



City of Broken Arrow

City Hall
220 S 1st Street
Broken Arrow OK
74012

Minutes Special Meeting Planning Commission

Chairperson Lee Whelpley
Vice Chairperson Ricky Jones
Commission Member Fred Dorrell
Commission Member Mark Jones
Commission Member Pablo Aguirre

Thursday, August 30, 2018

Time 5:00 p.m.

Council Chambers

1. Call to Order

Vice Chairperson Ricky Jones called the meeting to order at approximately 5:00 p.m.

2. Roll Call

Present: 4 - Pablo Aguirre, Mark Jones, Lee Whelpley, Ricky Jones
Absent: 1 - Fred Dorrell

3. Old Business

There was no Old Business.

4. Consideration of Consent Agenda

Staff Planner Amanda Yamaguchi presented the Consent Agenda.

A. 18-1056 Approval of BAL-2037, Sound Mind, approximately 19.50 acres, CG/PUD-279, located one-half mile north of Tucson Street, west of Aspen Avenue, north of the Creek Turnpike

Vice Chairperson Ricky Jones explained the Consent Agenda was approved in its entirety with a single motion and a single vote unless an item was to be removed for discussion. He asked if there were any Items to be removed. There were none.

MOTION: A motion was made by Mark Jones, seconded by Lee Whelpley.

Move to approve the Consent Agenda

The motion carried by the following vote:

Aye: 4 - Pablo Aguirre, Mark Jones, Lee Whelpley, Ricky Jones

5. Consideration of Items Removed from Consent Agenda

There were no items removed from the Consent Agenda. No action was required or taken.

6. Public Hearings

A. 18-1020 Public hearing, consideration, and possible action regarding the proposed changes to Section 3.1.F (Table 3.1 1) Table of Allowed Uses; and Section 5.4 (Table 4.4.1) Off Street Parking Schedule A; and Section 10.3.D.1 Definitions of General Use Categories and Specific Use Types; and Section 10.3.D.9 Definitions of General Use Categories and Specific Use Types of the Broken Arrow Zoning Ordinance

Plan Development Manager Larry Curtis reported this item made modifications to the Broken Arrow Zoning Ordinance, specifically in regard to the sections listed above. He stated the modifications established regulations for retail Medical Marijuana Dispensaries and Medical Marijuana Commercial Growing Cultivation Facilities. He explained the update was in response to the recent passage of State Question 788 and the subsequent changes to Title 63. He stated these particular use types were not envisioned under the 2008 Broken Arrow Zoning Ordinance; therefore, it was necessary to adjust the Zoning Code to new uses which had become legal under Oklahoma law.

Mr. Curtis reported Staff proposed the addition of two subcategories under Section 3.1.F (Table 3.1 1) Table of Allowed Uses. He reported, through research, Staff determined most medical marijuana growing was conducted in closed facilities; this type of environment would best be established in the IL and IH (Industrial Light and Industrial Heavy) zoning districts. He explained Staff proposed to add, under agriculture, medical marijuana commercial growing and to make it permissible in IL and IH zoning districts; in addition, in the definition section, it was added medical marijuana growing and cultivation would be regulated, under Titles 63 of the State of Oklahoma, and growing would be conducted within a building.

Mr. Curtis reported Staff had determined it was unnecessary to change the Zoning Ordinance for Manufacturing Marijuana as the current code allowed for the flexibility of manufacturing marijuana; therefore, Staff would interpret Marijuana Manufacturing as allowed under

Manufacturing Light which was permissible in the IL and IH zoning district. He displayed a map which illustrated where the IL and IH zoning districts were located.

Mr. Curtis reported Title 63, Section 420A, stated all applicants for medical marijuana licenses were required to be 18 years of age or older. He explained a special exception could be granted to an applicant under the age of 18; however, applicants under the age of 18 were required to have an individual over the age of 18 purchase medical marijuana. He stated, in addition, Title 63, Section 420A indicated medical marijuana dispensaries could not be located within 1,000 feet of any public or private school entrance; Zoning defined schools as public or private facilities, colleges, universities, elementary, middle school, high school and trade schools. He stated the Broken Arrow Zoning Code specifically indicated that child care facilities were not included as a public or private school. He explained initially Staff considered categorizing marijuana dispensaries as pharmacies which were general retail; however, unlike dispensaries, pharmacy businesses such as Walgreens and CVS were not restricted by law on all sales by age or by location to a school. He stated it was determined general retail was not the best categorical fit for medical marijuana dispensaries; it was determined medical marijuana dispensaries most closely resembled alcohol beverage retail sales as the purchase of alcohol, like medical marijuana, was strictly restricted by age and distance to schools. He explained this made dispensaries permissible in the Commercial Mixed Use, Downtown Mixed Use, the CN, CG and CH zoning districts, and in areas 6 and 7 of the DROD. He reported a definition was added: "Medical Marijuana, Retail Sales – A retail establishment, like a Medical Marijuana Dispensary, licensed to sell Medical Marijuana as established by Title 63 O.S., Statute 421A State of Oklahoma," and dispensaries must not be located within 1,000 feet from any school entrance. He explained these rules were set forth by the State; Broken Arrow was simply adding State rules to the Zoning Ordinance. He displayed a map which illustrated where it would be acceptable for Medical Marijuana Dispensaries were permissible by right. He stated it was the responsibility of the Medical Marijuana Dispensary to prove to the City it would not be located within 1,000 feet of a school. He stated additional changes were made within the parking tables in response to the above changes.

Vice Chairperson Jones stated, as a Planner, it seemed the Zoning Ordinance simply added a Use or a Permitted Use along with the restrictions which applied. He stated he liked the provided map which illustrated where businesses were permitted. He asked if the proposed changes paralleled the State's activities. Mr. Curtis responded in the affirmative. He stated City Council, through the City Attorney's office was developing an Ordinance in regard to Medical Marijuana which would go before City Council on September 4, 2018. Acting City Attorney Trevor Dennis concurred; the Ordinance was related to the local licensing and tracked the State licensing requirements very closely. Vice Chairperson Jones stated the Ordinance was unrelated to the Zoning Code. Acting City Attorney Dennis concurred; the only manner in which the Ordinance related to the Zoning Code was it indicated licensing would not be issued to an applicant unless the location was permitted through Zoning Code.

Commission Member Pablo Aguirre stated he researched zoning ordinances in cities similar to Broken Arrow in states which had approved medical marijuana. He stated he had discovered the state was the least restrictive and it was up to the community to decide what fit the community. He reported while Broken Arrow did not include a child care facility as a school, in many communities child care facilities were added separately, for example: "not allowed within 1,000 feet of any school or child care facility." He explained many communities added child care facilities in as a subcategory in this manner. He stated he felt this was in alignment with the mentality of not allowing dispensaries within 1,000 feet of schools. He stated some communities even included public parks, arcades, libraries, and places where youth gathered in this restriction which he felt were valid considerations for the Zoning Ordinance. He stated Broken Arrow proposed one buffer zone through the Zoning Ordinance where most, if not all, of the cities he researched had many more buffer zones. He asked if this was a City decision and if the Planning Commission was willing to consider additional buffers.

Mr. Curtis responded unfortunately Oklahoma State law was restrictive regarding a city's zoning capabilities; specifically cities were prevented from making zoning unduly restrictive for retail facilities. Acting City Attorney Dennis stated he understood Commission Member Aguirre's concerns; however, the City had to be careful not to have regulatory exclusions, and State Question 788 prohibited local municipalities from unduly restricting zoning, specifically for dispensaries. He explained the State only expressed exclusion for public and private schools. He stated in order to comply with State Question 788, and after research with communities and the Oklahoma Municipal Association, Broken Arrow could require additional setbacks; however, there was a high risk of being challenged in court.

Commission Member Aguirre asked if the State prohibited additional buffer zone requirements. Acting City Attorney Dennis responded the Statute, as currently written, allowed one buffer zone, specifically the 1,000 foot buffer zone for schools. He explained he could not know what the court or legislature would say regarding additional buffer zone

requirements; additional buffer zone requirements may not survive a challenge in court; therefore, the Legal Department determined regulating per the State Statute was the most prudent course.

Vice Chairperson Jones opened up the Public Hearing for Item 6A. He asked if any present wanted to speak regarding Item 6A.

Citizen Jack Carlson stated his address was 1509 Pecan Circle, Broken Arrow. He asked if growing facilities had the same restriction as dispensaries (1,000 feet from a school). Acting Mr. Curtis responded in the negative; however, the Planning Commission or City Council might make adjustments in the future. He stated currently growers were allowed in the IL and IH districts without school distance restrictions.

Vice Chairperson Jones asked if any other present wished to speak regarding Item 6A. Seeing none, he closed the Public Hearing for Item 6A.

Mr. Curtis stated if there were Commissioners who wished to further restrict zoning districts for marijuana business this was the time and place to discuss the possibilities. He stated the proposed Zoning was just that, proposed; Planning Commission had the ability to make recommendations and changes to further restrict zoning or to further permit zoning. Commission Member Aguirre asked if A1 could potentially become CH, CG, etc. Mr. Curtis responded the Comprehensive Plan clearly indicated where those types of uses were allowed within the City of Broken Arrow, IL was permissible in Level 6 with a PUD, and permission was possible in Level 7 for IL and IH, but again would require a zoning change which would come before the Planning Commission for approval.

Vice Chairperson Jones stated the map provided was not a final say on where marijuana business were allowed; there were other potential properties, if in accordance with the Comprehensive Plan, and if approved by the Planning Commission and City Council. Discussion ensued regarding the liquidity of the map, regulating the dispensaries as liquor stores, and zoning code being amended in the future.

MOTION: A motion was made by Lee Whelpley, seconded by Mark Jones.

Move to approve Item 6A 18-1020, as per Staff recommendation

The motion carried by the following vote:

Aye: 3 - Mark Jones, Lee Whelpley, Ricky Jones
Nay: 1 - Pablo Aguirre

Vice Chairperson Jones stated Item 6A would go before City Council on September 4, 2018 at 6:30 p.m. He explained if any citizen desired to speak regarding Item 6A, said citizen was required to fill out a Request to Appear before City Council form in advance.

7. Appeals

There were no Appeals.

8. General Commission Business

There was no General Commission Business.

9. Remarks, Inquiries and Comments by Planning Commission and Staff (No Action)

There were no Remarks, Inquiries and Comments by Planning Commission and Staff.

10. Adjournment

The meeting adjourned at approximately 5:29 p.m.

MOTION: A motion was made by Mark Jones, seconded by Lee Whelpley.

Move to adjourn

The motion carried by the following vote:

Aye: 4 - Pablo Aguirre, Mark Jones, Lee Whelpley, Ricky Jones

Mayor

City Clerk