



Legislation Text

File #: 16-00164, **Version:** 4

Ordinance No. 16-33 amending Section 302 (Definitions of Use Types) of Part 3 (Land Use Types and Classifications) of Article 2 (Basic Provisions, Definitions) and Section 205 (Additional Standards for Specific Land Uses) of Part 2 (Commercial Districts) of Article 3 (Land Use Zoning Districts) of Chapter 7 (Planning, Development and Building) of the Code of the City of Colorado Springs 2001, as amended, pertaining to marijuana consumption club facilities

Presenter:

Peter Wysocki, Planning and Community Development Director

Summary:

The proposed ordinance would prohibit the establishment of new marijuana consumption clubs within the City limits. Existing clubs operating within a previously-**issued similar use determination by the City would be considered as legal non-conforming uses** and could continue to operate for a period not to exceed 5 years.

Staff also prepared two other ordinances that would limit the location of any new marijuana consumption clubs to the M1 (Light Industrial) and M2 (Heavy Industrial) zoning districts - one allowing the clubs as a use permitted by right, the other permitted as a conditional use.

Previous Council Action:

This item was initially introduced to City Council by Councilmember Knight at the February 22 City Council work session.

Background:

In November 2000 the voters of the State of Colorado passed Amendment 20 providing an exception under Colorado law for the possession and use of a limited amount of marijuana for medical purposes. Over the course of the following decade, medical marijuana land use types evolved at a significant rate. In November 2012, the voters of the State subsequently passed Amendment 64 which provides for an exception under Colorado law for the possession and use of a limited amount of marijuana for personal use. In the following years there has been a proliferation of new marijuana-related land uses throughout the State, including retail marijuana dispensaries and marijuana consumption club facilities. Pursuant to its home rule authority, in 2013 the City Council passed an ordinance making it unlawful within the City limits to operate a retail marijuana establishment.

Marijuana consumption club facilities do not operate under any specific constitutional grant of authority or otherwise. The City wishes to regulate these land use activities as a matter of local concern under its home rule authority over land use and zoning matters.

Since at least 2014, marijuana consumption club facilities have operated within the City of Colorado

Springs (“City”) without specific zoning or licensing requirements. In 2014, during a zoning violation appeal hearing pertaining to Studio A64 - a marijuana consumption club located in downtown Colorado Springs - the City Council directed staff to develop regulations for marijuana consumption clubs. At that time, the City Council granted an appeal of a zoning violation issued to the club alleging a violation of the City’s Zoning Code. Specifically, the zoning violation alleged that a marijuana consumption club facility was not a permitted use in any zone district in the City. In permitting Studio A64’s land use, the City Council interpreted that Studio A64 was operating a “similar use” to a *social club*, which falls under the parent definition of a “(*membership*) club” as established in § 7.2.302 (D)(3) of the City Code. Based on that interpretation, the Manager made an official similar use determination pursuant to § 7.2.108 of the City Code that marijuana consumption club facilities are either permitted or conditionally permitted in zoning districts where (*membership*) clubs are permitted or conditionally permitted, including multi-family residential, commercial and industrial zone districts. Marijuana consumption club facilities operating within the parameters of the Manager’s similar use determination must comply with all other laws and all applicable zoning, subdivision, building and fire code requirements, and must have gone through the standard City review processes to legally operate.

On September 22, 2015, the City Council enacted a 6-month moratorium on the establishment of any new marijuana consumption clubs within the City limits. The City Council directed staff to present for adoption draft regulations prior to the expiration of the moratorium. Pursuant to City Council direction, the marijuana consumption club regulations were excluded from a separate medical marijuana task force established by City Council through the adoption of a separate moratorium on new medical marijuana facilities. This “medical marijuana task force” is focused on preparing new regulations for medical marijuana facilities and home-grow operations and will not address marijuana consumption club facilities.

The proposed marijuana consumption club ordinances were 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, who was a co-sponsor of the moratoria ordinances adopted by the City Council. Since the first introduction work session presentation on February 22, 2016, several minor changes have occurred to the draft zoning ordinances at Councilmember Knight’s request. A requirement for a ventilation and filtration system was added to Option 3 below and the requirement to obtain a license by a date certain has been removed to accommodate the City Clerk’s licensing process. Timelines for licensure will be addressed in the companion licensing ordinance. Language regarding ventilation and filtration was also updated in Options 1 and 2 to mirror language being utilized in the draft ordinances being considered by the medical marijuana task force. Additionally, several “whereas” clauses have been updated by staff following work session input.

Financial Implications:

N/A

Board/Commission Recommendation:

This item was considered by the Planning Commission at their February 18, 2016 meeting. The Commission was presented three options listed below. After a public hearing, the Planning Commission voted 6 to 3 to recommend to the City Council Option 3 (banning new clubs).

The Planning Commission had an extensive discussion on the best zoning and location of marijuana

consumption clubs. The Commission considered the impacts such clubs may have on surrounding uses (and conversely the impacts existing uses may have on the clubs), redevelopment, compatibility of uses, economic development and recruitment of high-tech industry, over-concentration if limited only to the M1 and M2 zoning districts, and prohibition of such clubs in unincorporated areas of El Paso County. A majority of the Commissioners felt that there is not a good location or zoning district for marijuana clubs; and therefore, recommended a ban of new clubs. Three Commissioners (Philips, Markewich, and Donley) felt that marijuana clubs should be permitted within the City. The three Commissioners also felt that limiting the clubs to the M1 and M2 zoning districts is too restrictive (particularly given the proposed setback requirements to residential uses) and that the M1 and M2 zoning districts are not appropriate given the purpose of the districts to serve industrial-type uses.

The summary of the three options considered by the Planning Commission are as follows:

Option 1:

- Marijuana consumption clubs are permitted as a use by right only in M1 and M2 zoning districts
- A 1,000-foot separation from, schools, daycare centers, and drug or alcohol treatment facilities
- A 1,000-foot separation from residentially used or zoned properties
- 1,000-foot separations are measured by pedestrian access
- Requirement for an air filtration system
- Marijuana consumption facilities currently located in zoning districts other than M1 and M2, and were lawfully operating pursuant to the similar use determination established prior to the moratorium (September 22, 2015) would have “non-conforming development” status pursuant to City Code § 7.5.1201, et seq.
- All lawfully operating clubs must obtain a license pursuant to ordinances being developed in conjunction with the City Clerk’s Office

Option 2:

- Marijuana consumption clubs are permitted as a conditional use in M1 and M2 zoning districts
- All other standards same as Option 1
- Requires a City Planning Commission hearing with the potential of an appeal to City Council

Option 3:

- Establishment of any new marijuana consumption clubs within City limits would be prohibited.
- Existing clubs that were lawfully operating pursuant to the similar use determination and prior to the moratorium are provided with a five (5) year amortization period and must cease operations no later than March 21, 2021. Colorado case law provides that a nonconforming use may be terminated upon the expiration of a reasonable period of amortization. This legal concept is untested by the City in the context of the length of the amortization period and for marijuana consumption club facilities generally.
- All lawfully operating clubs must obtain a license for the duration of permitted operations

Stakeholder Process:

A town hall meeting was hosted by Council Member Knight on February 23, 2016.

Alternatives:

1. Adopt an ordinance that would prohibit the establishment of new marijuana consumption clubs and amortization of the current marijuana consumption clubs operating within the Manager’s similar

use determination within 5 years, as recommended by the Planning Commission.

2. Adopt an ordinance that would limit the establishment of new marijuana consumption clubs in the M1 and M2 zoning districts as a use permitted by right.
3. Adopt an ordinance that would limit the establishment of new marijuana consumption clubs in the M1 and M2 zoning districts as a conditional use.
4. Adopt any of the ordinances with modifications.

Proposed Motion:

Move to adopt an ordinance amending Section 302 (Definition of Use Types) of Part 3 (Land Use Types and Classifications) of Article 2 (Basic Provisions, Definitions) and Section 205 (Additional Standards for Specific Land Uses) of Part 2 (Commercial Districts) of Article 3 (Land Use Zoning Districts) of Chapter 7 (planning, development and buildings) of the Code of the City of Colorado Springs 2001, as amended, pertaining to marijuana consumption club facilities.

An ordinance prohibiting the establishment of new marijuana consumption club facilities.