



## Legislation Text

File #: O-1920-4, Version: 1

CONSIDERATION OF ORDINANCE O-1920-4 UPON SECOND AND FINAL READING: AN ORDINANCE OF THE COUNCIL OF THE CITY OF NORMAN, OKLAHOMA, AMENDING SECTION 13-108, IN ARTICLE I OF CHAPTER 13 (LICENSES AND OCCUPATIONS); AMENDING ARTICLE XXXIV, 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); AND AMENDING SECTION 450 (DEFINITIONS), IN ARTICLE XIV OF CHAPTER 22 (ZONING ORDINANCE); ALL IN ORDER TO UPDATE LICENSING FOR MEDICAL MARIJUANA ESTABLISHMENTS AS ALLOWED BY STATE LAW, TO ADD AND UPDATE PERMITTED AND SPECIAL USES TO THE ZONING ORDINANCE TO ALLOW FOR THE LOCATION OF MEDICAL MARIJUANA ESTABLISHMENTS AND USES IN CONFORMANCE WITH STATE LAW, AND TO ADD DEFINITIONS AND OTHER RELATED PROVISIONS; DECLARING AN EMERGENCY AS PROVIDED BY ARTICLE XII, SECTION 5 OF THE CHARTER OF THE CITY OF NORMAN; AND PROVIDING FOR THE SEVERABILITY THEREOF.

**BACKGROUND:** Staff presented updates in state law concerning medical marijuana establishments to the City Council Oversight Committee on June 6, 2019. Upon direction from the Oversight Committee, staff presented a draft ordinance implementing state law definitions and licensing categories, and establishing and refining local licensing and zoning regulations to be consistent and compliant with state law that will become effective August 29, 2019. Below is a brief background of Oklahoma and the City of Norman establishment of law and regulation concerning marijuana establishments, as well as a description of the current proposed amendments to Norman's City Code.

State Question 788, entitled "Medical Marijuana," legalized the possession and use of marijuana for medicinal purposes (as set forth in state law) in Oklahoma. State law created the Oklahoma Medical Marijuana Authority ("OMMA") under the Oklahoma State Department of Health ("OSDH"), and developed applications for adult and minor patients, caregivers, growers, processors, dispensaries, and transporters. Though state law created a "researcher" category, the OMMA did not initially establish a licensure procedure. The OMMA began accepting license applications Saturday, August 25, 2018. The OSDH passed emergency rules effective August 3, 2018 and added provisions for Food Safety Standards for Processors effective December 20, 2018.

On May 23, 2019, the most recent Oklahoma Legislative Session closed, resulting in several new and amended laws relating to medical marijuana. Additionally, the OMMA will be implementing permanent rules consistent with those already in place and new state law. Below is a brief summary the changes and additions to state law as a resulting from the latest Oklahoma Legislative Session.

## **BILL SUMMARY**

Senate Bill 162 implements some language clean up and removes the “Board certified” requirement for physicians (new law requires a “physician licensed by and in good standing” with an applicable State Board). House Bill 2613 adds those licensed by Board of Podiatric Medical Examiners to the category (ies) of physicians able to recommend medical marijuana. House Bill 2601 addresses the smoking and vaping of medical marijuana, applying restrictions not less than, and in some cases more than, the current restrictions on smoking and vaping tobacco in public. HB 2601 also created a short-term medical marijuana patient license (physician recommendation only valid for 60 days), with a fee and procedure to be administratively determined at a later date by OSDH/OMMA. Senate Bill 532 sets procedures for insolvency/receivership proceedings in case of foreclosure of a medical marijuana business. Senate Bill 31 adds gram conversions to allowed medical marijuana amounts (state law was originally drafted in terms of ounces).

House Bill 2612 (dubbed the “Unity Bill”) adds 63 O.S. §§ 427.1-427.23 (§§ 420-426 were previously passed with State Question 788). In the Unity Bill, amendments to the existing statutes are minor, such as adding revocation/penalty language regarding abuse or violation of license terms. New provisions generally set out OSDH/OMMA responsibilities and authority, and address funding/staffing issues.

New Section 427.2 creates statutory definitions (the previous definitions were found only in the OMMA emergency rules). New Section 427.8 addresses the rights of license holders, and specifies limitations upon local regulations, such as specifying that they may not:

- Enact guidelines that “restrict or interfere with the rights of a licensed patient or caregiver to possess, purchase, cultivate or transport medical marijuana within the legal limits . . .”
- Require local patient/caregiver licenses.
- Restrict, revoke, suspend or otherwise infringe upon right of person to own/purchase firearm/ammunition/firearm accessories or certification.
- Arrest, prosecute or penalize in any way a patient/caregiver in actual possession of license for “medical use of marijuana” consistent with the act.
- Impose civil penalty or disciplinary action by business/ occupational/ professional licensing board/bureau for “medical use of marijuana” consistent with the act.
- Be required for governmental medical assistance programs to reimburse costs of medical use of marijuana (unless federal law so requires).

New Section 427.12 addresses home growth/possession of medical marijuana by patients and caregivers, sets requirement that it not be accessible or visible to the public, and prohibits home extraction processes that utilize certain substances (butane/propane/CO2, etc.). Further, if a patient leases their home, they must obtain permission of the owner to cultivate marijuana on site. New Section 427.14 incorporates the OMMA rules’ previous requirement that medical marijuana establishments be subject to applicable state and local building, construction and other specification codes. New Section 427.16 creates a “Transporter Agent” license (\$100/year), which is an employee-specific license for licensed Transporters or other medical marijuana businesses. The Transporter license allows transportation of medical marijuana without any other license, whereas Transportation

rights are automatic with the issuance of medical marijuana business state licenses. Vehicles must have a GPS, and be insured. Products must be transported in a labeled container in a secured area of the vehicle. Transporters may also keep stand-alone storage facilities for the use of their transportation activities. Additionally, new Section 427.17 establishing Medical Marijuana Testing Laboratory Licensing, new Section 427.19 establishes Medical Marijuana Research Licensing, and new Section 427.20 establishes Medical Marijuana Education Facility licensing.

Finally, the Unity Bill also addresses the rights of and limitations upon employers, and identifies categories of “safety sensitive” positions in which use of medical marijuana may be considered in the context of hiring, disciplinary action, discharge, or other penalty.

Senate Bill 1030 (SB1030) modified the already-approved Unity Bill. SB1030 adds 63 O.S. § 427, amends other portions of Unity Bill. SB1030 affirms the use of municipal zoning power regarding medical marijuana establishments as follows:

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.

Additionally, SB1030 created a Certificate of Compliance (“COC”) process as follows:

All marijuana-licensed premises, medical marijuana businesses or any other premises where marijuana or its by-products are licensed to be cultivated, grown, processed, stored or manufactured shall submit with their application, after notifying the political subdivision of their intent, a certificate of compliance from the political subdivision where the facility of the applicant or use is to be located certifying compliance with zoning classifications, applicable municipal ordinances and all applicable safety, electrical, fire, plumbing, waste, construction and building specification codes.

The City of Norman is working closely with the Oklahoma Municipal League and OMMA to ensure the implementation of the municipal COC procedure is smooth and complementary to the new state law, as well as the City of Norman’s existing regulation, and amended regulation proposed in O-1920-4.

## **DISCUSSION:**

### ***Licensing***

Amendments to the current business licensing portions of the City Code are necessary to accommodate the COC process proposed by the OMMA and to add licensure categories that allow the City of Norman to comply with the state’s new COC process. Existing local licensing categories are Medical Marijuana Grower, Medical Marijuana Processor, Medical Marijuana Dispensary, and Medical Marijuana Research Facility. The new categories will be Medical Marijuana Testing Laboratory, Medical Marijuana Education Facility, and Medical Marijuana Storage Facility (to accommodate the storage facilities operated by state-licensed Transporters, if any).

Additionally, references to the new statutory definitions for these facilities and procedures will be added to relevant portions of the City Code. Also, to accommodate new local administrative

requirements imposed on municipalities by new state law, as well as based upon an evaluation of City administrative time and resource expenditure in the licensing process, an increase of city fees for medical marijuana establishments (to half of the state fee amounts) is shown in O-1920-4.

## **Zoning**

O-1920-4 contains amendments adding new use categories for Medical Marijuana Testing Facility, Medical Marijuana Education Facility, and Medical Marijuana Storage Facility in various zoning districts. The Zoning Ordinance also incorporates the new statutory definitions to ensure consistency with state law. Due to the similarity in definition and treatment of Research Facilities and Testing Laboratories by the OMMA, the Ordinance suggests similar zoning treatment of these Medical Marijuana Establishments in the Norman Zoning Ordinance, which allows them as a Special Use only in O-1, CO, I-1, and M-1.

However, it was brought to the City's attention during discussion before the Planning Commission on July 11, 2019 that at least one testing facility is already operating as a permitted use in I-1 in Norman. The current Zoning Ordinance language for I-1 (as well as O-1, CO, and M-1) allow other types of "laboratories" for "testing" to operate as a permitted use (subject to certain restrictions) in these zoning districts. Thus, passage of these amendments as drafted would require a special use where it was not previously required for a current testing facility that wishes to add medical marijuana testing processes to its business.

Thus, an additional consideration for the zoning treatment of Medical Marijuana Testing Laboratories would be to mimic or utilize current language regarding "Laboratories. . . [for] testing" in the O-1, CO, I-1, and M-1 zoning districts, allowing Medical Marijuana Testing Laboratories as permitted uses in these districts. Otherwise, a consideration for leaving the language as drafted, and requiring a special use for medical marijuana testing, would be recognition that, effective August 29, 2019, the state will subject these same facilities to different and additional sets of regulation.

**STAFF RECOMMENDATION:** Staff recommends approval of Ordinance O-1920-4 amending the Zoning Ordinance and adding to and amending the business licensure portions of the City Code relating to medical marijuana establishments, in response to new state law.