



# City of Broken Arrow

## Request for Action

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**File #: 20-1345, Version: 1**

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**Broken Arrow Planning Commission  
10-22-2020**

**To: Chairman and Board Members**  
**From: Development Services Department**  
**Title:**

**Public hearing, consideration, and possible action regarding the proposed changes to Section 3.1.E (Uses Permitted in a Planned Unit Development); Section 3.1.F (Table 3.1-1) Table of Allowed Uses; Section 5.7.C General Sign Standards in All Nonresidential Zoning Districts; Section 10.1 General Rules of Construction; and Section 10.3 Definitions of General Use Categories and Specific Use Types of the Broken Arrow Zoning Ordinance**

Modifications to the Broken Arrow Zoning Ordinance are being proposed that would amend regulations for retail medical marijuana dispensaries and medical marijuana commercial growing/cultivating facilities. During a regular meeting of the City Council on September 15, 2020, the City Council asked that city staff review, evaluate, and propose modifications to the Zoning Ordinance in order to address the input provided by City Council during the meeting.

### Zoning Ordinance Background

On September 18, 2018, the City Council approved Ordinance 3540 that established regulations for retail medical marijuana dispensaries and medical marijuana commercial growing/cultivating facilities. Medical marijuana dispensaries were recognized as a permitted use in the commercial zoning districts, and medical marijuana growing/cultivating facilities were recognized as a permitted use in the IL (Industrial Light) zoning district. On September 25, 2018, a lawsuit was filed asking the court to make a legal determination whether the City of Broken Arrow had any authority to zone or otherwise regulate medical marijuana businesses within city limits. The trial court agreed with the plaintiff and on October 17, 2018, issued a declaratory judgement finding, as a matter of law, that Oklahoma cities were precluded from adopting regulations, zoning overlays, fees, or other restriction relating to medical marijuana business activities. This decision was appealed by the City of Broken Arrow. The Oklahoma Legislature enacted laws that became effective August 30, 2019, that stated, "Municipalities may follow their standard planning and zoning procedures to determine if certain zones or districts would be appropriate for locating marijuana-licensed premises, medical marijuana businesses or any other premises where marijuana or its by-products are cultivated, grown, processed, stored or manufactured." The plaintiff's lawsuit was dismissed by the Oklahoma Supreme Court on November 19, 2019. A complete copy of the Supreme Court ruling is attached with this Staff report.

### Proposed Modifications

Section 3.1.E Uses Permitted in a Planned Unit Development (PUD):  
Ordinance 3540 established use types for retail medical marijuana dispensaries and medical marijuana

commercial growing/cultivating facilities. However, the regulations of the Zoning Ordinance effective at the time of PUD approval remain in effect. For any PUD that was approved prior to the effective date of Ordinance 3540, medical marijuana commercial growing/cultivation and retail sales are not recognized as permitted uses, because the uses did not exist in Zoning Ordinance at that time. In order to change the list of permitted uses in a PUD, a major amendment to the PUD is required.

In order to not require a PUD major amendment for each commercial growing facility or retail dispensary proposing to locate within an established PUD, staff recommends adding a provision that allows medical marijuana commercial growing/cultivation and medical marijuana retail sales to be permissible by right in any PUD prior to November 3, 2020 provided that the PUD has the corresponding underlying zoning district and has not been specifically forbidden by the PUD.

#### Section 5.7.C General Sign Standards in All Nonresidential Zoning Districts:

Per Title 63, Section 427.21 of the Oklahoma State Statutes, advertising for medical marijuana and medical marijuana products shall not contain any statements, illustrations, or other material that:

1. Is deceptive, false, or misleading;
2. Promotes overconsumption;
3. Represents that the use of marijuana has curative or therapeutic effects;
4. Depicts a child or other person under legal age consuming marijuana;  
Depicts objects such as toys, cartoons, cartoon characters, or similar images, which suggest the presence of a child, or any other depiction designed in any manner to be especially appealing to children or other persons under legal age to consume marijuana; or
5. Has any manner or design that would be especially appealing to children or other persons under eighteen (18) years of age.

Staff recommends incorporated this language into the Forbidden Lights and Representations section of the Zoning Ordinance (Section 5.7.C) in order to allow local enforcement of the state statute. This modification would apply to signs in all nonresidential zoning districts that are regulated by Section 5.7 (Signs) of the Zoning Ordinance.

#### Section 10.3.D.9 Definitions of General Use Categories and Specific Use Types:

In an effort to prevent clustering medical marijuana retail uses within a close proximity, staff recommends the following provisions to be added into the Zoning Ordinance:

- A Medical Marijuana Dispensary license will not be granted to any applicant where the proposed location would be located within one thousand (1,000) feet from any other Medical Marijuana Dispensary. The distance specified shall be measured from any entrance of a current facility to the nearest entrance to the facility dispensary.

In order to allow for a minimum buffer of medical marijuana retail sales uses from other potentially sensitive areas, staff recommends the following location restriction:

- A Medical Marijuana Dispensary license will not be granted to any applicant where the proposed location would be located within one thousand (1,000) feet from any pre-school. The distance specified shall be measured from any entrance of the school to the nearest property line point of the dispensary.
- A Medical Marijuana Dispensary license will not be granted to any applicant where the proposed location would be located within one thousand (1,000) feet from any state licensed child care facility. The distance specified shall be measured from any entrance of the daycare to the nearest property line point of the dispensary.

Due to the nature of the business activity, staff also recommends the following regulation which is also consistent with the City of Tulsa's regulations:

- Drive-through windows and drive-through lanes are prohibited for Medical Marijuana Dispensaries.

If desired, the Planning Commission has the ability to revise these recommendations.

**Attachments:**

- Proposed modifications to Section 3.1.E (Uses Permitted in a Planned Unit Development); Section 3.1.F (Table 3.1-1) Table of Allowed Uses; Section 5.7.C General Sign Standards in All Nonresidential Zoning Districts; Section 10.1 General Rules of Construction; and Section 10.3 Definitions of General Use Categories and Specific Use Types of the Broken Arrow Zoning Ordinance

- November 19, 2019, Oklahoma Supreme Court ruling

**Recommendation:**

Recommend approval of modifications to Section 3.1.E (Uses Permitted in a Planned Unit Development); Section 3.1.F (Table 3.1-1) Table of Allowed Uses; Section 5.7.C General Sign Standards in All Nonresidential Zoning Districts; Section 10.1 General Rules of Construction; and Section 10.3 Definitions of General Use Categories and Specific Use Types of the Broken Arrow Zoning Ordinance, as presented, and an Ordinance be drafted for City Council approval.

**Prepared By:**            **Larry R. Curtis**

**Approved By:**        **Larry R. Curtis**

LRC