

ORDINANCE NO. 3742

An Ordinance amending the City of Broken Arrow Code of Ordinances, Chapter 7 Business Regulations and Licenses, Article XV – Medical Marijuana; Repealing All Ordinances to the Contrary; and declaring an emergency.

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF BROKEN ARROW, OKLAHOMA:

SECTION I. Chapter 7 Business Regulations and Licenses, Article XV Medical Marijuana of the Broken Arrow Code of Ordinances is hereby amended to read as follows:

Sec. 7-386. Definitions.

The following terms are defined as set forth for use in this article:

Caregiver means a family member or assistant who regularly looks after a medical marijuana license holder whom a physician attests needs assistant, and whom has been issued a caregiver license by the Oklahoma State Department of Health.

Commercial grower means an entity that is licensed by the Oklahoma State Department of Health pursuant to 63 O.S. § 422A, which allows the entity to grow, harvest, and package medical marijuana for the purpose of selling medical marijuana to a dispensary, processor or researcher.

Commercial license means a license issued to a medical marijuana dispensary, commercial grower or processor by the Oklahoma State Department of Health pursuant to 63 O.S. § 420A et seq.

Marijuana processor means an entity that is licensed by the Oklahoma State Department of Health pursuant to 63 O.S. § 423A which allows the entity to purchase marijuana from a commercial grower; prepare, manufacture, package, sell to and deliver medical marijuana products to a dispensary licensee or other processor licensee; and may process marijuana received from a qualified patient into a medical marijuana concentrate, for a fee.

Medical marijuana dispensary means an entity that is licensed by the Oklahoma State Department of Health pursuant to 63 O.S. § 421A which allows the dispensary to purchase medical marijuana or medical marijuana products from a licensed processor, grower, or dispensary; to sell medical marijuana and medical marijuana products to a licensed patient, to the licensed patient's parent(s) or legal guardian(s) if licensed patient is a minor, and a licensed caregiver; and to sell, transfer, and transport or contract with a commercial transporter to transport medical marijuana or medical marijuana products to another licensed dispensary, a research facility, and an educational facility; and to transfer to testing laboratories.

Permit means a current and valid permit for a medical marijuana dispensary, commercial grower or marijuana processor issued under this article, which shall be granted to a permit holder only for and limited to a specific permitted premises and specific permitted property.

Permit holder means the person that holds a current and valid permit issued under this article.

Permitted premises means the particular building or buildings within which the permit holder will be authorized to conduct the facility's activities pursuant to the permit.

Permitted property means the real property comprised of a lot, parcel or other designated unit of real property upon which the permitted premises is situated.

Qualified patient means a person that has been issued a medical marijuana license pursuant to 63 O.S. § 420A et seq.

Sec. 7-387. Permit required; general provisions.

- (a) No person shall operate a medical marijuana dispensary, commercial grower or marijuana processor at any time or at any location within the City of Broken Arrow unless a currently effective permit for that person at that location has been issued under this article.
- (b) A medical marijuana dispensary, commercial grower or marijuana processor shall operate only as allowed under this article.
- (c) The requirements set forth in this article shall be in addition to, and not in lieu of, any other licensing or permitting requirements imposed by applicable federal, state or local laws, regulations, codes or ordinances.
- (d) A permit shall not confer any vested rights or reasonable expectation of subsequent renewal on the applicant or permit holder.
- (e) It is the sole and exclusive responsibility of each permit holder or person applying to be a permit holder to immediately provide the City of Broken Arrow with all material changes in any information submitted on an application and any other changes that may materially affect any commercial license or City of Broken Arrow permit.
- (f) No permit issued under this article may be assigned or transferred to any person unless the assignee or transferee has submitted an application and all required fees under this article and has been granted a permit by the City of Broken Arrow. No permit issued under this article is transferrable to any other location except for the permitted premises.
- (g) The original permit issued under this article shall be prominently displayed at the permitted premises in a location where it can be easily viewed by the public, law enforcement and administrative authorities.
- (h) No permit shall be granted or renewed for a medical marijuana dispensary, commercial grower or marijuana processor in a residence.

Sec. 7-388. Medical marijuana dispensary requirements.

- (a) *State licensing requirement.* All operators of a medical marijuana dispensary within the City of Broken Arrow must maintain a valid commercial license from the Oklahoma State Department of Health. Each person operating a medical marijuana dispensary within the City of Broken Arrow shall provide the city with a copy of their commercial license issued by the Oklahoma State Department of Health prior to commencing operation and shall further provide the city with a copy of each renewed commercial license upon receipt.
- (b) *City permit requirement.* All operators of a medical marijuana dispensary within the City of Broken Arrow must obtain a medical marijuana dispensary permit from Community Development prior to commencing operation.

- (1) Prior to issuance of a medical marijuana dispensary permit, the physical address of the proposed medical marijuana dispensary will be subject to a property inspection by an authorized city inspector to ensure compliance with all city codes. The property inspection will occur at a time scheduled and approved by both the applicant and city inspector. The applicant is required to be present during the inspection. All structures, equipment and apparatuses shall comply with all building and fire codes adopted by the State of Oklahoma and City of Broken Arrow.
- (c) *Applications for medical marijuana dispensary permit.* Any person seeking to obtain a medical marijuana dispensary permit shall submit a written application to the Community Development Department on a city prescribed form to include, at a minimum, the following:
- (1) The name of the establishment;
 - (2) Physical address of the establishment;
 - (3) Phone number of the establishment;
 - (4) Operating hours of the establishment;
 - (5) The applicant's first name, middle name, last name and suffix if applicable;
 - (6) The applicant's residence address and mailing address;
 - (7) The applicant's date of birth;
 - (8) The applicant's preferred telephone number and email address;
 - (9) An attestation that the information provided by the applicant is true and correct;
 - (10) An application submitted on behalf of a business organization shall include an attestation that the applicant is authorized to make application on behalf of the business organization, full name of the business organization, type of business organization, mailing address for the business organization;
 - (11) A statement signed by the applicant not to divert marijuana to any individual or entity that is not lawfully entitled to possess marijuana;
 - (12) One copy of the following:
 - a. A valid commercial license issued by the Oklahoma State Department of Health if renewing the City permit;
 - b. All documentation showing the proposed permit holder's valid tenancy, ownership or other legal interest in the proposed permitted premises. If the applicant is not the owner of the proposed permitted premises, a notarized statement from the owner of such property authorizing the use of the property for a medical marijuana dispensary;
 - c. A valid, unexpired driver's license or state issued ID for all owners, directors, officers and managers of the proposed facility;
 - d. Evidence of a valid sales tax license for the business if such a license is required by state law or local regulations; and
 - e. Any other information reasonably requested by the City of Broken Arrow to be relevant to the processing or consideration of the application.

- (d) *Term and renewal of medical marijuana dispensary permit.*
 - (1) *Term.* A medical marijuana dispensary permit issued under this article shall be valid for one (1) year from the date of issuance.
 - (2) *Renewal.*
 - a. It is the responsibility of the permit holder to renew the permit, with all applicable documentation and fees, prior to the date of expiration of the permit by following the procedures provided in Subsection (c) above.
 - b. A permit holder that attempts to renew its permit after the expiration date shall pay a nonrefundable late renewal fee in the amount set forth in the Manual of Fees. A permit that has been expired for more than ninety (90) days shall not be renewed.
- (e) *Fees.* The initial fee and renewal fee for a medical marijuana dispensary permit shall be as set forth in the Manual of Fees adopted by the Broken Arrow City Council. The fees shall be used to offset municipal expenses covering costs related to licensing, inspection, administration, and enforcement of medical marijuana dispensary establishments. The annual fee shall be paid prior to the issuance or renewal of a City of Broken Arrow medical marijuana dispensary permit. Fees are non-refundable.
- (f) *Location restrictions for medical marijuana dispensary.*
 - (1) A medical marijuana dispensary permit will not be granted to any applicant where the proposed location is not allowed by the Broken Arrow zoning ordinance.

Sec. 7-389. Commercial grower requirements.

- (a) *State licensing requirement.* All operators of a commercial grower within the City of Broken Arrow must maintain a valid commercial license from the Oklahoma State Department of Health. Each person operating a commercial grower within the City of Broken Arrow shall provide the city with a copy of their commercial license issued by the Oklahoma State Department of Health prior to commencing operation and shall further provide the city with a copy of each renewed commercial license upon receipt.
- (b) *City permit requirement.* All operators of a commercial grower within the City of Broken Arrow must obtain a commercial grower permit from Community Development prior to commencing operation.
 - (1) Prior to issuance of a commercial grower permit, the physical address of the proposed commercial grower will be subject to a property inspection by an authorized city inspector to ensure compliance with all city codes. The property inspection will occur at a time scheduled and approved by both the applicant and city inspector. The applicant is required to be present during the inspection. All structures, equipment and apparatuses shall comply with all building and fire codes adopted by the State of Oklahoma and City of Broken Arrow.
- (c) *Applications for a commercial grower permit.* Any person seeking to obtain a commercial grower permit shall submit a written application to the Community Development Department on a city prescribed form to include, at a minimum, the following:
 - (1) The name of the establishment;

- (2) Physical address of the establishment;
- (3) Phone number of the establishment;
- (4) Operating hours of the establishment;
- (5) The applicant's first name, middle name, last name and suffix if applicable;
- (6) The applicant's residence address and mailing address;
- (7) The applicant's date of birth;
- (8) The applicant's preferred telephone number and email address;
- (9) An attestation that the information provided by the applicant is true and correct;
- (10) An application submitted on behalf of a business organization shall include an attestation that the applicant is authorized to make application on behalf of the business organization, full name of the business organization, type of business organization, mailing address for the business organization;
- (11) A statement signed by the applicant not to divert marijuana to any individual or entity that is not lawfully entitled to possess marijuana;
- (12) One copy of the following:
 - a. A valid commercial license issued by the Oklahoma State Department of Health if renewing the City permit;
 - b. All documentation showing the proposed permit holder's valid tenancy, ownership or other legal interest in the proposed permitted premises. If the applicant is not the owner of the proposed permitted premises, a notarized statement from the owner of such property authorizing the use of the property for a commercial grower establishment;
 - c. A valid, unexpired driver's license or state issued ID for all owners, directors, officers and managers of the proposed facility;
 - d. Evidence of a valid sales tax license for the business if such a license is required by state law or local regulations; and
 - e. Any other information reasonably requested by the City of Broken Arrow to be relevant to the processing or consideration of the application.

(d) *Term and renewal of a commercial grower permit.*

(1) *Term.* A commercial grower permit issued under this article shall be valid for one (1) year from the date of issuance.

(2) *Renewal.*

- a. It is the responsibility of the permit holder to renew the permit, with all applicable documentation and fees, prior to the date of expiration of the permit by following the procedures provided in Subsection (c) above.
- b. A permit holder that attempts to renew its permit after the expiration date shall pay a nonrefundable late renewal fee in the amount set forth in the Manual of Fees. A permit that has been expired for more than ninety (90) days shall not be renewed.

- (e) *Fees.* The initial fee and renewal fee for a commercial grower permit shall be as set forth in the Manual of Fees adopted by the Broken Arrow City Council. The fees shall be used to offset municipal expenses covering costs related to licensing, inspection, administration, and enforcement of commercial grower establishments. The annual fee shall be paid prior to the issuance or renewal of a City of Broken Arrow commercial grower permit. Fees are non-refundable.
- (f) *Location restrictions for commercial grower.*
 - (1) A commercial grower permit will not be granted to any applicant where the proposed location is not allowed by the Broken Arrow zoning ordinance.
- (g) *Conditions of operation for commercial grower.*
 - (1) All commercial grower facilities shall be located within an entirely enclosed and secured structure.
 - (2) All commercial grower facilities must be constructed in such a manner that the growing of the medical marijuana plants cannot be seen by the public from the public right-of-way.
 - (3) All commercial grower facilities shall comply with all building and fire codes adopted by the State of Oklahoma and the City of Broken Arrow.
 - (4) All commercial grower facilities must be properly vented so as to not create humidity, mold or other related problems.
 - (5) All commercial grower facilities shall be conducted in a manner that does not constitute a public nuisance. A public nuisance may be deemed to exist if growing marijuana produces light, glare, heat, noise, odor or vibration that is detrimental to public health, safety or welfare or interferes with the reasonable enjoyment of life and property.

Sec. 7-390. Marijuana processor requirements.

- (a) *State licensing requirement.* All operators of a marijuana processor within the City of Broken Arrow must maintain a valid commercial license from the Oklahoma State Department of Health. Each person operating a marijuana processor within the City of Broken Arrow shall provide the city with a copy of their commercial license issued by the Oklahoma State Department of Health prior to commencing operation and shall further provide the city with a copy of each renewed commercial license upon receipt.
- (b) *City permit requirement.* All operators of a marijuana processor within the City of Broken Arrow must obtain a marijuana processor permit from Community Development prior to commencing operation.
 - (1) Prior to issuance of a marijuana processor permit, the physical address of the proposed marijuana processor will be subject to a property inspection by an authorized city inspector to ensure compliance with all city codes. The property inspection will occur at a time scheduled and approved by both the applicant and city inspector. The applicant is required to be present during the inspection. All structures, equipment and apparatuses shall comply with all building and fire codes adopted by the State of Oklahoma and City of Broken Arrow.

(c) *Applications for a marijuana processor permit.* Any person seeking to obtain a marijuana processor permit shall submit a written application to the Community Development Department on a city prescribed form to include, at a minimum, the following:

- (1) The name of the establishment;
- (2) Physical address of the establishment;
- (3) Phone number of the establishment;
- (4) Operating hours of the establishment;
- (5) The applicant's first name, middle name, last name and suffix if applicable;
- (6) The applicant's residence address and mailing address;
- (7) The applicant's date of birth;
- (8) The applicant's preferred telephone number and email address;
- (9) An attestation that the information provided by the applicant is true and correct;
- (10) An application submitted on behalf of a business organization shall include an attestation that the applicant is authorized to make application on behalf of the business organization, full name of the business organization, type of business organization, mailing address for the business organization;
- (11) A statement signed by the applicant not to divert marijuana to any individual or entity that is not lawfully entitled to possess marijuana;
- (12) One copy of the following:
 - a. A valid commercial license issued by the Oklahoma State Department of Health, if renewing the City permit;
 - b. All documentation showing the proposed permit holder's valid tenancy, ownership or other legal interest in the proposed permitted premises. If the applicant is not the owner of the proposed permitted premises, a notarized statement from the owner of such property authorizing the use of the property for a marijuana processor;
 - c. A valid, unexpired driver's license or state issued ID for all owners, directors, officers and managers of the proposed facility;
 - d. Evidence of a valid sales tax license for the business if such a license is required by state law or local regulations; and
 - e. Any other information reasonably requested by the City of Broken Arrow to be relevant to the processing or consideration of the application.

(d) *Term and renewal of a marijuana processor permit.*

- (1) *Term.* A marijuana processor permit issued under this article shall be valid for one (1) year from the date of issuance.
- (2) *Renewal.*

- a. It is the responsibility of the permit holder to renew the permit, with all applicable documentation and fees, prior to the date of expiration of the permit by following the procedures provided in Subsection (c) above.
 - b. A permit holder that attempts to renew its permit after the expiration date shall pay a nonrefundable late renewal fee in the amount set forth in the Manual of Fees. A permit that has been expired for more than ninety (90) days shall not be renewed.
- (e) *Fees.* The initial fee and renewal fee for a marijuana processor permit shall be as set forth in the Manual of Fees adopted by the Broken Arrow City Council. The fees shall be used to offset municipal expenses covering costs related to licensing, inspection, administration, and enforcement of marijuana processor establishments. The annual fee shall be paid prior to the issuance or renewal of a City of Broken Arrow marijuana processor permit. Fees are non-refundable.
- (f) *Location restrictions for marijuana processor.*
- (1) A marijuana processor permit will not be granted to any applicant where the proposed location is not allowed by the Broken Arrow zoning ordinance.
- (g) *Conditions of operation for marijuana processor.*
- (1) All marijuana processor facilities must be constructed in such a manner that the processing of the medical marijuana cannot be seen by the public from the public right-of-way.
 - (2) All marijuana processor facilities shall be located within an entirely enclosed and secure structure.
 - (3) All marijuana processor facilities shall comply with all building and fire codes adopted by the State of Oklahoma and the City of Broken Arrow.
 - (4) All marijuana processor facilities must be properly vented so as to not create humidity, mold or other related problems.
 - (5) All marijuana processor facilities shall be conducted in a manner that does not constitute a public nuisance. A public nuisance may be deemed to exist if growing marijuana produces light, glare, heat, noise, odor or vibration that is detrimental to public health, safety or welfare or interferes with the reasonable enjoyment of life and property.

Sec. 7-391. Approval, issuance, denial and appeal.

- (a) All inspections, review and process of any application under this article shall be completed within 90 days of receipt of a complete application and all required fees. Community Development shall approve or deny the permit within 120 days of receipt of the completed application and fees. The processing time may be extended upon written notice by Community Development for good cause, and any failure to meet the required processing times shall not result in the automatic grant of the permit. Any denial must be in writing and must state the reason(s) for denial.
- (b) Any final denial of a permit may be appealed to a court of competent jurisdiction; provided that the pendency of an appeal shall not stay or extend the expiration of any permit.
- (c) The City of Broken Arrow has no obligation to process or approve any incomplete application, and any times provided under this article shall not begin to run until the City of Broken Arrow receives a complete application as determined by Community Development. A determination of a complete application shall not prohibit the city from requiring supplemental information.

Sec. 7-392. Operational and business plan requirements for medical marijuana dispensary, commercial grower and marijuana processor permit holders.

- (a) *Business and operation plan.* All applicants for a medical marijuana dispensary permit, commercial grower permit and/or marijuana processor permit shall submit a business and operations plan with their application showing in detail the medical marijuana dispensary's, commercial grower's and/or marijuana processor's proposed plan of operation, including without limitation, the following:
 - (1) A description of the type of facility proposed;
 - (2) A description by category of all products to be sold;
 - (3) A description and plan of all equipment and methods that will be employed to stop any impact to adjacent uses, including enforceable assurances that no odor will be detectable from outside of the permitted premises;
 - (4) A security plan which shall include a general description of the security systems and confirmation that those systems will meet state requirements and be approved by the state prior to commencing operations;
- (b) *Operational requirements.* All permit holders shall at all times comply with the following operational requirements, which the City of Broken Arrow may review and amend from time to time as it determines reasonable.
 - (1) All permitted premises shall comply with all respective applicable codes of the local zoning, building and health departments. The facility must hold a valid local permit and commercial license for the type of facility intended to be carried out on the permitted property. The facility operator, owner or licensee must have documentation available that local and state sales tax requirements, including holding any licenses, if applicable, are satisfied.

- (2) No permit holder shall be permitted to operate from a moveable, mobile or transitory location except as allowed under the Oklahoma State Department of Health rules that authorize and license the transportation of medical marijuana. No person under the age of 18 shall be allowed to enter into the permitted premises without a parent or legal guardian.
- (3) All activities of a medical marijuana dispensary, commercial grower and marijuana processor, including without limitation, distribution, growth, cultivation, or the sale of marijuana and all other related activity permitted under the permit holder's license or permit must occur indoors. The facility's operation and design shall minimize any impact to adjacent uses, including the control of any odor by maintaining and operating an air filtration system so that no odor is detectable outside the permitted premises.
- (4) Waste disposal. The permit holder, owner and operator of the facility shall use lawful methods in controlling waste or by-products from any activities allowed under the permit.
- (5) The City of Broken Arrow may impose such reasonable terms and conditions on a medical marijuana dispensary, commercial grower and marijuana processor as may be necessary to protect the public health, safety and welfare, and to obtain compliance with the requirements of this article and applicable law.

Sec. 7-393. Medical marijuana growing facilities for personal use.

- (a) All medical marijuana grown at home by a qualified patient or caregiver patient medical marijuana license holders can only be grown on residential real property owned by the patient license holder or on rented real property for which the patient license holder has the property owner's written permission to grow medical marijuana on the property.
- (b) All homegrown medical marijuana plants must be grown so that the marijuana is not accessible to a member of the general public and is only accessible to the patient or caregiver. If grown outdoors, it must be grown behind an opaque fence that is at least six feet in height. The marijuana plants must be completely enclosed by the fence and the fence must be secured with a lock and key. No marijuana plants may be visible from any street adjacent to the property.
- (c) Growing medical marijuana shall not be conducted in a manner that constitutes a public nuisance. A public nuisance may be deemed to exist if growing marijuana produces light, glare, heat, noise, odor or vibration that is detrimental to public health, safety or welfare or interferes with the reasonable enjoyment of life and property.

Sec. 7-394. Additional regulations.

- (a) The smell of noxious odor emitted from smoking or consumption of medical marijuana by a person possessing a valid state issued medical marijuana license shall constitute a public nuisance.
- (b) Smoking and vaping marijuana shall be prohibited on all city property including vehicles, buildings, parks or other facilities.
- (c) Revocation or suspension of municipal issued marijuana license; hearing.

- (1) The city manager or designee shall revoke or suspend a license issued under this article on any of the following grounds:
 - a. Violation of city ordinance, state law or department of health regulations governing medical marijuana.
 - b. The license was procured by fraudulent conduct or false statement of a material fact or a fact concerning the applicant was not disclosed at the time of the application, and such fact would have constituted just cause for refusal to issue the license.
- (2) Prior to suspension or revocation the permittee shall be given notice of the proposed action to be taken and shall have an opportunity to be heard before the city manager or designee. If an employee has been designated by the city manager, such designee shall make a report to the city manager together with a recommendation as to whether the license should be suspended or revoked.
- (3) Revocation of any department of health marijuana license shall result in the immediate revocation of any city issued permit under this article.
- (d) Any person or entity applying for or issued a permit by the City of Broken Arrow under this article shall comply with all state law and department of health rules and regulations.

Sec. 7-395. Enforcement.

Enforcement of this article shall be accomplished by the inspectors of the Community Development Department and the Broken Arrow Police Department.

Sec. 7-396. Penalties.

Any person who shall violate any provisions of this article, either by doing anything which is prohibited or by failure or refusal to do anything which is commanded, shall be guilty of an offense and, upon conviction thereof, punished by a fine of not less than \$100.00 or more than \$750.00 or by imprisonment of not less than five days nor more than 60 days, or by both such fines and imprisonment; providing that each day of such violation shall be deemed a separate offense. In addition, the City Council may file a report with the Oklahoma State Department of Health requesting the commercial license be revoked.

SECTION II. Any ordinance or parts of ordinances found to be in conflict herewith are hereby repealed.

SECTION III. An emergency exists for the preservation of the public health, peace, and safety, and therefore this ordinance shall become effective from and after the time of its passage and approval.

PASSED AND APPROVED and the emergency clause ruled upon separately this 20th day of June, 2022.

MAYOR

ATTEST:

(Seal) CITY CLERK

APPROVED:

DEPUTY CITY ATTORNEY