



Legislation Text

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Ordinance No. 16-34 adopting Part 2 (Marijuana Consumption Clubs) of Article 2 (Marijuana) of Chapter 2 (Business Licensing, Liquor Regulation and Taxation) of the code of the City of Colorado Springs 2001, as amended, pertaining to Marijuana Consumption Club licenses

Presenter:

Sarah B. Johnson, City Clerk

Summary:

As proposed, the Clerk's Office will license Marijuana Consumption Clubs (MCC). This new license type is contemplated to be substantially similar to other license types in the General Business License category. 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.

This ordinance will ban MCCs, 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 MCCs.

The proposed MCC ordinance was developed collaboratively by the Planning Department, City Clerk's Office, Colorado Springs Police Department, Colorado Springs Fire Department, and the City Attorney's Office, with input from the Mayor's Office and Councilmember Don Knight.

Previous Council Action:

Marijuana Related Ordinances:

- City Ordinance 10-45 (creating new City Code 2.3.11 for MMJ Pre-Application Licensing)
- City Ordinance 10-107 (creating definitions, zoning, and specific Land Use standards for MMJ)
- City Ordinance 11-32 (amending City Code 2.3.1 to create City MMJ Code)
- City Ordinance 13-18 (amending City Code 9.7.206 for Possession of Marijuana)
- City Ordinance 13-19 (creating new City Code sections 9.7.207 and 9.7.208 for Consumption of Marijuana in Public and Vehicles)
- City Ordinance 13-47 (amending City Code 2.3.1 to Prohibit Growing and Selling of Retail Marijuana)
- City Ordinance 14-14 (amending City Code 3.2.302 and 9.6.108 for Marijuana Possession in Municipal Airport)
- City Ordinance 15-55 (creating new City Code section 9.7.209 Prohibiting Manufacture of Concentrates in Residential Settings)

- City Ordinance 15-76 (creating a six month moratorium on Marijuana Consumption Clubs)
- City Ordinance 15-79 (creating a six month moratorium on MMJ Land Use and licensing reviews)
- City Ordinance 15-100 (amending City Code 9.7.210 regarding possession of marijuana paraphernalia by minors)

The growing and selling of retail marijuana and Retail Marijuana Establishments were banned by City Council via Ordinance 13-47. This ordinance did not include “Marijuana Consumption Clubs” in the definition of a “Retail Marijuana Establishment”. Since 2014, about fifteen (15) MCC facilities have begun operating in the City of Colorado Springs (“City”). A six (6) month moratorium on new MCCs was approved by City Council on September 22, 2015 (Ord. 15-76), creating a time period to study the impacts of MCC related land uses and to determine whether additional land use, zoning, or other regulations are necessary.

On February 22, 2016, Councilmember Don Knight introduced this item to City Council during a work session meeting. Since the February 22, 2016, meeting, small revisions have been made to the two ordinance options that were presented to City Council. Councilmember Knight requested each option contain a ventilation requirement. Accordingly, section 2.2.211 of each ordinance option was amended by adding a new subsection (L), that provides: “No marijuana consumption club licensee shall operate or permit any person upon the licensed premises without a ventilation and filtration system that ensures odors are not detectible by a person with a typical sense of smell from any adjoining lot, parcel, tract, public right-of-way, building unit or residential unit.”

On March 8, 2016, City Councilmembers voted for an ordinance, on first reading, to ban MCCs, 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 MCCs.

Background:

Amendment 64 (C.R.S.A. Const, Art. 18 § 16), passed in November, 2012, authorizing Recreational/Retail Marijuana cultivation, sales, and personal use. Amendment 64 and the resulting enabling Statutes and Regulations essentially separate activities into the following three categories: (1) Retail sales, cultivation, product manufacturing, and/or marijuana testing, (2) Personal recreational possession and use, and (3) Industrial Hemp activities. Personal, recreational use of marijuana is legal as a state constitutional right, subject to the limitations specified in Amendment 64. Hemp activities are governed by the Colorado Department of Agriculture.

Section (5)(f) of Amendment 64 authorizes local government to enact ordinances or regulations “governing the time, place, manner and number of marijuana establishment operations...” so long as the regulation does not conflict with State regulations.

The Governor’s Amendment 64 Implementation Task Force issued its final report on March 13, 2013 regarding regulation of marijuana in Colorado, which outlined various recommendations for regulation, and included this statement regarding the practice of remuneration:

“One issue for which the Task Force did not make a recommendation was defining

remuneration in transactions involving marijuana, given public concerns about marijuana businesses providing marijuana free of charge to customers with the purchase of other items. This practice falls outside the intent of Amendment 64 to allow adults over the age of 21 to privately share small amounts of marijuana. The Criminal Law Working Group concluded that no recommendation was necessary on this issue because such activities are already illegal under Section 18-18-102, C.R.S. where the definition of remuneration includes services and trades. Although the Task Force did not make a recommendation on this issue, policy-makers and law enforcement officers may wish to take action to respond to these illegal actions by marijuana businesses.”

Under the express grant of Colorado Constitutional authority, via Amendment 64, and the City’s home rule authority, City Council passed Ordinance 13-47 making it unlawful to operate a retail marijuana establishment within the City. Since, at least 2014, however, MCCs have operated within the City and without specific zoning or licensing requirements. MCC facilities do not operate under any specific constitutional grant of authority or other law. Accordingly, the City desires to regulate these land use activities as a matter of local concern under its home rule authority over land use, zoning, and licensing matters.

The City does not currently have specific zoning regulations or licensing requirements for MCC facilities. A 2014 appeal hearing before City Council resulted in an interpretation that a specific MCC (Studio A64) was operating under a “similar use” determination to a social club. Since that decision, other clubs opened and are operating under the argument that they too fall within the “similar use” interpretation arising from the Studio A64 decision. Without authority via ordinance to regulate MCC facilities, the City has been unable to verify that they are operating within the Manager of Planning and Community Development’s similar use determination or that they comply with all other laws and applicable zoning, subdivision, building, and fire code requirements.

It is important to note that any MCC could not be organized *specifically* to allow the consumption of Medical Marijuana. Section (12)(c) of C.R.S. 25-1.5-106 directs that “[a] person shall not establish a business to permit patients to congregate and smoke or otherwise consume *medical* marijuana” [emphasis added].

Should the City Council elect to ban this type of marijuana related business, the City would still need to address the existing clubs that are operating under a perceived similar use determination for both legal status and compliance with the City Council’s previous ban on growing and selling retail marijuana. The “ban” version of the ordinance would enact business licensing requirements that would set up the review process and specified unlawful acts for MCC compliance during any “phase out” period for existing clubs, as follows:

- This 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
- There is no specific licensing deadline proposed because the City Clerk’s Office needs a flexible time schedule to fully investigate each proposed licensee. Additionally, a licensing

deadline could not 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..

Highlights of MCC licensing are as follows:

- 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 marijuana or marijuana 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 marijuana or marijuana 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 closed between the hours of 2:00 a.m. and 7:00 a.m.;
- 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.

Financial Implications:

Costs associated with the licensing of MCCs are to be substantially recovered through a companion license fees ordinance.

Board/Commission Recommendation:

The City Planning Commission recommended banning MCCs at their February 18, 2016 meeting.

Stakeholder Process:

This and related topics were considered by the City Planning Commission on February 18, 2016, and City Council work session on February 22, 2016. A City Council town hall meeting also took place for public input on February 23, 2016.

Alternatives:

N/A

Proposed Motion:

Approve the ordinance, on second reading, to ban Marijuana Consumption Clubs with time limited licensing of existing clubs.

Enacting business license requirements for Marijuana Consumption Clubs.