bans any new MCC and provides a time-limited licensing of existing clubs if the proposed licensee demonstrates the MCC facility was lawfully operating prior to the 9/22/2015 moratorium deadline (five year amortization set to expire 3/21/21);
- Creates a 4/29/2016 application deadline for licensing, with no applications being accepted after that date; and
- No specific licensing deadline proposed. Flexible time schedule is needed to fully investigate each proposed licensee, and effectively take into account the appeal process time period of either a lawful operation determination by the Manager of Planning and Community Development or application denial.

## MCC License – Option 2

- Allows new MCCs to operate in conjunction with new zoning regulation ordinances submitted contemporaneously with these proposed licensing ordinances. New facilities/clubs could apply at any time, however, they cannot operate until licensed;
- Legal non-conforming use (“grandfathering”) of existing clubs/locations will be permitted if the proposed licensee demonstrates they were lawfully operating prior to the 9/22/2015 moratorium deadline, as defined in zoning code (to include building and fire code compliance); and
- An application deadline of 4/29/2016 will be implemented for existing MCCs to remain in operation until the facilities are inspected and licensed.



# MCC Business License – Regulations

- MCC facilities must comply with all applicable zoning, building, and fire codes prior to licensing;
- MCC licenses are treated similar to other location-based licenses in the General Business Licensing Code, with the intent to permit a lawfully operating gathering place for consumption of legal MJ or MJ products out of the view of the public, as required in Colorado Constitution Article 18 §14(5)(a)(II), and Article 18 §16(3)(d) (aka – Amendment 20 and Amendment 64);
- Licensing will prohibit selling, cultivating, transfer, storing, and providing (with or without remuneration) any MJ or MJ product by or through the club applicant/licensee;
- Patrons must be at least 21 years of age, and bring in their own product for consumption on the licensed premises;
- MCC facilities will have similar operating hours as bars. All MCC facilities must be close between the hours of 2:00 a.m. and 7:00 a.m.;



# MCC Business License – Regulations

(continued)

- MCC facilities must be in a fixed location (no mobile facilities);
- Compliance with the Colorado Clean Indoor Air Act;
- Fingerprint based background checks on each principal and manager of the business will be required;
- The Licensee must provide proof of possession of the proposed premises;
- A Detailed diagram of the proposed premises is required;
- The MCC Manager must be registered with the City;
- Sales Tax licenses for applicable sales of food or non-marijuana products will be required;
- Food Service Establishment license from the Health Department for applicable food preparation will be required; and
- MCC's must install ventilation and filtration systems which prevents marijuana odor from being detected beyond the facility.

# MCC License – Fees

Type	Fee
Application Fee	\$ 200.00
Initial background check fee, per principal/managing agent	\$ 39.50
Annual license fee	\$ 90.00
Modification of licensed premises	\$ 200.00
Manager's registration fee	\$ 75.00
Duplicate license fee	\$ 5.00