

CITY COUNCIL SPECIAL SESSION MINUTES

December 3, 2019

The City Council of the City of Norman, Cleveland County, State of Oklahoma, met in Special Session at 5:30 p.m. in the Municipal Building Conference Room on the 3rd day of December, 2019, and notice and agenda of the meeting were posted in the Municipal Building at 201 West Gray 48 hours prior to the beginning of the meeting.

PRESENT: Councilmembers Bierman, Carter, Hall, Holman, Petrone, Scanlon, Scott, Wilson, Mayor Clark

ABSENT: None

Item 1, being:

DISCUSSION REGARDING MEDICAL MARIJUANA PROCESSOR ZONING AND LICENSING AND UPDATE ON MEDICAL MARIJUANA DISPOSAL AND CONSUMPTION.

Ms. Beth Muckala, Assistant City Attorney, said Council will be presented information on a proposed three tier categorization of medical marijuana processors, specifically examining permitted uses for certain types of processors within commercial areas. She highlighted current zoning uses for processors that includes I-1, Light Industrial; I-2, Heavy Industrial; and M-1, Restricted Industrial. Processors are also allowed under a Special Use permit in C-1, Local Commercial; C-2, General Commercial; C-3, Intensive Commercial; and MUD, Mixed Use Development.

Ms. Muckala highlighted the proposed three tiers as follows:

- Tier I – [A] facility defined and regulated by Oklahoma state law as a Medical Marijuana Processor (MMP), and which engages in only the following activity(ies): the preparation (from medical marijuana grown off-site) including necessary grinding of “pre-rolled” marijuana cigarettes, “joints”, or “blunts” for sale on-site.
- Tier II – [A] facility defined and regulated by Oklahoma state law as a MMP, and which engages in Tier I MMP activities and/or the following activities: the use of marijuana concentrate(s) created off-site in compliance with state law, to make derivative infused products for sale on-site. Tier II MMP, does not include extraction processes of any kind. Examples of Tier II MMP are the cooking, baking, or preparation of Medical Marijuana edible products, or the addition of Marijuana concentrate to products pre-manufactured off-site, such as lotions or soaps.
- Tier III – [A] facility defined and regulated by Oklahoma state law as a MMP, which engages in any type(s) of MMP including all allowed extraction processes, except that on-site sales are not permitted.

All categories specify continued applicability of state law and licensing processes and language now highlights potential need for applicant to obtain multiple state licenses.

Medical marijuana concentrate is defined as “[S]ubject to state law definitions, also generally means a product created by the extraction of constituent parts, including cannabinoids, terpenes, and other biomolecules, accumulation of trichomes from marijuana plant(s), and may include, but is not limited to kief, hash, rosin, tinctures, oils, shatter, pull and snap wax, budder/badder, crumble, distillate, and crystalline, and may result from solvent or non-solvent extraction process.”

Ms. Muckala said Tier 1 and Tier II license fees will be the same amount as dispensaries and there will be no duplication of fees for the same location. She said zoning will allow Tier I and Tier II to be located wherever and in the same manner that dispensaries are allowed. Tier III processors stay the same, but will include Tier I and Tier II activities with no on-site sales. She said dispensaries combined with processing usually require a Special Use permit because industrial areas do not typically have customer patronage.

Item 1, continued:

Ms. Muckala said there has been discussion of “chemical” extraction versus “cold water” extraction (known in the industry as “solvent” vs “non-solvent” extraction). She has found guidance from Tulsa, Oklahoma; Denver, Colorado; and Los Angeles County that provided very good terminology for distinguishing the process. She said unfortunately, she has not found a good example of a municipality that has approached this issue of processing. She said processors are generally called “manufacturers” in other states and are treated as manufacturers placed in industrial areas. She said the chief challenge in this approach is creating a category that complies with State law and anticipates future application of the language in a way that avoids inconsistencies or confusion. Once the definitions and categories are determined, the application to licensing and zoning provisions is fairly straight-forward. She said Los Angeles has a very detailed and regimented categorization system for their Zoning Ordinance that very clearly sets up categories instead of lists where uses can be fit into. She said Denver, Colorado, is a good example of open zoning where marijuana processors are allowed everywhere except they have to be set back 500 feet from any residential areas.

Ms. Muckala said the City of Norman has constructed specific lists for uses creating Norman’s own categorization of manufacturing that fits into industrial areas versus manufacturing that fits into commercial areas. As an example, bakeries have some level of manufacturing, but they are located in commercial areas because they are making something out of ingredients that are on-site. She said breweries are another example because the brewing of alcoholic beverages involves processes and equipment clearly different from the commercial manufacturing activities typically located in Norman’s commercially zoned areas, and such establishments may be permitted to locate, under the current Zoning Ordinance, in C-3 areas when a specific list of conditions are met.

The Norman Zoning Ordinance’s list of uses has been compiled over the years to specifically list those types of manufacturing or assembly-type activities that are allowed in commercial areas, such as baking goods store, delicatessen store, and flower shop, as distinguished from those allowed in industrial areas, such as manufacture of beer, wine and spirits; assembly of electrical appliances; and manufacture of bakery goods; candy; cosmetics; dairy products; drugs; perfumes, etc.; the “line” that exists between these types of uses is demonstrated within these lists rather than defined specially with the Zoning Ordinance. She said Council may consider implementation of limited “tiers” of processors, where processing activities clearly fall into the “commercial” side of the line, such as grinding marijuana for making pre-rolled joints and infusing products with concentrates created at manufacturing facilities. The Zoning Ordinance does not provide clear guidance for differing treatment of extraction or concentrate-manufacturing processors, which can involve specific and scientific processes and specialized equipment.

Councilmember Bierman asked if the current process of using a Small Planned Unit Development (SPUD) is a good way to address processing, such as cold water extraction, while the industry is still changing. Ms. Muckala said the City’s approach so far has been very compatible with an evolving industry like the medical marijuana industry. She said Special Use permits, Planned Unit Developments (PUDs), and SPUDs allow Staff to look at a specific project instead of trying to shape that category to fit an area. Councilmember Bierman said her concern is someone stating on their application that they are using cold water processing, obtaining their processing license in a densely populated area, and down the road technology evolves to where they begin using a more volatile extraction process. She wants this to be more specific on the application so that does not happen. Ms. Muckala said the State has a Certificate of Compliance (COC) process that requires annual inspections of medical marijuana facilities so if someone is doing something different than what they stated on their application, that will be discovered during the annual inspection process and can be addressed at that time. She said it will be a delicate balance trying to make sure Staff and the applicant are understanding exactly what the applicant is asking for in order to be on the same page. She said restrictions will be laid out in the PUD or SPUD narrative and restrictions will be included in the ordinance for a Special Use permit.

Councilmember Petrone said she would like Staff to send letters to dispensaries letting them know they need to notify the City if they are processing, i.e., pre-rolls, and they will need a processing license from the State. Ms. Muckala said after passage of the tiers, the City can send notification to medical marijuana facilities letting them know the City has instituted permitted uses, which may be different than what is happening at the State level.

Item 1, continued:

Councilmember Bierman said she would like to see some type of distinction, but realizes that would be difficult right now and if the current process is working she is good with leaving it as is for now. She does not see a problem with being the first municipality to look at this, because it shows recognition of a complex issue and across the board solutions will have an impact. She said by finding ways to navigate a balance that works for the City and reduces the administrative burden for the City, but also provides clarity and paths forward for businesses wanting to be a dispensary and processor without drastically increasing their administrative costs, then it is worth doing. She agrees that extraction seems to be wading far deeper into waters the City may not be ready for. She would like to move forward with the tier system, but not extraction at this time.

Councilmember Petrone said she is more concerned about all manufacturing businesses that use chemical or harmful substances in their processes. She would be interested in finding out how other States handle chemical processing as a whole.

Ms. Muckala highlighted updated draft ordinance zoning allowances as follows:

Zoning District	Dispensary	Commercial Grower	TIER I Processor	TIER II Processor	TIER III Processor	Research Facility	Testing Laboratory	Education Facility	Storage Facility
A-1 – General Agriculture		P						P*	
A-2 - Rural Agriculture		P						P*	
RO - Residence/Office	S		S	S					
O-1 - Office/Institutional						S	S		
CO – Suburban Office Commercial						S	S		
C-1 – Local Commercial	P		P	P	S	S	S	S	
C-2 – General Commercial	P		P	P	P	S	S	S	
TC – Tourist Commercial	P		P	P					
CR – Rural Commercial	P	S	P	P				P*	P
C-3 – Intensive Commercial	P		P	P	S	S	P	S	S
I-1 – Light Industrial	S	P	S	S	P*	S	P	P	
I-2 – Heavy Industrial	P	P	P	P	P	P	P	P	P
M-1 – Restricted Industrial	S	P	S	S	S	P	S	P	
MUD – Mixed Use Development	P		P	P	P			S	
CCFBC	P	CCPUD	P	P	P	CCPUD	CCPUD	CCPUD	P

S = Special Use P = Permissive Use CCPUD = Center City Planned Use Development

Ms. Muckala said the Community Planning and Transportation Committee (CPTC) asked Staff to present this information to full Council for input and asked if an evaluation of a complete draft should go back to CPTC or full Council moving forward. Councilmember Holman said he supports a review of the final draft ordinance by CPTC.

Ms. Muckala said new issues that Staff needs direction from Council on are public consumption and disposal facilities. She said State law updates on consumption are essentially amendments to existing smoking regulations to add references to vaping and smoking of marijuana. She said consumption is allowed in public areas that are not enclosed. She said public parks prohibit tobacco smoking specifically, so does the City want to prohibit vaping or smoking of marijuana in public parks in line with State law? Councilmember Holman said the consumption of cannabis should not be illegal in a City park; however, the smoking of cannabis should be restricted. He said if someone wants to eat their edible marijuana on a park bench, it should be allowed and Councilmember Wilson agreed.

Ms. Muckala said the State has specified smoking and vaping in nearly every area; however, there is a statute that enables a public entity to designate an area as entirely non-smoking. She said because these laws are so recent there are a lot of questions on whether that language was purposeful, but from a construction standpoint including it in one place and not another does speak volumes so does the City want to expand the smoking prohibition to include marijuana?

Item 1, continued:

Mayor Clark said she would fully support the prohibition of vaping in public parks. She understands this is medical marijuana, but as other Councilmembers have pointed out, there are other ways to take that medication other than smoking. Councilmember Bierman said because of the amendments to State law the City has less risk of being accused of impeding a person's ability to take their medication as deemed necessary.

Ms. Muckala said under new State law, medical marijuana waste must be disposed of by a licensed medical marijuana waste disposal company, which the State has limited to ten licenses for the first year of licensure; however, she has not found a licensed facility in Oklahoma. There is a State license for this activity, but it does not appear to be subject to the COC requirements at this time. The City's ordinance on open burning provides that open burning is generally prohibited, except in certain situations, including the burning of trees, brush, grass, and other vegetable matter for the purpose of clearing land as well as agricultural crop burning. She said State law clearly empowers municipalities to ban the open burning of marijuana plants and if that is the direction Council wishes to take Staff recommends an amendment to clearly remove medical marijuana from the "agricultural crop" category.

Councilmember Scanlon said the City, by virtue of collecting trash, could pick up medical marijuana and felt this could cause potential problems for the City.

Councilmember Carter said veterinarian clinics have medical waste "garbage cans" that is picked up by a hazardous waste company. He felt medical marijuana would have to be disposed of the same way as any other medical waste.

Ms. Muckala said the definition of marijuana waste is very broad and states, "unused surplus, returned or out-of-date marijuana, and plant debris." She said root balls, stems, fan leaves, and stems are exempt from this definition and the exempt parts of the plant may be destroyed legally in various ways, including on-site open burning unless it is restricted by local ordinance.

Councilmember Wilson asked if there will be a lot of waste to burn and Councilmember Holman said there could be waste from processing facilities, but did not feel there would be waste from dispensaries. Councilmember Wilson said she did not feel like this would be a huge problem in Norman and she does not want to prohibit Ward Five agricultural areas from open burning their own brush.

Councilmember Petrone asked if the waste could be used at the City's Compost Facility and Mr. Darrel Pyle, City Manager, said the process of composting neutralizes seeds so it may neutralize the components of compost for gardening.

Ms. Muckala said there seems to be interest in finding out whether or not language already specifies or has parameters that specify open burning only products that arise from operations on the land. It sounds like if that language is already in the Code, as written, then the City does not need to go any further and Councilmembers agreed.

Items submitted for the record

1. Memorandum dated November 27, 2019, by Beth Muckala, Assistant City Attorney, through Kathryn L. Walker, Interim City Attorney, to Honorable Mayor Breea Clark and City Council
2. Legislatively notated draft ordinance
3. Memorandum dated November 27, 2019, by Beth Muckala, Assistant City Attorney, through Kathryn L. Walker, Interim City Attorney, to Honorable Mayor Breea Clark and City Council
4. PowerPoint presentation entitled, "Norman City Council Special Session," dated December 3, 2019

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Item 2, being:

CONSIDERATION OF ADJOURNING INTO AN EXECUTIVE SESSION AS AUTHORIZED BY OKLAHOMA STATUTES, TITLE 25 §307(B)(4) TO DISCUSS PENDING LITIGATION REGARDING HOLCOMB VS. HICKMAN, ET AL., CASE NO. CV-2019-276 AND OKLAHOMA STATUTES, TITLE 25 §307(B)(3) TO DISCUSS THE ACQUISITION OF REAL PROPERTY LOCATED AT 36TH AVENUE N.W. BETWEEN TECUMSEH ROAD AND INDIAN HILLS ROAD AND ROCK CREEK ROAD BETWEEN 36TH AVENUE N.W. AND GRANDVIEW AVENUE.

Councilmember Scott moved that the Special Session be adjourned out of and an Executive Session be convened into in order to discuss pending litigation regarding Holcomb vs. Hickman, et al., Case No. CV-2009-276, and the acquisition of real property located at 36th Avenue N.W. between Tecumseh Road and Indian Hills Road and Rock Creek Road between 36th Avenue N.W. and Grandview Avenue, which motion was duly seconded by Councilmember Holman; and the question being upon adjourning out of the Special Session and the subsequent convening, a vote was taken with the following result:

YEAS: Councilmembers Bierman, Carter, Hall, Holman, Petrone, Scanlon, Scott, Wilson, Mayor Clark

NAYES: None

The Mayor declared the motion carried and the Special Session adjourned out of; and an Executive Session was convened into in order to discuss pending litigation regarding Holcomb vs. Hickman, et al., Case No. CV-2009-276, and the acquisition of real property located at 36th Avenue N.W. between Tecumseh Road and Indian Hills Road and Rock Creek Road between 36th Avenue N.W. and Grandview Avenue.

The City Council convened into Executive Session at 6:33 p.m. Ms. Kathryn Walker, City Attorney, Ms. Beth Muckala, Assistant City Attorney, Mr. Rick Knighton, Assistant City Attorney, and Mr. Darrel Pyle, City Manager, were in attendance at the Executive Session.

Thereupon, Councilmember Scott moved that the Special Session be reconvened, which motion was duly seconded by Councilmember Wilson; and the question being upon reconvening the Special Session, a vote was taken with the following result:

YEAS: Councilmembers Bierman, Carter, Hall, Holman, Petrone, Scanlon, Scott, Wilson, Mayor Clark

NAYES: None

The Mayor declared the motion carried and the Special Session was reconvened at 7:38 p.m.

The Mayor said pending litigation regarding Holcomb vs. Hickman, et al., Case No. CV-2009-276, and the acquisition of real property located at 36th Avenue N.W. between Tecumseh Road and Indian Hills Road and Rock Creek Road between 36th Avenue N.W. and Grandview Avenue was discussed in Executive Session. No action was taken and no votes were cast.

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Item 2, continued:

ADJOURNMENT

There being no further business, Councilmember Scott moved that the meeting be adjourned, which motion was duly seconded by Councilmember Wilson; and the question being upon adjournment of the meeting, a vote was taken with the following result:

YEAS:	Councilmembers Bierman, Carter, Hall, Holman, Petrone, Scanlon, Scott, Wilson, Mayor Clark
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NAYES:	None
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The Mayor declared the motion carried and the meeting was adjourned at 7:39 p.m.

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ATTEST:

City Clerk

Mayor