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ORDINANCE NO. O-1920-45

ITEM NO. 14

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**STAFF REPORT**

**ITEM:** AN ORDINANCE OF THE COUNCIL OF THE CITY OF NORMAN, OKLAHOMA AMENDING CHAPTER 22 OF THE CODE OF THE CITY OF NORMAN ("ZONING"), SECTIONS 420.3 (RE, RESIDENTIAL ESTATE DWELLING DISTRICT), 422.9 (O-1, OFFICE INSTITUTIONAL DISTRICT), 423.2 (C-1, LOCAL COMMERCIAL DISTRICT), 424.1 (C-2, GENERAL COMMERCIAL DISTRICT), AND 424.2 (TC, TOURIST COMMERCIAL DISTRICT), IN ORDER TO RESOLVE LANGUAGE INCONSISTENCIES AND UPDATE CROSS-REFERENCES BY REMOVING THE RE SPECIAL USE ALLOWING ONE USE PERMITTED IN THE M-1, RESTRICTED INDUSTRIAL DISTRICT; CLARIFY ZONING USES, INCLUDING MEDICAL MARIJUANA ZONING USES IN THE O-1, OFFICE INSTITUTIONAL DISTRICT; AND PROVIDING FOR THE SEVERABILITY THEREOF.

**BACKGROUND:** In mid-2018 staff presented to Council information on the recently adopted State Question 788, Medical Marijuana. The presentation by staff addressed Oklahoma state regulations as well as local and nation-wide municipal approaches to licensing and zoning of medical marijuana uses/businesses. For staff to properly implement the recent state regulations, amendments to the Zoning Ordinance were necessary. In December of 2018, City Council adopted Ordinance No. O-1819-17, adding medical marijuana uses to various zoning districts. Following the December 2018 amendments, additional state legislation was passed in the spring of 2019, thus requiring updates to the City Code. Ordinance No. O-1920-4 amended the Zoning Ordinance in August of 2019, placing new medical marijuana uses into various zoning districts.

**DISCUSSION:**

This section of the staff report reviews the allowed uses in the M-1, Restricted Industrial District and what Special Use requests an applicant may submit to City Council for medical marijuana uses in the RE, Residential Estate Dwelling District.

More specifically, in the M-1, Restricted Industrial District the following are currently permitted Medical Marijuana uses:

- Medical Marijuana Commercial Grower
- Medical Marijuana Education Facility
- Medical Marijuana Processor (any Tier, except that Tier I and Tier II will not be allowed to have on-site sales), as allowed by state law
- Medical Marijuana Storage Facility

The adoption of an ordinance in 1990 allows an applicant in the RE, Residential Estate Dwelling District the option to request Special Use for "one and only one of the specific uses permitted in the M-1, Restricted Industrial District." If approved by Council, this language could potentially allow any of the above listed uses be approved as Special Use in a residential

district. This memorandum evaluates this language in the context of the remaining Zoning Ordinance and the purposes behind passage of this language in 1990.

### History of 1990 Ordinance

At the July 24, 1990 City Council meeting, an amendment was proposed to the list of uses eligible for Conditional Use Permits in the A-2, Rural Agricultural District. The City Council accepted the amendment, which added specific M-1 permitted uses in the A-2, Rural Agricultural District as Conditional Use Permits. City Council then asked the Planning Commission to explore the feasibility of adding the same language to the RE, Residential Estate Dwelling District.

On September 13, 1990, the Principal Planner for the City of Norman presented to the Planning Commission possible amendments to the Zoning Ordinance to add this language in the RE, Residential Estate Dwelling District. The discussion outlined two positive aspects to the proposal as well as possible negative consequences. "First, applications to allow specific M-1 uses in the RE areas which have never developed, or have unimproved roads, may allow better utilization of land which was inappropriately zoned. Second, small "cottage industries" could occur as accessory uses to existing residential development, thus providing an inexpensive opportunity for entrepreneurs to get a start or carry on an avocation. The negative consequences of either of these proposals may result in the deterioration of the RE areas for residential purposes, thus making a bad situation worse. The Conditional Use Permit procedure, if properly utilized could serve to effectively control or limit any adverse impacts". The Conditional Use Permit procedures can be an effective mechanism to insure that specific M-1 uses are required to be compatible with large lot residential areas.

On December 11, 1990 City Council adopted the amendment, adding language that allowed an RE applicant to seek a Conditional Use Permit to operate "one and only one" permitted use from the M-1 zoning district.

In 1990, the uses listed under the section of Conditional Permit Use in the RE District were as follows:

- (a) Child Care Establishment.
- (b) Bed and Breakfast Establishment.
- (c) One and only one of the specific use permitted in the M-1, Restricted industrial District, except Section 428.1(2) (a), for which application is made.

In 1990, the uses listed in the M-1, Restricted Industrial District that would be eligible for Conditional Use Permit were as follows:

- (b) Fabrication or processing of the following products:
  - 1. Art and handicraft items
  - 2. Bakery goods
  - 3. Book binding and tooling
  - 4. Carpentry, custom woodworking, or custom furniture making
  - 5. Clothing and needlework from prepared material
  - 6. Dairy products
  - 7. Instruments; professional, scientific, controlling, musical or similar precision
  - 8. Jewelry
  - 9. Optical Goods
  - 10. Printing and publishing
- (c) Laboratories; experimental, photo or motion picture, film or testing

- (d) Market research
- (e) Office buildings
- (f) Systems development
- (g) Trade schools and schools for vocational training

Per the 1990 Planning Commission discussion, the adopted Conditional Use Permit process opened a window of opportunity in those areas which could justify an individual manufacturing or light assembly type of utilization in their neighborhood, if there was no great concern or protest by their neighbors.

At that time, Conditional Use permits were reviewed annually to assure adjacent properties were not negatively impacted with the adjacent use. In 1995, City Council adopted Ordinance No. O-9596-11; this Ordinance removed Conditional Use Permit and Permissive Use on Review processes and established Special Use. Thus, Conditional Use Permits were transitioned to Special Use Permits and no longer required to be inspected on an annual basis. The standards and procedures remained the same, public notice hearing and allowance of additional conditions for each application but no longer required an annual review of the site.

Additionally, at the time of review and adoption of the Ordinance in 1990 placing the Conditional Use Permit for M-1 uses in the RE District, Medical Marijuana Commercial Grower, as allowed by state law, was not part of the Conditional Use Permit allowance. This use was adopted effective December 11, 2018, as part of Ordinance No. O-1819-17.

### **Current Zoning Ordinance**

Reviewing the Zoning Ordinance today, the uses permitted in the M-1, Restricted Industrial District that would be considered for Special Use, which is no longer subject to annual review, in the Residential Estates District are as follows:

(b) Fabrication or processing of the following products:

1. Art and handicraft items
2. Bakery goods
3. Book binding and tooling
4. Carpentry, custom woodworking, or custom furniture making
5. Clothing and needlework from prepared material
6. Dairy products
7. Instruments; professional, scientific, controlling, musical or similar precision
8. Jewelry
9. Optical Goods
10. Printing and publishing

(c) Laboratories; experimental, photo or motion picture, film or testing. For the purposes of this section, "Laboratories" includes Medical Marijuana Testing Laboratories, as allowed by state law, that fully comply with the provision.

(d) Mail order house

(e) Medical Marijuana Commercial Grower, as allowed by state law

(f) Medical Marijuana Education Facility, as allowed by state law

(g) Medical Marijuana Processor, as allowed by state law

(h) Medical Marijuana Storage Facility

(i) Market research

(j) Office buildings

(k) Systems development

- (l) Trade schools and schools for vocational training

The uses permitted in the RE, Residential Estates Dwelling District are as follows:

- (a) Detached one family dwelling
- (b) Family day care home
- (c) General purpose farm or garden
- (d) Type I mobile home
- (e) Accessory buildings and a guest house so long as it's not lived in permanently or rented and is secondary to the main dwelling and not a mobile home.

Special Uses in RE, Residential Estates Dwelling District are as follows:

- (a) Church, temple, or other place of worship
- (b) School offering general educational courses the same as ordinarily given in public schools and having no rooms regularly used for housing and sleeping
- (c) Publicly operated recreation or water supply
- (d) Municipal use, public buildings and public utility
- (e) Private recreation operated on a non-profit basis for residents of the subdivision or immediate area
- (f) Type I Bed and Breakfast Establishment
- (g) One and only one of the specific uses permitted in the M-1, Restricted Industrial District, except Section 428.1(2)(a), for which application is made
- (h) Tiny houses as regulated by Section 434.2 (b)

### **Special Use**

Special Uses can have specific conditions attached to the application to ensure the request is within the same intensity of surrounding uses. A granted Special Use would be regulated by the site plan and any specific conditions placed on the use; any changes to the site plan, requests for additions or new structures would be required to go before City Council for approval.

A Special Use request shall be reviewed and evaluated on the following criteria according to the Zoning Ordinance 22:434.1, Special Uses:

1. Conformance with applicable regulations and standards established by the Zoning Regulations.
2. Compatibility with existing or permitted uses on abutting sites, in terms of building height, bulk and scale, setbacks and open spaces, landscaping and site development, and access and circulation features.
3. Potentially unfavorable effects or impacts on other existing or permitted uses on abutting sites, to the extent such impacts exceed those which reasonably may result from use of the site by a permitted use. (NOTE: Throughout this Section, "Permitted Use" means any use authorized as a matter of right under the applicable zoning district.)
4. Modifications to the site plan which would result in increased compatibility, or would mitigate potentially unfavorable impacts, or would be necessary to conform to

applicable regulations and standards and to protect the public health, safety, morals, and general welfare.

5. Safety and convenience of vehicular and pedestrian circulation in the vicinity, including traffic reasonably expected to be generated by the proposed "Special Use" and other uses authorized and anticipated in the area, considering existing zoning and land uses in the area.
6. That any conditions applicable to approval are the minimum necessary to minimize potentially unfavorable impacts on nearby uses and to ensure compatibility of the proposed "Special Use" with existing or permitted uses in the surrounding area.

### **Summary**

There is concern that allowing medical marijuana operations as a Special Use, using the language adopted in 1990 when Conditional Uses were annually evaluated, is not consistent with the City Council's determinations of Medical Marijuana zoning made in December 2018 and August 2019, where in both amendments, Council declined to place Medical Marijuana uses in the RE zoning district.

In the discussions with committees and Council preceding the adoption of Ordinance No. O-1819-17 regarding where the medical marijuana uses should be permitted, residential zones in general were not among the locations approved. As a result, Medical Marijuana Commercial Grower, Medical Marijuana Education Facility, Medical Marijuana Processor and Medical Marijuana Storage Facility uses were not included in the RE, Residential Estate Dwelling Districts.

An additional concern is the location and current nature of the RE developments. These RE Districts are typically developed with private streets/roads. RE developments are typically 2 acre lots with structures located closer together than what is typically found in the A-2, Rural Agricultural areas. Additionally, where an RE parcel already contains a home or is surrounded by homes, there are no longer indications that the parcel is "underutilized" so as to invoke the justifications underlying the 1990 amendment language. Thus, the development of these parcels since 1990 indicates this language is no longer compatible with the underlying RE District.

City staff notes that the A-2, Rural Agricultural District has the same allowance to request Special Use from one of the M-1, Restricted Industrial Uses; however, medical marijuana grower and medical marijuana education facility were adopted as allowed uses in the A-2 District. The other two uses an applicant may request in the A-2 District by means of Special Use from the M-1 District are medical marijuana processor and medical marijuana storage facility.

### **Zoning Ordinance Clean-Up – Medical Marijuana**

In the O-1, Office-Institutional District, this ordinance removes "Medical Marijuana Testing Laboratory, as allowed by state law" from the list of Special Uses, and adds it to Permitted Uses, along with "Laboratories for research and testing, including Medical Marijuana Testing Laboratories, as allowed by state law, where all work is housed in buildings."

In the C-1, Local Commercial District, Medical Marijuana Testing Laboratories are specifically excluded from the Permitted Uses: "(a) Any use permitted in CO, except for Medical Marijuana Testing Laboratories as set forth in 423.1.2. (a)(4)."

In the C-2, General Commercial District, Tier III Medical Marijuana Processor, and Medical Marijuana Research Facility, are specifically excluded from "Any Special Use permissible in C-1".

In the TC, Tourist Commercial District, "as allowed by state law" are added to the Tier I Medical Marijuana Processor and Tier II Medical Marijuana Processor, to be consistent with the language for those uses throughout the ordinance. In addition, Special Uses is clarified by adding "in 424.2.2" which is the list of permissible uses in that district.

**STAFF RECOMMENDATION:** Based on the fact that medical marijuana uses were never discussed in Council Committee meetings, to be an allowed use or Special Use in any of the residential districts, staff proposes removing the language that allows a Special Use request in the RE, Residential Estate Dwelling District for "one and only one of the specific uses permitted in the M-1, Restricted Industrial District from the RE, Residential Estates Dwelling District."

Staff supports the miscellaneous amendments to the ordinance language.