

ORDINANCE NO. O-1819-17

ITEM NO. 11

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**STAFF REPORT**

**ITEM:** AN ORDINANCE OF THE COUNCIL OF THE CITY OF NORMAN, OKLAHOMA, AMENDING SECTION 10-203.1, IN ARTICLE II OF CHAPTER 10 (HEALTH AND SAFETY); AMENDING SECTION 13-108, IN ARTICLE I OF CHAPTER 13 (LICENSES AND OCCUPATIONS); ENACTING ARTICLE XXXIV, INCLUDING SECTIONS 13-3401 THROUGH 13-3407, IN CHAPTER 13 (LICENSES AND OCCUPATIONS); AMENDING SECTIONS 420.1 (A-1, GENERAL AGRICULTURAL DISTRICT), 420.2 (A-2, RURAL AGRICULTURAL DISTRICT), 422.7 (RO, RESIDENCE-OFFICE DISTRICT), 422.9 (O-1, OFFICE INSTITUTIONAL DISTRICT), 423.1 (CO, SUBURBAN OFFICE COMMERCIAL DISTRICT), 423.2 (C-1, LOCAL COMMERCIAL DISTRICT), 424.1 (C-2, GENERAL COMMERCIAL DISTRICT), 424.2 (TC, TOURIST COMMERCIAL DISTRICT), 424.3 (CR, RURAL COMMERCIAL DISTRICT), 425.1 (C-3, INTENSIVE COMMERCIAL DISTRICT), 426.1 (I-1, LIGHT INDUSTRIAL DISTRICT), 428.1 (M-1, RESTRICTED INDUSTRIAL DISTRICT), 429 (MUD, MIXED USE DEVELOPMENT DISTRICT), ALL IN ARTICLE XI OF CHAPTER 22 (ZONING ORDINANCE); AMENDING SECTION 434.1 (SPECIAL USES) AND SECTION 438.1 (HOME OCCUPATIONS), BOTH IN ARTICLE XII OF CHAPTER 22 (ZONING ORDINANCE); AND AMENDING SECTION 450 (DEFINITIONS), IN ARTICLE XIV OF CHAPTER 22 (ZONING ORDINANCE), ALL IN ORDER TO ESTABLISH A PUBLIC NUISANCE AS TO THE CREATION AND FAILURE TO PREVENT THE EMANATION OF NOXIOUS ODORS BEYOND PROPERTY BOUNDARIES, TO ESTABLISH BUSINESS LICENSING FOR MARIJUANA ESTABLISHMENTS AS PERMITTED BY STATE LAW, TO ADD PERMITTED AND SPECIAL USES TO THE ZONING ORDINANCE TO ALLOW FOR THE LOCATION OF MARIJUANA ESTABLISHMENTS IN CONFORMANCE WITH STATE LAW, AND TO ADD DEFINITIONS AND OTHER RELATED PROVISIONS; AND PROVIDING FOR THE SEVERABILITY THEREOF.

**BACKGROUND**

The City Council Community Planning and Transportation Committee (CPTC) requested that staff prepare information on the recently adopted State Question 788, Medical Marijuana, to present to CPTC at their August 23<sup>rd</sup> meeting. The presentation by city staff addressed Oklahoma state regulation as well as local and nation-wide municipal approaches to medical marijuana. CPTC reviewed and commented on the presentation, providing direction for moving forward. Staff was directed to take a proposed ordinance to the full City Council at its Conference on October 9<sup>th</sup>. At the October 9<sup>th</sup> Council Conference direction was given regarding amendments to the draft ordinance, with direction to return with a revised ordinance at the October 11<sup>th</sup> Council Conference. At the October 11<sup>th</sup> Council Conference, staff was directed to move the ordinance forward to the November 8<sup>th</sup> Planning Commission meeting.

State Question 788, entitled Medical Marijuana, passed with nearly 57% of the vote in the Oklahoma primary election held June 26, 2018. A regulatory office, the Oklahoma Medical Marijuana Authority ("OMMA") was established under the Oklahoma State Department of

Health ("OSDH"), which is now licensing adult and minor patients, caregivers, growers, processors, dispensaries, transporters and researchers. Various items are required as part of the application, including the following:

- 1) Establishment name/physical address/GPS coordinates/phone number of the particular establishment location;
- 2) Personal or identifying information regarding individual or entity applicants;
- 3) Entity applicant ownership information and certificate of good standing with the Oklahoma Secretary of State;
- 4) Affidavit of Lawful Presence for each owner;
- 5) For licensed dispensaries, "proof that the proposed location is at least one thousand (1,000) feet from a public or private school."

Additionally, prior to the issuance of any dispensary, grower, processor, transportation or researcher license, all applicants and owners of entity applicants, must obtain criminal background checks within thirty (30) days prior to applying for the license. Also, before any commercial marijuana establishment may handle or process marijuana, the applicant must register with the Oklahoma State Bureau of Narcotics and Dangerous Drugs Control ("OBND").

State law/regulation provides that a Marijuana Dispensary may not locate within 1,000 ft. of a public or private school (measured in a straight line from the Marijuana Dispensary property boundary to the front door of the school). State regulation also requires that all commercial marijuana establishments (including dispensaries, growers, and processors) "implement appropriate security measures to deter and prevent the unauthorized entrance into areas containing marijuana and the theft and diversion of marijuana," ensure security during transit of medical marijuana, and "meet the standards of any applicable state and local electrical, fire, plumbing, waste and building specification codes...."

## **DISCUSSION**

### **Zoning**

In order to implement and follow current state law and regulation, the current draft ordinance adds Marijuana Establishments as permitted and special uses to the City of Norman's various zoning districts. Marijuana Dispensaries are added as allowed uses in the following commercial zoning districts; C-1, C-2, TC, CR, MUD, Mixed Use Development District and CCFBC. The C-3 zoning district incorporates all C-2 uses so adding to C-3 separately was not necessary. Marijuana Dispensaries are added as Special Use in RO, Residence Office District, I-1, Light Industrial District, and M-1, Restricted Industrial District. Marijuana Processors are added as Special Use in the following zoning districts: C-1 Local Commercial, C-2, General Commercial, and C-3, Intensive Commercial, and MUD, Mixed Use Development zoning districts. Marijuana Processors are allowed by right in I-1, Light Industrial, I-2, Heavy Industrial, and M-1 Restricted Industrial zoning districts. Marijuana Growers are added as Special Use in CR, Rural Commercial District, and as a permitted use in A-1, General Agricultural, A-2, Rural Agricultural, I-1 Light Industrial, and M-1 Restricted Industrial zoning districts. Finally, Marijuana Researcher (a Marijuana Establishment category referenced but not yet formally permitted by state regulation), is added as a special use to O-1, Office Institutional, CO, Suburban Office Commercial District, C-1, Local Commercial, C-2, General Commercial, C-3, Intensive Commercial, I-1, Light Industrial, and M-1, Restricted Industrial zoning districts.

To allow for marijuana growers, processors and researchers in the CCFBC area a CCPUD is required.

Marijuana dispensaries, growers, processors and researchers are an allowed use in the I-2 district.

Where a Marijuana Establishment is added as a special use, Section 434.1 of the Zoning Ordinance (addressing "Special Use") specifies applicable site plan requirements. Section 438.1 has been amended to specify that Marijuana Establishments may not be considered "Home Occupations." Finally, Section 450 of the Zoning Ordinance is amended to include definitions modeled directly from the state regulation definitions.

### **Other Items Addressed by the Draft Ordinance**

Though Planning Commission is reviewing the zoning provisions of the draft Ordinance, this report will also summarize other items it addresses. The draft ordinance adds Article XXXIV, addressing Marijuana Establishment Licenses, which sets forth definitions consistent with those added to the Zoning Ordinance, defines application requirements, and sets forth other basic regulations based upon the state guidance, including the state requirement for appropriate security measures. The draft ordinance limits application submissions to those materials already required by and issued by the state and sets a Marijuana Establishment license fees of \$1,199.00 per license/per year, well below those established at the state level, in order to cover associated administrative costs of issuance.

Additionally, the draft Ordinance amends the City Code definition of "public nuisance." Recognizing that certain occupations or uses of property, particularly those located in densely populated areas, bear a potential for the creation of a public nuisance by the emission of noxious odors, it was determined that the City Code should be amended to include language placing a responsibility upon all property owners to avoid situations where a noxious odor is created by an activity and the creator does not take reasonable measures to prevent emanation of the noxious odor beyond the property boundary.

These elements discussed have been included in the attached Ordinance, Attachment A.

**STAFF RECOMMENDATION:** Staff recommends approval of the attached Ordinance, O-1819-17, amending the Zoning Ordinance to allow for the use of those medical marijuana facilities licensed by the State of Oklahoma and the City of Norman.

## **SEC. 420.1 – A-1, GENERAL AGRICULTURAL DISTRICT**

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2. Uses Permitted. Property and buildings in an A-1, General Agricultural District shall be used only for the following purposes:

- (h) Accessory buildings including barns, sheds, and other farm buildings which are not part of the main building. One guest house may be utilized provided (a) it is clearly secondary to the larger main dwelling;
- (b) the structure is not rented or leased, nor used as a permanent dwelling; and (c) is not a mobile home.
- (i) Marijuana Grower, as permitted by state law.

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§ 5. That Section 420.2 of Chapter 22 shall be amended to read as follows:

## **SEC. 420.2 – A-2, RURAL AGRICULTURAL DISTRICT**

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2. Uses Permitted. Property and buildings in an A-2, Rural Agricultural District shall be used only for the following purposes:

- (h) Type 2 mobile home.
- (i) Marijuana Grower, as permitted by state law.

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§ 6. That Section 422.7 of Chapter 22 shall be amended to read as follows:

## **SEC. 422.7 – RO, RESIDENCE-OFFICE DISTRICT**

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3. Special Use. The following uses may be permitted, after review, in accordance with Section 434.1:

(m) Pre-packaged food store and toiletries within apartment buildings or complexes wherein there are a minimum of 150 dwelling units, provided that:

- (1) Such store is limited to the main floor or below of the building in which it is located;
- (2) There is no direct entrance thereto from any public street, sidewalk or other public way;
- (3) No part of such store, or its entrance is visible from any public way, street or sidewalk;
- (4) That such store shall not be advertised in any manner;
- (5) In reviewing any application for permission to establish and operate any such store in any apartment building or complex, the following matters shall be considered:

- [a] The proximity of other business or commercial districts, and whether or not the proposed store would constitute an independent commercial enterprise, as opposed to any “accessory” use to the tenants of the apartment complex;
  - [b] Service entrances for delivery vehicles and adequate space for the parking of customers;
  - [c] The size and character of the apartment building or complex, since the tenants thereof will be expected to furnish substantially all of the financial support of such store.
- (6) Any ordinance hereafter enacted granting permission for the establishment and operation of any pre-packaged food store after review, may set forth restrictions as to the space to be occupied, provisions for the automatic termination of permission for violations, and any other reasonable conditions which the Commission may seem proper.

(n) Marijuana Dispensary, as permitted by state law (only when in conjunction with residential uses in a mixed building).

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§ 7. That Section 422.9 of Chapter 22 shall be amended to read as follows:

**SEC. 422.9 – O-1, OFFICE-INSTITUTIONAL DISTRICT**

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3. Special Use. The following uses may be permitted, after review, in accordance with Section 434.1:

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- (h) Municipal use, public buildings and public utility. (O-1617-31)
- (i) Marijuana Researcher, as permitted by state law.

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§ 8. That Section 423.1 of Chapter 22 shall be amended to read as follows:

**SEC. 423.1 – CO, SUBURBAN OFFICE COMMERCIAL DISTRICT**

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3. Special Use. The following uses may be permitted, after review, in accordance with Section 434.1:

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- (g) Municipal use, public buildings and public utility. (O-1617-31)
- (h) Marijuana Researcher, as permitted by state law.

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§ 9. That Section 423.2 of Chapter 22 shall be amended to read as follows:

**SEC. 423.2 – C-1, LOCAL COMMERCIAL DISTRICT**

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2. Uses Permitted. Property and buildings in a C-1, Local Commercial District, shall be used only for the following purposes:

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Leathergoods shop.  
Marijuana Dispensary, as permitted by state law.  
Messenger or telegraph service.

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3. Special Use. The following uses may be permitted, after review, in accordance with Section 434.1:

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- (g) Municipal use, public buildings and public utility. (O-1617-31)
- (h) Marijuana Processor, as permitted by state law.
- (i) Marijuana Researcher, as permitted by state law.

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§ 10. That Section 424.1 of Chapter 22 shall be amended to read as follows:

**SEC. 424.1 – C-2, GENERAL COMMERCIAL DISTRICT**

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2. Uses Permitted. Property and buildings in a C-2, General Commercial District, shall be used only for the following purposes:

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- (e) Automobile, farm implement and machinery repair, sales and service, but not automobile wrecking yards or junk yards.

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Lumber and building materials sales yard.  
Marijuana Dispensary, as permitted by state law.  
Music, radio or television shop.

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3. Special Use. The following uses may be permitted, after review, in accordance with Section 434.1:

- (m) Municipal use, public buildings and public utility. (O-1617-31)
- (n) Marijuana Processor, as permitted by state law.
- (o) Marijuana Researcher, as permitted by state law.

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§ 11. That Section 424.2 of Chapter 22 shall be amended to read as follows:

**SEC. 424.2 – TC, TOURIST COMMERCIAL DISTRICT**

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2. Uses Permitted.

- (a) Any of the following uses:

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- (8) Ice dispensing machine (and other outdoor-type automatic vending machines).
- (9) Marijuana Dispensary, as permitted by state law.

- (910) Miniature golf course.
- (1011) Offices accessory to main use.
- (1112) Parks or playgrounds.
- (1213) Parking lot or structure, non-commercial accessory to and within 200 feet.
- (1314) Pre-packaged food store.
- (1415) Service station.
- (1516) Travel trailer store.
- (1617) Sporting goods store, including sale of live bait. (O-9596-19)
- (1718) Child Care Center, as specified in Section 438.3. (O-9596-19)

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§ 12. That Section 424.3 of Chapter 22 shall be amended to read as follows:

**SEC. 424.3 – CR, RURAL COMMERCIAL DISTRICT**

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2. Uses Permitted. Property and buildings in CR, Rural Commercial District, shall be used only for the following purposes:

- (a) No individual use shall exceed a Gross Floor Area of 35,000 square feet:

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- (12) Key shop.
- (13) Marijuana Dispensary, as permitted by state law.
- (1414) Office building and offices for such professional services as accountant, architect, attorney, business or management consultant, court reporter, dentist or dental surgeon, engineer, geologies or geophysicist, linguist, landscape architect, optometrist, optician, osteopathic physician, planning consultant, psychologist, physician or surgeon, or registered nurse. Funeral homes and mortuaries shall not be considered professional services permitted in this district.
- (1415) Package liquor store.
- (1516) Pharmacy.
- (1617) Plant nursery.
- (1718) News stand and tobacco store.
- (1819) Restaurant.
- (1920) Shoe store or repair shop.

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3. Special Use. The following uses may be permitted, after review, in accordance with Section 434.1: (O-9596-19)

- (i) Municipal use, public buildings and public utility. (O-1617-31)
- (j) Marijuana Grower, as permitted by state law.

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§ 13. That Section 425.1 of Chapter 22 shall be amended to read as follows:

**SEC. 425.1 – C-3, Intensive Commercial District**

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3. Special Use. The following uses may be permitted, after review, in accordance with Section 434.1: (O-9596-19; O-0304-29; O-1213-17; O-1314-13)

- (j) Municipal use, public buildings and public utility. (O-1617-31)

- (k) Marijuana Processor, as permitted by state law.
- (l) Marijuana Researcher, as permitted by state law.

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§ 14. That Section 426.1 of Chapter 22 shall be amended to read as follows:

**SEC. 426.1 – I-1, LIGHT INDUSTRIAL DISTRICT**

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1. Uses Permitted. Property and buildings in an I-1, Light Industrial District, shall be used only for the following purposes:

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(b) The Following uses when conducted within a complete enclosed building:

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- (14) Machinery or equipment storage yard.
- (15) Marijuana Grower, as permitted by state law.
- (16) Marijuana Processor, as permitted by state law.

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2. Special Use. The following uses may be permitted, after review, in accordance with Section 434.1: (O-9596-19)

- (e) Municipal use, public buildings and public utility. (O-1617-31)
- (f) Marijuana Dispensary, as permitted by state law.
- (g) Marijuana Researcher, as permitted by state law.

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§ 15. That Section 427.1 of Chapter 22 shall be amended to read as follows:

**SEC. 428.1 – M-1, RESTRICTED INDUSTRIAL USE**

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2. Uses Permitted. The uses listed below shall be permitted subject to Use Conditions referenced in this section and as they may be regulated by other sections of the Norman City Ordinances.

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- (d) Mail order house
- (e) Marijuana Grower, as permitted by state law
- (f) Marijuana Processor, as permitted by state law
- (e) Market research
- (f) Office buildings
- (g) Systems development
- (h) Trade Schools and schools for vocational training. (O-8586-12)

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4. Special Use. The following uses may be permitted, after review, in accordance with Section 434.1: (O-9596-19)

- (g) Municipal use, public buildings and public utility. (O-1617-31)
- (h) Marijuana Dispensary, as permitted by state law.
- (i) Marijuana Researcher, as permitted by state law.

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§ 16. That Section 429 of Chapter 22 shall be amended to read as follows:

**SEC. 429 – MUD, MIXED USE DEVELOPMENT DISTRICT**

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## 2. Uses Permitted.

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- (c) General neighborhood oriented retail uses, including but not limited to the following:

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- (16) Key shop
- (17) Marijuana Dispensary, as permitted by state law
- ~~(17)~~ (18) Office use (including medical offices)
- ~~(18)~~ (19) Personal services
- ~~(19)~~ (20) Pet store
- ~~(20)~~ (21) Repair shop
- ~~(21)~~ (22) Shoe shop (including repair)
- ~~(22)~~ (23) Small electric equipment (including sales and repair)
- ~~(23)~~ (24) Toy store

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4. Special Use. City Council may approve the following Special Uses after review and in accordance with Section 434.1:

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- (g) Municipal use, public buildings and public utility. (O-1617-31)
- (h) Marijuana Processors, as permitted by state law.

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§ 17. That Section 434.1 of Chapter 22 shall be amended to read as follows:

### **SEC. 434.1 – SPECIAL USES**

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- (a) Application and Fee: Application for a “Special Use” shall be filed with the Director of Planning and Community Development. The application shall include the following:

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- (5) A site plan, drawn to scale, showing the location and dimensions of boundary lines with distances and bearings, easements, required yards and setbacks, and all existing and proposed buildings, parking and loading areas, ingress and egress, the location of existing and proposed landscaped areas, utility or service areas, fencing and screening, signs and lighting. Site plans submitted for special use as a Marijuana Dispensary, Marijuana Grower, Marijuana Processor, or Marijuana Researcher shall also include the following information:
  - [a] A description of all lighting, surveillance and security equipment or devices, including all measures taken to separate areas in which non-licensed individuals are allowed from areas in which licensed individuals are allowed.
  - [b] As also required by code(s) adopted in Article II, Chapter 5 (Building Construction) of the City Code, a list of Material Safety Data Sheets (“MSDS’s”) for all chemicals, solvents or substances to be utilized on the premises.
  - [c] As also required by code(s) adopted in Article II, Chapter 5 (Building Construction) of the City Code, a clearly labeled floor plan, depicting the following:
    - (i) Layout of the structure and dimensions of all spaces, fixtures and equipment;

- (ii) The principal uses of each area depicted on the floor plan, including but not limited to the areas where non-licensed individuals are permitted, private consulting areas, storage areas retail areas, and restricted areas where medical marijuana will be located;
- (iii) Areas where services or products other than the distribution of marijuana are offered or proposed to occur on the premises;
- (iv) Location(s) of separation between areas where non-licensed individuals are allowed from areas where licensed individuals are allowed.

To the extent any of the information required by subpart (5) above changes following issuance of a special use permit, Applicant shall provide updated information within fourteen (14) days of any such change.

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§ 18. That Section 438.1 of Chapter 22 shall be amended to read as follows:

**SEC. 438.1 – HOME OCCUPATIONS**

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- (b) The following uses by the nature of the investment or operation have a tendency once started to rapidly increase beyond the limits permitted for home occupations and thereby impair the use and value of a residentially zoned area for residential purposes. Therefore, the uses specified below shall not be permitted as home occupations: auto repair, major or minor; barber shop; beauty shop; carpentry work; dance instruction; medical or dental offices; painting of vehicles, trailers, or boats; private schools with organized classes; child care establishment; radio or television repair; upholstering; restaurant; or rest home.
- (c) Marijuana Establishments shall not be permitted as home occupations.

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§ 19. That Section 450 of Chapter 22 shall be amended to read as follows:

**SEC. 450 – DEFINITIONS**

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(80.4) LUMINOUS TUBE. A glass tube filled with a gas or gas mixture (including neon, argon, mercury or other gasses), usually of small diameter (10-15 millimeter), caused to emit light by the passage of an electric current, and commonly bend into various forms for use as a decoration or signs. A luminous tub does not include common fluorescent tubes or compact fluorescent lamps.

**(80.5) MARIJUANA DEFINITIONS.**

The following words, terms and phrases, when used in this article, shall have the meaning ascribed to them in this section, except where the context clearly indicates a different meaning:

Applicant means the natural person or entity in whose name a license would be issued.

Marijuana means all parts of a plant of the genus cannabis, whether growing or not; the seeds of a plant of that type; the resin extracted from a part of a plant of that type; and every compound, manufacture, salt, derivative, mixture, or preparation of a plant of that type or of its seeds or resin. "Marijuana" does not include the mature stalks of the plant, fiber produced from the stalks, oils or cake made from the seeds of the plant, or any other compound, manufacture, salt, derivative, mixture, or preparation of the mature stalks, except the resin extracted from the mature stalks, fiber, oil or cake, or the sterilized seed of the plant that is incapable of germination.

Marijuana Dispensary means an entity that has been licensed by the State pursuant to Title 63 O.S. § 421 and OAC 310:681, which allows the entity to purchase medical marijuana from a processor licensee or grower licensee and sell medical marijuana only to qualified patients, or their parents or legal guardian(s) if applicable, and caregivers.

Marijuana Establishment means a Marijuana Dispensary, Marijuana Grower, Marijuana Processor, or Marijuana Researcher issued a license by the State pursuant to Subchapters 3, 4, or 5 of OAC 310:681.

Marijuana Grower means an entity that has been licensed by the State pursuant to Title 63 O.S. § 422, which allows the entity to grow, harvest, and package medical marijuana according to OAC 310:681 for the purpose of selling medical marijuana to a dispensary, processor, or researcher.

Marijuana Processor means an entity that has been licensed by the State pursuant to Title 63 O.S. § 423, which allows the entity to: purchase marijuana from a commercial grower; prepare, manufacture, process,

package, sell to, and deliver medical marijuana products to a dispensary licensee or other processor licensee; and may manufacture marijuana received from a qualified patient into a medical marijuana concentrate, for a fee.

*Marijuana Researcher* means an entity issued a license by the State pursuant to Subchapter 4 of OAC 310:681

*Medical Marijuana* means marijuana that is grown, processed, dispensed, tested, possessed, or used for a medical purpose.

*Medical Marijuana Product* means a product that contains cannabinoids that have been extracted from plant material or the resin therefrom by physical or chemical means and is intended for administration to a qualified patient, including but not limited to oils, tinctures, edibles, pills, topical forms, gels, creams, forms medically appropriate for administration by vaporization or a nebulizer, patches, tinctures, and liquids excluding live plant forms.

*Medical Marijuana Waste* means unused, surplus, returned or out-of-date marijuana; recalled marijuana; unused marijuana; plant debris of the plant of the genus cannabis, including dead plants and all unused plant parts and roots; and any wastewater generated during growing and processing.

*Retailer* means a Marijuana Dispensary.

(80.56) MAXIMUM EXTENT PRACTICABLE. Under the circumstances, reasonable efforts have been undertaken to comply with the regulations or requirement, the costs of compliance clearly outweigh the potential benefits to the public or would unreasonably burden the proposed project or development, and reasonable steps have been undertaken to minimize any potential harm or adverse impact resulting from noncompliance.

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