



Legislation Text

File #: 18-00033, **Version:** 3

Ordinance No. 18-52 amending Section 211 (Personal Cultivation of Medical Marijuana) of Part 2 (Other Dangerous Weapons and Substances) of Article 7 (Dangerous Weapons and Substances) of Chapter 9 (Public Offenses) of the Code of the City of Colorado Springs 2001, as amended, pertaining to the cultivation of marijuana and providing penalties for the violation thereof

Presenter:

Mattie Albert Gullixson, Senior Regulatory Compliance Analyst

Summary:

The proposed ordinance is a revision to the City's criminal code to complement the zoning code ordinance developed to prohibit the growth, cultivation or processing of marijuana or medical marijuana in specified zones, unless licensed by the City of Colorado Springs or specifically authorized in the zoning code.

The language reflects Colorado Revised Statutes 18-18-406 ("Offenses relating to marijuana and marijuana concentrate"), aligning the City's criminal code with that of the state.

Previous Council Action:

N/A

Background:

In November 2000, Colorado voters passed Amendment 20 that authorized limited possession and use of medical marijuana. A decade after Amendment 20, the Colorado State Legislature approved legislation licensing the commercial production and distribution of medical marijuana. While the medical marijuana industry was legitimized in Colorado State Statute, caregivers and patients remained able to grow their own medical marijuana in residential properties with allowances up to 99 plants.

Years after the state-led legalization of the medical marijuana industry - and retail marijuana industry - black market diversion remains a significant challenge. One of the driving factors identified was the high plant count allowed for patients and caregivers in residential areas - and the allowance that individuals could grow marijuana on behalf of others without being the primary caregiver. In order to address the public safety issue and public nuisance issues that arose with large-scale grows in residential areas the Colorado State Legislature passed House Bill 17-1220 capping the number of plants allowed in residential properties to 12; Colorado Springs aligned its local rules to adhere to that limit. Additionally, the legislature passed House Bill 17-1221 that made it an offense to grow marijuana on behalf of another individual, unless he or she is the primary caregiver for that individual. The proposed ordinance change aligns the City's criminal code with State law regarding the cultivation of marijuana.

The limitations set forth by legislation provide tools for law enforcement to address large-scale residential grows. However, the Colorado Springs Fire and Police Departments have been encountering an increasing number of unlicensed grows operating illegally in commercial spaces. These grows are not authorized under the catch-all provision in the City's Zoning Code, Section 7.2.108, which prohibits land uses that are not specifically permitted or allowed under a similar use determination. However, it is the belief of the city administration that explicitly addressing unlicensed grows in commercial spaces will equip the Police Department, the Fire Department, and the Planning Department with an additional and more specific tool for addressing these unlawful grows.

The proposed ordinance change further aligns Colorado Springs policies with statewide enforcement priorities to prevent the diversion of marijuana to the black market, and to ensure public safety and welfare. It is consistent with several other jurisdictions' work to address illegal grow activity. Examples include Douglas County, Brighton, Greenwood Village, Pueblo, Commerce City, and Monument among others.

Not only do these commercial grows undermine efforts to prevent diversion, but they also pose public safety hazards. Many of the grows exhibit the following dangers: overloaded electrical circuits; improperly stored, unpermitted hazardous materials; blocked and barred exits; and low hanging wires. These obstructions threaten the safety of the grow operators themselves, first responders (in the event of a fire), and neighboring properties. The health of those who consume products developed in these grows is also of concern. Licensed grows must regularly test their products for insects, mold, and other harmful substances; unlicensed grows do not adhere to the same public health standards.

Additionally, the city administration seeks to ensure the maintenance of usable property in Colorado Springs. Affordable commercial property space is an essential asset to a growing city seeking to attract and retain businesses. The increasing number of commercial spaces that are damaged or destroyed by unlicensed grows undermines city efforts to reduce blight, and encourage business investments.

Having explicit language - with complementary language in the criminal code - regarding illegal grows in commercial spaces is necessary for public safety and public welfare, and supports the City's strategic objective of encouraging the development of a defined and well-promoted City image through addressing public safety issues.

Financial Implications:

N/A

Board/Commission Recommendation:

N/A

Stakeholder Process:

The ordinance was discussed with the Council President's Special Marijuana Working Group, and was given general support to move forward.

Alternatives:

N/A

Proposed Motion:

Move to adopt an ordinance amending Section 211 (Personal Cultivation of Medical Marijuana) of Part 2 (Other Dangerous Weapons and Substances) of Article 7 (Dangerous Weapons and Substances) of Chapter 9 (Public Offenses) of the Code of the City of Colorado Springs 2001, as Amended, Pertaining to the Cultivation of Marijuana and Providing Penalties for the Violation Thereof

An ordinance aligning the City's criminal code with State statutes and the City's zoning code regarding marijuana cultivation within the City.