

CITY COUNCIL CONFERENCE MINUTES

June 25, 2019

The City Council of the City of Norman, Cleveland County, State of Oklahoma, met in a conference at 5:30 p.m. in the Municipal Building Conference Room on the 25th day of June, 2019, and notice and agenda of the meeting were posted at the Municipal Building at 201 West Gray and the Norman Public Library at 225 North Webster 48 hours prior to the beginning of the meeting.

PRESENT:

Councilmembers Bierman, Carter, Castleberry, Clark, Hickman, Holman, Scott, Wilson, Mayor Miller

ABSENT:

None

Item 1, being:

DISCUSSION REGARDING UPDATES TO THE MEDICAL MARIJUANA ORDINANCE AS A RESULT OF CHANGES IN STATE LAW.

Ms. Beth Muckala, Assistant City Attorney, said the City of Norman has Medical Marijuana (MM) licensing procedures in place that includes a \$100 per year fee. She said City regulations require the applicant to obtain the state license prior to issuance of the City license. She said the City created a Research Facility use category for the Zoning Ordinance, but the State had not put a procedure in place to license Research Facilities. The new State law has since created a Research Facility category for state licenses and the City may begin to see those facilities in Norman.

Ms. Muckala said in the Zoning Ordinance there are special and permitted uses as well as a 1,000-foot setback requirement for dispensaries, which is controlled by state law. There are allowances for home growth and possession that are also controlled by state law and restrictions on MM businesses as a home occupation. The Zoning Ordinance has language for the processes, equipment, chemicals, and substances on site, which is largely an issue of building and occupation codes. She said all MM zoning laws are subject to adopted codes per state law.

Ms. Muckala said dispensaries are allowed in most commercially zoned districts as a permitted use; growers are permitted in industrial and agricultural districts except where it overlaps with commercial, such as CR, Rural Commercial District, which is only allowed under special use; processors are permitted in industrial and as Special Use in commercial or mixed use districts; and researchers are Special Use everywhere except I-2, Heavy Industrial District. She said dispensaries will be permitted within C-1, Local Commercial District, C-2, General Commercial District, and C-3, Intensive Commercial District, in the Center City Form Based Code (CCFBC) area as retail areas; however, growers, processors, and researchers would have to apply for a Planned Unit Development (CCPUD) zoning that requires Council approval. Staff has added general nuisance language that would apply to any business that allowed noxious odors to permeate beyond the boundary of the parcel.

Ms. Muckala said current state law established licenses and fees as well as a 7% state sales tax. There are also two sets of emergency rules as follows:

- General rules passed by the Oklahoma State Department of Health (OSDH)
 - Established licensing procedures/requirements
 - Set inventory standards/general security requirements
- Food Safety and Handling rules for Processors
 - Recommended processors adopt Hazard Analysis and Critical Control Plans
 - Required testing of products and set applicable standards

These rules are anticipated to become permanent without a gap in coverage so there should be no change in City ordinances that were previously based on state law.

Ms. Muckala said the Oklahoma Medical Marijuana and Patient Protection Act, known as the Unity Bill, established new language regarding regulation of MM establishments. This bill addressed the sale, handling, record keeping, and other administrative duties for MM establishments. The Unity Bill also established new license categories that include Transporter Agent, Testing Laboratory, Education Facility, and Research Facility. She said amendments to the Unity Bill include direct acknowledgement of municipal zoning powers and a Certificate of Compliance requirement to coordinate with the process currently proposed by the Oklahoma Municipal League (OML) and Oklahoma Medical Marijuana Authority (OMMA).

In an early version of Senate Bill 1030 (SB1030), OML suggested language to make clear that municipalities may collect local sales tax on top of the state excise tax, but this language was stricken due to a concern that it created confusion regarding application or the amount of the state excise tax. The Oklahoma Tax Commission (OTC) through an administrative regulation to guide the collection of sales tax, is currently collecting local sales tax on top of the 7% state excise tax and remitting that; however, there is a pending lawsuit that could affect OTC's administrative status so the collection and remittance of local sales tax could change.

Ms. Muckala said a Research Facility has always been based on the idea of academic pursuit of advances in the field as opposed to a Testing Laboratory, which is a new category created to allow growers to test their product for contaminants prior to sending to a processor or dispensary. She said there is also language in the Testing Laboratory licensure framework that allows the lab to perform research for these businesses in advancing their product.

State law has added a requirement to submit a Certificate of Compliance (COC) for any business that cultivates, grows, processes, stores, or manufactures medical marijuana. A COC must certify compliance with zoning classifications, applicable municipal ordinances, and all applicable safety, electrical, fire, plumbing, waste, construction, and building specification codes. She said the requirement for providing a COC was drafted very broadly and one is required for locations where marijuana is stored. The only potential for a storage facility where a licensing category does not already exist relates to the Transporter Agent license. Ms. Muckala said in order to ensure that state COC requirements are met a licensing category for MM Storage Facilities is needed, but this

license will only be required where another type of license has not already been obtained. Considering the state's additional requirement of issuing COC's, it is anticipated this amount of time and expenditure of resources is likely to increase substantially. At this time, the draft ordinance suggests the City license fee be half of the amount of the related state license fee.

Ms. Muckala highlighted new state zoning uses as MM Testing Laboratory, MM Education Facility, MM Storage Facility (i.e. Storage Warehouse), and MM Research Facility (already in City zoning). A Storage Warehouse is defined as "a building or group of buildings used for the storage of goods and wares by commercial clients and business organizations and not open to the general public." An Education Facility is defined as "[A] person or entity approved pursuant to this act to operate a facility providing training and education to individuals involving the cultivation, growing, harvesting, curing, preparing, packaging, or testing of medical marijuana, or the production, manufacture, extraction, processing, packaging or creation of medical-marijuana infused products or medical marijuana products as described in this act."

Ms. Muckala said the City will continue to work with OML and OMMA for a smooth transition of COC regulations. In response to current and additional state reliance on local oversight, a fee increase for a local license needs to be considered and Staff is suggesting the license fees be one-half of the annual state fee. She said the City's ordinance needs to add licensure categories to ensure the COC process complies with state law as well as add use categories and definitions to the Zoning Ordinance.

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

Zoning District	Dispensary	Commercial Grower	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						
O-1 - Office/Institutional				S	S		
CO - Suburban Office Commercial				S	S		
C-1 - Local Commercial	P		S	S	S	S	
C-2 - General Commercial	P		S	S	S	S	
TC - Tourist Commercial	P						
CR - Rural Commercial	P	S				P*	P
C-3 - Intensive Commercial	P		S	S	S	S	S
I-1 - Light Industrial	S	P	P	S			
I-2 - Heavy Industrial	P	P	P	P	P	P	P
M-1 - Restricted Industrial	S	P	P	S	S	P	
MUD - Mixed Use Development	P		S			S	
CCFBC	P	CCPUD	CCPUD	CCPUD	CCPUD	CCPUD	P

S = Special Use

P = Permissive Use

CCPUD = Center City Planned Use Development

*P = Cultivation education activities only

Ms. Muckala highlighted the timeline moving forward and said the Planning Commission will hold a public hearing on July 11, 2019, Council will consider First Reading on July 23, 2019, with Second and Final Reading on August 13, 2019. She said state law will be effective August 29, 2019.

Councilmember Hickman asked why a Storage Facility is not a permitted use in all industrial districts when it is permitted in commercial districts and Ms. Muckala said in looking through all the zoning districts, Staff was looking for where storage language is allowed and in industrial there was some reference to storage, but it was specific to certain types of product. She said compatibility can be evaluated at this level and that use added, if that is Council's desire. She said processors and growers are allowed in industrial zones and if they need storage right now the state is expecting them to have it at their already licensed location, but on the local level it would not require a separate use to be recognized for that. She said all storage warehouses are allowed in commercial districts, most specifically C-3, Intensive Commercial District. Councilmember Hickman said he would prefer storage facilities (warehouses) not be allowed in C-3 because that includes Main Street. He would also prefer storage facilities not be allowed in portions of the Center City Form Based Code area that includes Main Street, Gray Street, James Garner Avenue, etc.

Ms. Muckala said if Council wants the storage language expanded, would Council like to create a MM Storage Facility separately and add it as a separate use in every category or add Storage Warehouse to other categories, such as industrial.

Councilmember Holman said he agrees with Councilmember Hickman because he would not want storage facilities of any kind on Main Street.

Councilmember Bierman shares Councilmembers' concerns and said a lot of dispensaries are located in and around the Main Street area so she can see the attraction of wanting a storage facility nearby.

Ms. Muckala said Staff can amend the draft ordinance to create a use category defined separately as a MM Storage Facility; however, a storage warehouse as defined in the current Zoning Ordinance is permitted in C-2, General Commercial, which includes portions of Center City.

Ms. Muckala said HB2601) amends several existing laws coordinating the regulation of marijuana smoking and vaping with existing tobacco and vaping regulations. The smoking tobacco and smoking or vaping of marijuana is not permitted in a "public place," such as in any part of a zoo whether indoors or outdoors, an indoor workplace, in any vehicle providing public transportation, at a meeting of a public body, in a nursing facility licensed by the state, or in a childcare facility. Additionally, the amendments were such that exemptions from prohibitions that are allowed for tobacco smoking (such as restaurants creating designated smoking sections with separate ventilation systems) were not extended to marijuana smoking and vaping.

Councilmember Clark said the City will need to educate residents on changes in state law, specifically state rules regarding smoking and vaping in public places.

Ms. Muckala said she would like direction from Council regarding the proposed MM license fees and Councilmember Clark said she wants to keep the fees low while still covering Staff's time and resources.

Councilmember Hickman said he agreed with Councilmember Clark that fees should be kept as low as possible and still cover the City's costs. He said in a year or two after the City has some experience under its belt, Council can look at the fees again to ensure the City is not charging more than what it is costing especially since this will be an annual fee. He said half of the state's fee seems to be a decent starting point because he would rather break even than make money.

Ms. Brenda Hall, City Clerk, said the COC inspections will be required annually for every MM facility license and there are more inspections involved in the MM COC process than what is required for alcohol COC's. She said fees that are half the cost of state licenses does not seem overly burdensome considering the amount of Staff time that will go into inspecting these facilities annually.

Items submitted for the record

1. Memorandum dated June 25, 2019, by Beth Muckala, Assistant City Attorney, through Kathryn L. Walker, Interim City Attorney, to Honorable Mayor Lynne Miller and City Council
2. Copy of Title 310. Oklahoma State Department of Health, Chapter 681. Medical Marijuana Control Program
3. Draft ordinance
4. PowerPoint presentation entitled, "Medical Marijuana Zoning/Licensing Updates" Council Conference dated June 25, 2019

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The meeting was adjourned at 6:14 p.m.

ATTEST:

City Clerk

Mayor