



Legislation Text

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An ordinance creating a six (6) month moratorium on the processing of any land use approval or licensing application for a new medical marijuana facility or the change of location of a currently operating medical marijuana facility within the city limits

From:

Councilmember Don Knight
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Summary:

The proposed ordinance would establish a City moratorium on the processing of any application for land use approval or licensing for any new medical marijuana facilities, or for the change of location of a currently operating medical marijuana facility, for a time not to exceed six months. The moratorium will allow time for City staff to comprehensively review the City's existing marijuana regulations and draft any necessary code amendments. The moratorium would not preclude the continued operation of any legally existing facilities.

Previous Council Action:

During its regular meeting on September 22, 2015, City Council considered a proposed ordinance to enact a six month moratorium on the establishment of any new Marijuana Consumption Club facility within the City limits or on the processing any land use approval for a new medical marijuana facility within the City limits. Pursuant to Council rule 3-9, Division of a Question, the two points were divided, and City Council voted to postpone the discussion of a proposed moratorium on new medical marijuana facilities within the City Limits to the October 13, 2015 City Council meeting. During the October 13, 2015 meeting, City Council voted to amend the Ordinance to exempt expansion of a licensed business, include a hardship exemption and establish a MMJ Task Force to make recommendations on code changes. The amended ordinance passed on first reading.

Background:

Regulations for medical marijuana facilities were first adopted by the City Council in 2011. Medical marijuana facilities are defined by the City's zoning code as:

An establishment licensed by the City of Colorado Springs and the State of Colorado for the growth, cultivation, acquisition, manufacture, storage, dispensing or sale of medical marijuana or medical marijuana infused products. The following are considered medical marijuana facility use types:

- a. Medical Marijuana Center (MMC): An establishment for the storage, dispensing and/or sale of medical marijuana or medical marijuana infused products.
- b. Medical Marijuana Infused Products Manufacturer (MMIPM): An establishment for the manufacture and storage of medical marijuana infused products.
- c. Optional Premises Cultivation Operation (OPCO): An establishment for the growth, cultivation,

and storage of medical marijuana.

MMJ facilities are a permitted use in OR, OC, PBC, C5, C6, PIP1, PIP2, M1 and M2 zoning districts.

City Code Section 7.3.205.K establishes additional zoning standards for MMJ facilities:

Medical Marijuana Facility (MMJ Facility): A medical marijuana facility shall be subject to the following additional standards:

1. The MMJ facility is prohibited within a residential zone district or dwelling unit, to the extent the facility is not subject to an exception pursuant to subsection 7.3.105P of this article.
2. The MMJ facility must hold valid local and State medical marijuana business licenses and local and State sales tax licenses, as applicable.
3. On premises use, consumption, ingestion, or inhalation within an MMJ facility is prohibited.
4. If necessary, the facility shall install, maintain and operate an air filtration system so that odor is not detectable beyond the facility.
5. A medical marijuana center (MMC) shall be located no less than four hundred feet (400') from any public or private elementary, middle, junior high or high school, or a residential childcare facility or a drug or alcohol treatment facility. This minimum distance shall be measured from the nearest portion of the building used for the medical marijuana center to the nearest property line of the school, residential childcare facility or drug or alcohol treatment facility using a route of direct pedestrian access.
6. City Council specifically finds and determines that it is in the best interests of the public health, safety and welfare to forego zoning enforcement action against those MMJ facilities located within the office residential (OR) or office complex (OC) zone districts that: a) otherwise complied with the City's application procedure found in chapter 2, article 3, part 1 of this Code, and b) are subsequently granted State and local medical marijuana business licenses. So long as these qualified MMJ facilities obtain and maintain State and local medical marijuana business licenses at the locations identified in the application, the City will forego any adverse zoning enforcement action related to that MMJ facility use in the OR or OC zone.

This zoning enforcement forbearance only applies to the identified and qualified MMJ facilities owned or operated by the person or entity identified in the preapplication and shall not run with the land. Should these identified MMJ facilities cease operations for any period of time in the facilities' current OR or OC zone, the City shall enforce zoning restrictions against the reestablishment of, or any expansion of any existing MMJ facility, or any proposed new MMJ facility seeking to locate in any OR or OC zone. No MMJ facility located in an OR or OC zone district shall be declared a legal nonconforming use or be granted any "grandfathered" land use rights.

In addition to zoning regulations, a separate license approval is necessary prior to opening a MMJ facility and undertaking medical marijuana related sales and goods. Licensing requirements are set forth in City Code §§ 2.3.101 et seq.

Over the past several months, City staff and El Paso County staff - representing CSPD, CSFD, Planning, City Clerk, City Attorney, CSU, RBD, County Attorney, and the Sheriff's Office - have formed an internal task force to comprehensively review regulations pertaining to marijuana facilities. The purpose of this multi-disciplinary task force is to assess various issues associated with marijuana facilities, including code enforcement, licensing, land use compatibility, storage of flammable and explosive gases and liquids, building and fire code standards, impacts to residential electrical services and nuisances such as odor. Based upon the discussions by the task force, it has become

clear that marijuana regulations should be evaluated holistically, not piecemeal.

A moratorium will allow staff to complete the comprehensive evaluation of City Code and draft new regulations in a cohesive manner, in compliance with ever-changing state regulations.

Financial Implications:

N/A

Board/Commission Recommendation:

No other City board or commission reviewed or considered this ordinance. Any future ordinances establishing new or amending existing regulations will be reviewed by the appropriate boards or commissions.

Stakeholder Process:

Stakeholder input will be sought upon drafting of any new regulations

Alternatives:

1. Approve ordinance;
2. Delay the first reading to later date;
3. Deny the ordinance; or

Proposed Motion:

Approve an ordinance creating a six (6) month moratorium on the processing of any land use approval or licensing application for a new medical marijuana facility or the change of location of a currently operating medical marijuana facility within the City limits.

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