



Legislation Text

File #: 17-848, **Version:** 2

Ordinance No. 17-28 amending Part 1 (Medical Marijuana License Code) 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 Medical Marijuana License Code.

Presenter:

Bret Waters, Deputy Chief of Staff
Lee McRae, License Enforcement Officer in the City Clerk's Office

Summary:

This ordinance to amend the existing Medical Marijuana (MMJ) License Code is based on input and discussions with the City Council Marijuana Working Group. In addition to minor definition clarifications, the proposed changes prohibit any new Medical Marijuana Center license applications, creates a cap on the number of Medical Marijuana facility locations, and allows for a Medical Marijuana Testing Facility license type.

Previous Council Action:

Marijuana Related Ordinances and Resolutions:

- City Ordinance 10-45 (creating new City Code 2.3.11 for MMJ Pre-Application Registration)
- 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 Resolution 120-11 (MMJ application fees)
- City Resolution 153-11 (MMJ license fees)
- City Ordinance 13-18 (MJ possession)
- City Ordinance 13-19 (MJ public-vehicle consumption)
- City Ordinance 13-47 (RMJ ban)
- City Ordinance 14-14 (MJ airport possession)
- City Ordinance 15-55 (MJ residential hash oil)
- City Ordinance 15-76 (MJ consumption club moratorium)
- City Ordinance 15-79 (creating a six month moratorium on MMJ Land Use and licensing reviews and creating task force)
- City Ordinance 15-100 (MJ paraphernalia)
- City Ordinance 16-32 (renaming and moving MJ code)
- City Ordinance 16-33 (MJ consumption club zoning ban)
- City Ordinance 16-34 (MJ consumption club licensing ban-phase out)
- City Ordinance 16-35 (MJ consumption club fees)
- City Resolution 27-16 (MJ consumption club lawful operation criteria)
- City Ordinance 16-52 (residential plant limits)

- City Ordinance 16-53 (MMJ conditional use zoning)
- City Ordinance 16-54 (MMJ odor and MMC buffer)
- City Ordinance 16-55 (MMJ personal cultivation)
- City Ordinance 16-56 (MMJ licensing amendments - unlawful acts)
- City Ordinance 16-57 (creating a twelve month moratorium on MMJ Land Use and licensing reviews)
- City Resolution 50-16 (Appointment of MJ working group)
- City Ordinance 16-100 (MMJ use - downtown FBZ)

On October 24, 2016, the Marijuana Working Group presented the following options to City Council (1) creating additional exemptions to the current MMJ moratorium; or (2) maintaining the current MMJ moratorium without amendment. City Council indicated its preference was to maintain the current MMJ moratorium without amendment. Members of the Marijuana Working Group also suggested there was some industry support for a cap on MMJ licenses or locations. City Council did not suggest a preference on the licensing cap subject.

Background:

LOCATION CAP: The Marijuana Working Group researched and discussed possible variations of a cap on Medical Marijuana businesses. The data collected from other Colorado jurisdictions indicated that while many other municipalities had some restrictions on new MMJ or retail marijuana (“RMJ”) businesses, there appeared to be no common rationale for the respective caps. Some jurisdictions used the population as a basis, some caps were based on the number of patients, and some were based on simply creating a maximum number of establishments in each district/ward. After discussion, the Marijuana Working Group agreed to propose a cap on the number of existing total locations, similar to the Denver RMJ model. The group also discussed and concluded that having 132 existing Medical Marijuana Centers (dispensaries) is apparently more than sufficient to serve the patient base. Therefore, in conjunction with this cap, and with unanimous consent, the Marijuana Working Group recommends prohibiting any new Medical Marijuana Centers in Colorado Springs. Transfers or changes of ownership would continue to be allowed.

The location cap portion of this proposed ordinance recommends defining and creating a cap on the number of all existing MMJ facility/establishment locations and prohibits any new Medical Marijuana Center licenses (aka dispensary - currently 132). As MMJ licensees are able to co-locate different license types in the same location, the contemplated cap would be a cumulative location cap, regardless of how many MMJ licenses or license types are at each unique location. There are currently 356 individual MMJ licenses in 212 unique MMJ facility locations, however this number may change slightly (either more or less) before the expiration of the moratorium. Any change in this number would be the result of potential hardship change of location for one or more licenses which is currently allowed under the moratorium, or as a result of surrender or expiration of licenses before the end of the moratorium. The exact defined cap would be based upon the total number of approved Medical Marijuana Centers, Medical Marijuana Optional Premises Cultivation (grows), and Medical Marijuana Infused Product Manufacturers unique premises locations that exist upon the expiration of the current MMJ moratorium on 5/25/2017.

Existing Medical Marijuana licenses and locations in Colorado Springs:

MMJ License Type	Number
MMC (Centers)	132
OPC (Optional Premises Cultivation)	173
MIP (Infused Product Manufacturer)	51
Total License Types	356

Unique premises addresses/locations	212
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A unique premises location is defined as a “distinct and definite location with approved unique enumeration, which may include a building, a part of a building, a room, or any other definite area with internal contiguous access, which is under the exclusive possession and control by the licensee.” A unique premises location may include multiple addresses or suites licensed as a single location (e.g., 34-38 Sample Street, or 33 Sample Street, #104-106). The proposal also contemplates that any surrender or expiration of an existing MMJ license does not create any opportunity for replacement (attrition will not be replaced).

The proposed ordinance entails the following:

- Prohibits any new MMC license applications.
- Allows for new OPC and MIP applications and changes of location for all types as long as it does not create an additional location, and must be in compliance with current zoning regulations.
 - Applications for new OPC or MIP licenses allowed, but would require locating in an already existing and approved MMJ facility (with 100% common ownership).
 - For a change of location, all licenses/types at original location must either (1) move to the same new location, or (2) to an existing approved MMJ facility, or (3) surrender the MMJ licenses not moving.
 - Example 1: Licensee with single OPC license requests a change of location. In this case, the OPC can move to any zoning approved location. Since the old location is vacated, it does not create an additional location (net neutral effect).
 - Example 2: Licensee with co-located MMC and OPC licenses requests a change of location for the OPC license only. In this case, if the MMC is to remain at the original location, the OPC can only move to another existing approved OPC licensed facility (with 100% common ownership).
 - Example 3: Licensee with co-located MMC and OPC licenses requests a change of location for both license types. In this case (1) both licenses must move to the new location, or (2) one license could move to the new location and the remaining license must locate to another existing approved OPC facility (with 100% common ownership).
 - Example 4: Licensee with co-located OPC and MIP-H (hazardous) currently in a “grandfathered” C6 zone wants to move (or is evicted). In this case, the licensee must (1) move both licenses to M1/M2 zone, or (2) move the OPC license to a zoning approved location and surrender the MIP-H license.

- Creates a new Medical Marijuana Testing Facility license type and caps Medical Marijuana Testing Facility locations at one per one hundred MMJ locations subject to the cumulative cap.

TESTING: Since Medical Marijuana (MMJ) licensing began in 2010, MMJ licensees were allowed to voluntarily provide samples of their products to a laboratory for testing and research purposes, however there was no mandatory testing requirement. Conversely, Retail Marijuana (RMJ) Testing Facilities have been a part of the RMJ Code (C.R.S. 12-43.4), with mandatory testing by RMJ licensees since inception in 2013.

2015 amendments to the Colorado Medical Marijuana Code (C.R.S. 12-43.3) enacted by Senate Bill 15-260 and subsequent MED Regulation amendments (series 700 and 1500), created a Medical Marijuana testing program to become effective on 7/1/2016. SB15-260 created both a MMJ Testing Facility license type and testing and certification programs for MMJ. This act requires, however, that MMJ testing shall not be mandatory until a testing reference library is created and proficiency tests and standards are created. MED Industry bulletin 16-10 issued on 6/15/2016 indicates that the MMJ testing will not become mandatory until the proficiency tests and standards have been completed. These testing proficiencies and standards are being phased in, starting with flower potency, which is now mandatory as of 11/01/2016, and to be followed by the remaining categories of products and concentrates potency, microbial testing, and residual solvent testing in the next few months.

As of 7/1/2016, an MMJ licensee may only test through licensed MMJ Testing Facilities, and can no longer use RMJ Testing Facilities, as was the allowed practice prior to 7/1/2016 (the only available testing facilities). There are currently approximately 14 MMJ Testing Facilities licensed by the MED, most of which also have co-located RMJ Testing Facility licenses. 11 of these are in the Denver metro area, with the other three being located in Durango and Carbondale. If a licensed MMJ Testing Facility also holds a current RMJ Testing Facility license, the facility may test MMJ in all of the current RMJ certified categories. Co-location of MMJ and RMJ Testing facilities would not be allowed in the City under the current RMJ ban.

The 2015 State amendments, however, only provided for a State MED license class for the Medical Marijuana Testing Facility, and left intact the section which limits the local authority to licensing only MMC, OPC, and MIP facilities (Retail Marijuana Testing already had both State and Local licensing). The practical effect of this was that Medical Marijuana Testing Facilities could not be licensed by the local authority and by extension created a mandate to test without having any licensed testing facilities within the local jurisdiction.

House Bill 16-1064 added MMJ testing as an authorized local license type. Without changing our local MMJ Code to allow for licensing of Medical Marijuana Testing Facilities, MMJ testing is banned in Colorado Springs, although now required by State Statute.

The MMJ Testing Facility licensee would, of course, need to be in compliance with all local MMJ Code and Rules (including zoning and fire), and, by current State Code and Regulations, is currently prohibited from having any common ownership or interest with licensed MMC, OPC, or MIP facilities (or any similar RMJ types).

The proposed ordinance would allow for Medical Marijuana Testing only, as Retail Marijuana Testing facilities are currently banned in the City as a part of Ordinance 13-47 which bans all Retail Marijuana

Facilities.

Financial Implications:

City Clerk's Office costs associated with these proposed code changes for MMJ business licenses appear to fit into the same fee framework applicable to all MMJ licensees. Further analysis and discussion of enforcement activities and related cost impacts and MMJ fees are in progress, and the Marijuana Working Group may be recommending fee adjustments in the future.

Board/Commission Recommendation:

At the February 7, 2017 meeting, the City Council Marijuana Working Group made a unanimous recommendation to make these changes to the existing Medical Marijuana License Code.

Stakeholder Process:

This and related topics were considered by the City Council Marijuana Working Group at public meetings, and with stakeholder input.

Alternatives:

N/A

Proposed Motion:

Approve the ordinance to amend the Medical Marijuana License Code.

Enacting amendments and changes to the Medical Marijuana License Code.