



Legislation Text

File #: 14-0036, **Version:** 1

Appeal of Planning Commission Approval of a Medical Marijuana Smoking Facility at 332 East Colorado Avenue - Studio A64. (Planning & Development - Peter Wysocki)

Summary: This is a request by the City of Colorado Springs Administration (“Administration”) to appeal and overturn the City Planning Commission’s approval of an appeal of the Notice and Order issued against Studio A64 (*see Attachment 1*). In granting the appeal filed by Studio A64, the City Planning Commission (“Planning Commission”) permitted a use of the property located at 332 East Colorado Avenue that is not permitted by Chapter 7 of the City Code (“Zoning Code”). Pursuant to City Code Section 7.5.906, any aggrieved person may appeal Planning Commission’s decision to the City Council. The Administration believes it has the right to file the appeal as an aggrieved person.

Previous Council Action: There has been no previous consideration or action on this item or similar issue by the City Council.

Background: The Notice and Order to cease the operation of Studio A64 or otherwise abate the violation was issued by the City’s Code Enforcement Division of the Police Department on November 21, 2013. The Notice and Order gave Studio A64 10 days to cease operations or otherwise abate the violation. Code Enforcement’s Notice and Order was based on the Planning and Development Department’s determination that a facility which allows the consumption of marijuana is not a permitted use within the Form-Base Zone - Central Sector zoning district (*see Attachment 2*), and otherwise not permitted by the City’s zoning code. The investigation was prompted by City staff becoming aware of Studio A64 through media sources. Upon internal discussions between Code Enforcement (Police Department), Planning and the City Attorney’s Office, the decision was made to issue the Notice and Order.

On December 2, 2013, Studio A64 filed an appeal with the Planning and Development Department, appeal the Notice and Order to cease or abate the illegal use of the property. Studio A64’s appeal statement is attached as *Attachment 3*. According to the owner of Studio A64 and Studio A64 website, the facility offers other services and activities such as live music, dance, recording studio, private events, among others. Studio A64 argued that it is a “private club” and the City’s determination that it is an illegal use was contrary to law and against the intent and expressed language of the Zoning Code.

Studio A64’s appeal was originally scheduled for the January 16, 2014 Planning Commission meeting, but it was postponed to the February 20, 2014 meeting due to scheduling conflicts.

At its February 20, 2014 meeting, the Planning Commission approved Studio A64’s appeal.

Studio A64 continues to operate pending the final decision by the Council on the Administration’s

appeal.

ANALYSIS:

The Administration's justification and reasons for filing the appeal are stated and comprehensively detailed in the letter to City Clerk dated March 3, 2014, attached hereto. Pursuant to City Code Section 7.5.906, any aggrieved person may appeal Planning Commission's decision to the City Council. The Administration believes it has the right to file the appeal as an aggrieved person.

In summary, the Administration believes that the Planning Commission's decision is:

1. Inconsistent with the City's zoning code and the Downtown Colorado Springs Form-Based Code;
2. Comparison of the subject property to a "Civic Use Type" is not consistent with the Classification of a "Civic Use Type" under the Zoning Code or the FBZ Code;
3. Inconsistent with the restrictions on the location of civic uses under the FBZ Code; and
4. Inconsistent with the expressed intent of the Zoning Code for similar uses.

It should be noted that this appeal is not regarding Amendment 64 or a moral or legal debate on the consumption of marijuana. This appeal is to be considered strictly in the context of the City's zoning code and whether or not the Planning Commission accurately compared this particular use to a "social club" under the broader land use category of "civic uses". To place the Administration's appeal into perspective, and based on Planning Commission's action, marijuana consumption facilities would be permitted in any zoning district that allows social clubs, including neighborhood shopping centers, without any additional standards that apply to liquor facilities (bars, liquor stores, etc.) and medical marijuana sales.

Financial Implications: Not applicable.

Board/Commission Recommendation: At its February 20, 2014 meeting, the Planning Commission approved Studio A64's appeal on a 6-to-2 vote. In its motion to approve the appeal, the Planning Commission found that staff's determination that a facility which permits consumption of marijuana is an illegal use was erroneous and contrary to the Zoning Code. The Planning Commission compared Studio A64 to a "social club" under the umbrella definition of "[Membership] Club".

Stakeholder process: Not applicable. However, the Planning and Development Department staff has notified and communicated with Studio A64 and the Planning Commission.

Alternative:

1. Deny the Administration's appeal and uphold the decision of the City Planning Commission - other similar businesses could seek similar use determinations as social clubs which could be permitted by right in the PBC, C5, C6, PIP1, PIP2, and FBZ zoning districts and conditionally permitted in the M-1 and M-2 zoning districts without any specific requirements or standards.
2. Approve the Administration's appeal and reverse the decision of the City Planning Commission - this would uphold the Notice and Order and Studio A64 would be required to stop operating as a business that permits on-site marijuana consumption.
3. Refer the project back to the City Planning Commission for further consideration.
4. Deny the Administration's appeal as in #1, above, and direct staff to draft and present a city code amendment that would establish some level of regulations and standards.
5. Approve the Administration's appeal as in #2, above, and direct staff to draft and present a city code amendment that would establish some level of regulations and standards.

Should the Council wish to grant the appeal - resulting in the reinstatement of the Notice and Order - staff recommends that Studio A64 be required to comply with the Notice and Order no later than 10 days after Council's action. This is consistent with the 10-day deadline imposed by the Notice and Order.

Recommendation:

Staff recommends approval of the appeal.

Proposed Motion:

CPC AP 14-00002 - APPEAL OF NOTICE AND ORDER

Move to APPROVE City Administration's appeal of Planning Commission's approval of an appeal filed by Studio A64, LLC, and reinstate the Notice and Order issued to Studio A64, LLC dated November 21, 2013, and order Studio A64, LLC to comply with the Notice and Order no later than 10 calendar days this action.