



## Legislation Text

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**File #:** CPC CA 17-00018, **Version:** 3

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Ordinance No. 17-30 amending Chapter 7 (Planning, Development and Building) of the Code of the City of Colorado Springs 2001, as amended, pertaining to marijuana uses and providing remedies for the violation thereof.

(Legislative)

**Presenter:**

Peter Wysocki, Director of Planning and Development

**Summary:**

The proposed ordinance amends City Code Chapter 7, Article 3, Part 2, Sections 203 and 205 adding a new prohibited use and a definition of “Marijuana Uses, Other”.

**Previous Council Action:**

The proposed ordinance was developed by City staff and vetted through the City’s Marijuana Working Group. The proposed ordinance was introduced to Council on February 27, 2017. Council has recently approved several ordinances pertaining to marijuana regulations and licensing. This ordinance does not change or modify any of the previously adopted ordinances.

On March 14, 2017, City Council approved this item on first reading with a unanimous vote of 9:0.

**Background:**

The Marijuana Working Group meets to discuss ordinances and policies related to the current medical marijuana moratorium and future code and licensing amendments. Through those discussions it was recognized that unlawful transfer of retail marijuana is occurring throughout the City. The operation of a retail marijuana establishment is currently prohibited in Chapter 2 of the City Code. One way that businesses have attempted to circumvent the prohibition on the retail sale of marijuana is by the “transfer” or “gifting” of marijuana in exchange for other goods or services. This practice, which was specifically outlawed in 2016 by the State Legislature, occurs when a person receives marijuana in exchange for purchasing a separate service or product, such as a smoking device. This practice is prohibited under the Colorado Revised Statutes. The proposed ordinance will codify that prohibition within the City Zoning Code by defining “marijuana uses, other” and specifically states that it is a violation in any zoning district to utilize or permit to be utilized any property in the following manner:

To operate a retail marijuana establishment (this is already prohibited in City Code),

To transfer or permit the transfer of marijuana or marijuana concentrate at no cost to a person if the transfer is in any way related to remuneration for any other service or product,

marijuana and marijuana concentrate shall have the same meanings as set forth in section 9.7.206 of the City Code.

In addition to any other competent evidence identifying a substances as marijuana, or marijuana concentrate, results of the field test known as the “Duquenois-Levine Reagent System” shall be admissible in evidence and shall be prima facie evidence of whether or not the substance tested was marijuana or marijuana concentrate.

By specifically placing this prohibition within the City’s Zoning Code, the City may more efficiently utilize its zoning enforcement remedies and any available remedies through the State court system. Nothing in this section is meant to inhibit any individual’s personal use or possession of marijuana pursuant to article XVIII, section 16(3) (a) - (e) of the Colorado Constitution.

In addition to the specific provisions proposed in section 7.3.205, staff is also requesting a “housekeeping” modification to note 7 within section 7.3.203 of the Code. This note has been modified multiple times in the past due to definitional amendments to section 7.3.205. This change is intended to simplify note 7 and eliminate the need to amend this particular note each time a new definition is placed within section 7.3.205.

This item supports the City’s strategic goal relating to building community and collaborative relationships in that the ordinance insure clarity related to the remuneration of marijuana within the city as a prohibited act.

**Financial Implications:**

There is no financial implication to the City.

**Board/Commission Recommendation:**

At their February 16, 2017 meeting, the City Planning Commission unanimously (7-0 vote, Commissioners Walkowski and Graham absent) recommended approval of the ordinance to City Council. There was little discussion on the item with Commissioners agreeing that the proposal is rational and needed. There were a few questions about enforcement. It was explained that CSPD could use either the zoning regulation or the parallel criminal regulations to enforce as needed.

**Stakeholder Process:**

The proposed ordinance was developed by City staff and vetted through the City’s Marijuana Working Group. The Marijuana Group consists of voting representatives from the medical marijuana industry, medical marijuana caregivers, business representatives, and neighborhood organizations, and a member of the City Council. The Working Group is supported by non-voting City Staff from Planning, Police, Fire, City Clerk’s Office, CSU, City Attorney’s Office, and the Mayor’s Office. Voting members of the Working Group were appointed by the City Council.

**Alternatives:**

1. Uphold the action of the City Planning Commission;
2. Modify the decision of the City Planning Commission;
3. Reverse the action of the City Planning Commission; or
4. Refer the matter back to the City Planning Commission for further consideration

**Proposed Motion:**

Approve the ordinance amending Section 203 (Permitted, Conditional and Accessory Uses) 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 uses.

An ordinance amending Section 203 (Permitted, Conditional and Accessory Uses) 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 Uses and Providing Remedies for the Violation Thereof