

**ORDINANCE NO. 2698**

**AN ORDINANCE OF THE CITY OF MCALESTER, OKLAHOMA, AMENDING CHAPTER 22, BUSINESSES, OF THE MCALESTER CITY CODE, ARTICLE IX, MEDICAL MARIJUANA; REPEALING ALL CONFLICTING ORDINANCES, AND PROVIDING FOR SEVERABILITY.**

\*\*\*\*\*

**NOW THEREFORE, BE IT ORDAINED BY the City Council of the City of McAlester, Oklahoma:**

**SECTION 1.** That Chapter 22, Businesses, Article IX, Medical Marijuana, Section 22-311, Definitions, reads as follows:

**Sec. 22-311. – Definitions.**

- A. “Applicant” means the person or entity in whose name a license or permit would be issued.
- B. “Commercial Marijuana Establishment” means an entity licensed by the State of Oklahoma and The City as a medical marijuana dispensary, commercial grower, or processor.
- C. “Commercial Grower” means an entity that has been licensed by the State of Oklahoma and The City to grow, harvest, and package medical marijuana for the purpose of selling medical marijuana to a dispensary or processor.
- D. “Commercial Processor” means an entity that has been licensed by the State of Oklahoma and The City 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.
- E. “Dispensary” means an entity that has been licensed by the State of Oklahoma and The City 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.
- F. “Medical Marijuana Concentrate” means a substance obtained by separating cannabinoids from any part of the marijuana plant by physical or chemical means, so as to deliver a product with a cannabinoid concentration greater than the raw plant material from which it is derived, intended to be refined for use as an ingredient in a medical marijuana product and not for administration to a qualified patient.
- G. “Patient” means a person that has been properly issued a medical marijuana license pursuant to Oklahoma State statutes.
- H. “Private School” means an elementary, middle, or high school maintained by private individuals, religious organizations, or corporations, typically funded, at least in part, by fees or tuition, and open only to pupils selected and admitted based on religious affiliations or other particular qualifications. Private school does not include “home schooling” locations.
- I. “Public School” means an elementary, middle, or high school established under state law, regulated by the local and state authorities in the various political subdivisions, funded and maintained by public taxation, and open and free to all children of the particular district where the school is located. For purposes of this Section, public school does not include “home schooling” locations.
- J. The City hereby adopts all other terms and definitions as established by State law or Department of Health regulations. In the event of a conflict between any definition contained herein, the definition promulgated by the State or Department of Health shall prevail.

**SECTION 2.** That Chapter 22, Businesses, Article IX, Medical Marijuana, Section 22-312, General Requirements, is hereby amended to read as follows:

**Sec. 22-312. – General Requirements.**

- A. ~~Applicants for any license contained herein shall be required to first possess the appropriate corresponding valid State of Oklahoma issued medical marijuana license prior to making application for the City license.~~ Pursuant to state statute, applicants

- who have received the City marijuana facilities licenses must submit copies of their approved state marijuana facilities license(s) within 30 days of receipt of the same.
- B. The property to be licensed as a commercial marijuana establishment outlined in this Ordinance will be subject to inspection by an authorized City Inspector prior to issuance of said license to ensure compliance with all applicable state and City electrical, fire, plumbing, waste, and building specification codes. This inspection requirement applies only to the initial license application and not to same license renewals as long as the license has not expired at time of renewal application. The Applicant will be required to be present during the inspection and the inspection will occur at a time scheduled and approved by both the applicant and the City Inspector.
- C. The Commercial Medical Marijuana Business License Application shall be filled out and signed by the Applicant and submitted to the City prior to scheduling the building codes inspection. A nonrefundable license fee, as established herein, shall be paid at the time of application. The license fee shall be set according to and used to offset municipal expenses covering costs related to licensing, inspection, administration, and enforcement.
- D. An Applicant who holds more than one type of valid Commercial Medical Marijuana license issued by the State of Oklahoma and applies for a City license to operate a Commercial Marijuana Establishment for each corresponding State license at a single location, under the same business name, will be required to apply for each type of City license but will only be required to pay for a single license and submit to one inspection for the entire facility, to be renewed, with applicable fees paid, each year the facility is in operation. This applies to the initial application and renewals as long as each license has not expired. Adding a license type or renewing an expired license at a single commercial location after the initial application will require payment of the license fee for the additional type license and require an inspection. Every commercial medical marijuana facility or business in operation within the City must hold a valid State issued license and a valid City issued license.
- E. City issued Commercial Medical Marijuana licenses cannot be transferred.
- F. City issued Commercial Medical Marijuana licenses cannot be changed from one business type to another.
- G. Revocation of the State issued Commercial Medical Marijuana license shall result in immediate revocation of the City issued license.
- H. For the Private or Public School distance requirements outlined in this ordinance, the distance described will be measured by direct measurement in a straight line from any entrance of the school to the nearest property line of the parcel of land in which the proposed Commercial Medical Marijuana facility will be located and licensed by the City.
- I. License holder shall remit all required State and City sales taxes which shall be collected at the point of sale.
- J. Medical marijuana waste must be disposed of in accordance with Oklahoma statutes and rules.
- K. It is the intent of the City of McAlester that nothing in the Medical Marijuana Ordinance be construed to:
1. Allow persons to engage in conduct that endangers the health, safety, or welfare of the Citizens of the City of McAlester, or causes a public nuisance;
  2. Allow the use of marijuana for non-medical purposes; or
  3. Allow any activity that is otherwise illegal and not permitted by State law.
- L. All applicants for a commercial marijuana establishment license shall implement and maintain appropriate security measures in order to deter and prevent unauthorized access to or entrance into areas or spaces containing marijuana by persons or entities not licensed to possess or distribute marijuana under state law or regulation, and to prevent the theft or diversion of marijuana or proceeds produced by its lawful sale. Such security, measures by way of illustration, may consist of safe zones for all entrances and exits of any building. Such security may consist of electronic locking doors, operated from a vantage point within the building, with a clear view of the secured area bounded by two such locking doors. Such security features of any building involved in the commercial marijuana business shall be inspected by the Chief of Police of the City, or the Chief's designee, and his findings and any recommendations shall be relayed to the City Building Inspector and the property owner, and shall become part of the City Inspector's report before any City license may issue.

M. Buildings where medical marijuana is grown, stored, or dispensed must be equipped with ventilation/air filtration systems so that no odors are detectable off premises.

**SECTION 3.** That Chapter 22, Businesses, Article IX, Medical Marijuana, Section 22-313, Additional Regulations, reads as follows:

**Sec. 22-313 – Additional Regulations.**

- A. The use of medical marijuana shall be prohibited on all City owned or leased property including vehicles, buildings, parks, or other facilities.
- B. The City Manager or designee shall revoke or suspend a City issued Commercial Medical Marijuana License if it is determined by the City that the license was procured by fraudulent conduct or false statement of a material fact or a fact concerning the Applicant was not disclosed at the time of application, and such fact would have constituted just cause for refusal to issue the license; or
- C. Revocation or Expiration of the State issued Commercial Medical Marijuana license; or
- D. Violation of City ordinance, State statute, or other State regulation governing Commercial Medical Marijuana facilities.
- E. Prior to a suspension or revocation action, the licensee shall be given at least a 10 calendar day written notice of the proposed action to be taken, including the reason(s) for the action and shall have an opportunity to be heard by the City Manager or designee. The written notice will be mailed by certified letter through the U. S. Postal Service and will be addressed to Applicant's address as shown on the City license application and to the business location address listed on the license.
- F. If the decision to revoke or suspend a City issued Commercial Medical Marijuana License is made by someone other than the City Manager, the Licensee may appeal the decision to the City Manager. If the City Manager upholds the revocation or suspension of the license, the Licensee may appeal the decision to the City Council and be placed on the City Council Agenda for the next regularly scheduled Council meeting. Any Appeal must be made in writing and submitted to the City Clerk and processed by the Clerk to the City Manager or City Council as appropriate within 5 working days. During the Appeal process, the affected City issued Commercial Medical Marijuana License(s) shall be considered suspended and the Licensee cannot operate under the License(s).

**SECTION 4.** That Chapter 22, Businesses, Article IX, Medical Marijuana, Section 22-314, Medical Marijuana Dispensary, is hereby amended to read as follows:

**Sec. 22-314. – Medical Marijuana Dispensary.**

Medical Marijuana Dispensaries are hereby allowed in the municipal boundaries of McAlester, Oklahoma and may be issued a City Commercial Medical Marijuana Dispensary License in compliance with Section 2 of this ordinance and the following additional provisions:

- A. Medical Marijuana Dispensary License will not be granted to any applicant where the proposed location would be located within one thousand (1,000) feet of any entry way of any public or private school as defined.
- B. A Medical Marijuana Dispensary must be located in an area of the City that is zoned for commercial, health/medical use, or industrial. A Medical Marijuana Dispensary may also be located in an area zoned Residential if zoning allows establishment of the business per the City Land Use Ordinance after review through the City Planning Commission and approval of the City Council.
- C. Conditions of Operation:
  - 1. The Medical Marijuana Dispensary must maintain a valid sales tax permit issued by the State of Oklahoma.
  - 2. No on premises consumption, use or ingestion of alcohol, marijuana or marijuana derivatives shall be allowed.
  - 3. A Medical Marijuana Dispensary may not employ persons under 18 years of age.
  - 4. A Medical Marijuana Dispensary may not offer an off-site medical marijuana or medical marijuana product delivery service to patient license holders or caregiver license holders.
  - 5. A Medical Marijuana Dispensary shall not engage in false advertising as prohibited under Oklahoma state statutes.
  - 6. No Medical Marijuana Dispensary shall sell or offer to sell medical marijuana products by means of any advertisement or promotion including any statement,

representation, symbol, depiction, or reference, directly or indirectly, which would reasonably be expected to induce minors to purchase or consume marijuana or medical marijuana products.

- D. There shall be an annual business license fee with an annual renewal fee as provided in chapter 48. The annual business license will expire on June 30th each year. For the License period following date of approval of this Ordinance through June 30, 2019, the initial license fee as provided in chapter 48.

**SECTION 5.** That Chapter 22, Businesses, Article IX, Medical Marijuana, Section 22-315, Commercial Medical Marijuana Growing Facility, is hereby amended to read as follows:

**Sec. 22-315. – Commercial Medical Marijuana Growing Facility.**

Commercial Medical Marijuana Growing Facilities are hereby allowed in the municipal boundaries of McAlester, Oklahoma and may be issued a City Commercial Medical Marijuana Growing Facility License in compliance with Section 2 of this ordinance and the following additional provisions:

- A. Commercial Medical Marijuana Growing Facility License will not be granted to any applicant where the proposed location would be located within one thousand (1,000) feet of any entry way of any public or private school as defined.
- B. A Commercial Medical Marijuana Growing Facility must be located in an area of the City that is zoned for commercial or industrial.
- C. Conditions of Operation:
  - 1. If applicable, the Commercial Medical Marijuana Growing Facility must maintain a valid sales tax permit issued by the State of Oklahoma.
  - 2. No on premises consumption, use or ingestion of alcohol, marijuana or marijuana derivatives shall be allowed.
  - 3. A Commercial Medical Marijuana Growing Facility may not employ persons under 18 years of age.
  - 4. A Commercial Medical Marijuana Growing Facility shall not engage in false advertising as prohibited under Oklahoma state statutes.
  - 5. No Commercial Medical Marijuana Growing Facility shall sell or offer to sell medical marijuana products by means of any advertisement or promotion including any statement, representation, symbol, depiction, or reference, directly or indirectly, which would reasonably be expected to induce minors to purchase or consume marijuana or medical marijuana products.
- D. There shall be an annual business license fee with an annual renewal fee as provided in chapter 48. The annual business license will expire on June 30th each year. For the License period following date of approval of this Ordinance through June 30, 2019, the initial license fee as provided in chapter 48.

**SECTION 6.** That Chapter 22, Businesses, Article IX, Medical Marijuana, Section 22-316, Commercial Medical Marijuana Processing Facility, is hereby amended to read as follows:

**Sec. 22-316. – Commercial Medical Marijuana Processing Facility.**

Commercial Medical Marijuana Processing Facilities are hereby allowed in the municipal boundaries of McAlester, Oklahoma and may be issued a City Commercial Medical Marijuana Processing Facility License in compliance with Section 2 of this ordinance and the following additional provisions:

- A. Commercial Medical Marijuana Processing Facility License will not be granted to any applicant where the proposed location would be located within one thousand (1,000) feet of any entry way of any public or private school as defined.
- B. A Commercial Medical Marijuana Processing Facility must be located in an area of the City that is zoned for commercial and industrial.
- C. Conditions of Operation:
  - 1. If applicable, the Commercial Medical Marijuana Processing Facility must maintain a valid sales tax permit issued by the State of Oklahoma.
  - 2. No on premises consumption, use or ingestion of alcohol, marijuana or marijuana derivatives shall be allowed.
  - 3. A Commercial Medical Marijuana Processing Facility may not employ persons under 18 years of age.
  - 4. A Commercial Medical Marijuana Processing Facility shall not engage in false advertising as prohibited under Oklahoma state statutes.

5. No Commercial Medical Marijuana Processing Facility shall package, label, sell or offer to sell medical marijuana products by means of any advertisement or promotion including any statement, representation, symbol, depiction, or reference, directly or indirectly, which would reasonably be expected to induce minors to purchase or consume marijuana or medical marijuana products.
- D. All medical marijuana and marijuana derivatives packaged at or distributed from a Commercial Medical Marijuana Processing facility for sale to a marijuana dispensary must:
1. Ensure labels and packages are not attractive to minors.
  2. Ensure packaging contains a label that reads “Keep out of reach of children.”
  3. Ensure all medical marijuana and medical marijuana products be packaged in child resistant packages.
  4. Ensure labels contain a warning that states “Women should not use marijuana or medical marijuana products during pregnancy because of the risk of birth defects.”
- E. Commercial Medical Marijuana Processing Facilities must comply with Oklahoma statutes and rules, including food and drug safety regulations, set forth in Title 63 of Oklahoma statutes.
- F. A Commercial Medical Marijuana Processing Facility may only sell marijuana products to a licensed Medical Marijuana retailer or other processor. Under no circumstances may a Commercial Medical Marijuana Processor sell any marijuana product directly to an individual holder of a Medical Marijuana license. A Commercial Medical Marijuana Processor may, however, process cannabis into a concentrated form for a Medical Marijuana license holder, for a Fee.
- G. There shall be an annual business license fee with an annual renewal fee as provided in chapter 48. The annual business license will expire on June 30th each year. For the License period following date of approval of this Ordinance through June 30, 2019, the initial license fee as provided in chapter 48.

**SECTION 7.** That all other ordinances or parts of ordinances in conflict herewith are hereby repealed to the extent of any such conflict or inconsistency and all other ordinances not in conflict herewith shall remain in full force and effect.

**SECTION 8.** The provisions of this Ordinance are severable, and if any part or provision hereof shall be adjudged invalid by any court of competent jurisdiction, such adjudication shall not affect or impair any of the remaining parts or provisions hereof.

PASSED BY THE CITY COUNCIL AND APPROVED BY THE MAYOR OF THE CITY OF MCALESTER, OKLAHOMA this 27th day of October, 2020.

CITY OF McALESTER, OKLAHOMA  
A Municipal Corporation

(SEAL)

By: \_\_\_\_\_  
John Browne, Mayor

ATTEST:

\_\_\_\_\_  
Cora Middleton, City Clerk

Approved as to form and legality this \_\_\_\_\_ day of \_\_\_\_\_, 2020.

By: \_\_\_\_\_  
William J. Ervin, City Attorney