



City of Broken Arrow

Request for Action

File #: 18-1104, Version: 1

**Broken Arrow City Council
Meeting of: 09-18-2018**

Title:

Consideration, discussion, and possible adoption of Ordinance No. 3540, an ordinance amending 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; and declaring an emergency

Background:

Modifications to the Broken Arrow Zoning Ordinance are being proposed that will establish regulations for Retail Medical Marijuana Dispensaries and Medical Marijuana Commercial Growing/Cultivating facilities. The reason for this update is in regards to the recent passage of State Question 788 and the subsequent change to Title 63 O.S.

As these particular use types were not something that was envisioned with the 2008 City of Broken Arrow Zoning Ordinance, it is necessary to adjust the zoning code to new uses that have become legal by Oklahoma law. Through many meetings, staff has drafted the proposed modifications 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.

It is proposed to add two subcategories to Section 3.1.F (Table 3.1-1) Table of Allowed Uses. These subcategory uses being Medical Marijuana Commercial Growing/Cultivation and Medical Marijuana Retail Sales.

Through research staff has determined most medical marijuana growth is conducted in an enclosed facility. Staff has determined that this type of environment would best be established in IL (Industrial Light) or IH (Industrial Heavy) zoning districts. This use must be done within a building.

Staff looked closely to related uses for Medical Marijuana Dispensary. Title 63 O.S. § 420A states that all applicants (for a medical marijuana license) must be eighteen (18) years or older. A special exception is granted to an applicant under the age of eighteen (18), however these applications must be signed by two (2) physicians and the applicant's parent or legal guardian, but a caregiver who is 18 years or older must make the purchase. In addition it states that a Medical Marijuana Dispensary cannot be located within one thousand (1,000) feet from any public or private school entrance. The zoning code defines schools as public or private facilities for College & Universities, Elementary, Middle, or High School, and Trade Schools. The zoning code does specifically state that Child Care Facilities do not include public or private schools.

When beginning their analyses, staff first thought of classifying the Medical Marijuana Dispensary/Retail Sales use similar to pharmacies. Pharmacies are a permitted use in the use group of General Retail. But when comparing a pharmacy type use, staff looked at companies like Walgreens and CVS. These types of facilities

are not restricted by law on all sales by age nor by location to a school or other facility. As most general retail does not have such limitations, it was determined that the general retail use was not the best category to define a Medical Marijuana Dispensary/Retail Sales. Staff concluded that such a use most closely related to Alcoholic beverage Retail Sales as the purchase of Medical Marijuana is strictly regulated by age and by distance to schools (public or private). By doing so, this use would be permissible in the CM (Commercial Mixed Use), DM (Downtown Mixed Use), CN (Commercial Neighborhood), CG (Commercial Neighborhood), and CH (Commercial Heavy) zoning districts while also being permissible within Area 6 and 7 of the Downtown Residential Overlay District.

The proposed modification of Section 5.4 (Table 4.4.1) Off-Street Parking Schedule A is to add a subcategory to the parking requirements for Medical Marijuana Commercial Growing / Cultivation. The proposed parking requirement is the same standard as other industrially zoned developments.

The proposed modification to Section 10.3.D.1 Definitions of General Use Categories and Specific Use Types is to add a definition for Medical Marijuana Commercial Growing/Cultivation. It is defined as Indoor commercial medical marijuana growing /cultivation as established by Title 63 OS. §422A State of Oklahoma.

The proposed modification to Section 10.3.D.1 Definitions of General Use Categories and Specific Use Types is to add a definition for Medical Marijuana, Retail Sales. It is defined as a retail establishment, like a Medical Marijuana Dispensary, licensed to sell Medical Marijuana as established by Title 63 O.S. § 421A State of Oklahoma.

In addition, the ordinance proposes to reinforce the state requirement that a Medical Marijuana Dispensary permit will not be granted to any applicant where the proposed location would be located within one thousand (1,000) feet from any public or private school entrance. The distance specified shall be measured from any entrance of the school to the nearest property line point of the dispensary.

Medical Marijuana Processing (creation of product) will be interpreted by staff to be a permissible use under the subcategory of Manufacturing Light which is only permissible in the IL (Industrial Light) or IH (Industrial Heavy) zoning districts. This use must be done within a building.

The Planning Commission will have a meeting on August 30, 2018 to discuss and make recommendations. Those findings will be presented at the City Council on September 4, 2018.

Cost: \$0

Funding Source: Source

Requested By: Michael Skates, Development Services Director

Approved By: Michael L. Spurgeon, City Manager

Attachments: Ordinance No. 3540
Published Planning Commission Fact Sheet
Map of Possible Locations

Recommendation:

Adopt Ordinance No. 3540 and approve the emergency clause.