

ORDINANCE NO. 2675NS

AN ORDINANCE AMENDING CHAPTER 8 (BUSINESSES, PERMITS AND LICENSES), ARTICLE VIII. – (MEDICAL MARIJUANA) OF THE CODE OF THE CITY OF SHAWNEE, SO AS TO FURTHER COMPORT WITH STATE LAW 63 O.S. 420A ET SEQ. AND OAC 310: 618-1-1 ET SEQ.; PROVIDING FOR SEVERABILITY; AND DECLARING AN EMERGENCY.

WHEREAS, a proposal has been presented to the City Commission of the City of Shawnee, Oklahoma to amend Chapter 8 of the Code of Ordinances of the City of Shawnee, Oklahoma, and,

WHEREAS, the City Commission has determined that such modification and amendment is necessary and in the best interest of the health and safety of the citizens of the City of Shawnee, and for the efficient operations of municipal governance.

THEREFORE, BE IT ORDAINED BY THE COMMISSION OF THE CITY OF SHAWNEE, OKLAHOMA, THE FOLLOWING:

SECTION 1. That section 8-541 of the Shawnee City Code is hereby amended to read follows:

Section 8-541: Definitions

The following words and terms, when used in this Chapter and Article, shall have the following meaning, unless the context clearly indicates otherwise, and in accordance with OAC 310: 681-1-4.

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

"Application Status" means the status of a submitted application and includes the following:

- (a) **"Pending"** means the application has been submitted but a review is not yet complete;
- (b) **"Rejected"** means the application has been reviewed but contains one or more errors requiring correction by the applicant at no additional fee before a final determination on the application can be made. "Rejected" does not mean the application is denied. OMMA has 14 days to review the submission of any corrections to a rejected application;
- (c) **"Approved"** means the application has been approved and that a license will be issued and mailed to the applicant; and
- (d) **"Denied"** means the applicant does not meet the qualifications under 63 O.S. § 420A and this Chapter for a license.

"Batch" means a specifically identified quantity of marijuana, no greater than ten (10) pounds, that is uniform in strain, cultivated using the same growing practices, and harvested at the same time at the same location, and dried or cured under uniform conditions; and with regard to medical marijuana concentrate and medical marijuana products, means an identified quantity that is uniform, that is intended to meet specifications for identity, strength, and composition, and that is processed, packaged, and labeled during a specified time period according to a single manufacturing, packaging, and labeling protocol.

"Batch Number" means a unique numeric or alphanumeric identifier assigned prior to any testing or sale to allow for inventory tracking and traceability.

"Cannabinoid" means any of the diverse chemical compounds that can act on cannabinoid receptors in cells and alter neurotransmitter release in the brain, including phytocannabinoids that are produced naturally by marijuana and some other plants.

"Clone" means a non-flowering plant cut from a mother plant that is no taller than eight inches and is capable of developing into a new plant.

"Commercial Establishment" ("Establishment") or **"Commercial Licensee"** means an individual or entity licensed under this Chapter as a medical marijuana dispensary, grower, processor, or researcher.

"Commercial License" means a license issued to a medical marijuana dispensary, grower, processor, or researcher.

"Commissioner" means the Commissioner of Health of the Oklahoma State Department of Health.

~~**"Complete(d) Application"** means a document prepared in accordance with 63 O.S. § 420A et seq., these Rules, and the forms and instructions provided by the Department, including any supporting documentation required by the Department and the license fee.~~

"Department" means the Oklahoma State Department of Health or its agent or designee.

"Dispense" means the retail sale of medical marijuana, medical marijuana concentrate, or medical marijuana products to a qualified patient, the qualified patient's parent(s) or legal guardian(s) if qualified patient is a minor, and a licensed caregiver.

"Dispensary" means an individual or entity that has been licensed by the Department pursuant to 63 O.S. § 421A and this Chapter, which allows the dispensary to purchase medical marijuana from a processor or grower and to sell medical marijuana only to a qualified patient, to the qualified patient's parent(s) or legal guardian(s) if qualified patient is a minor, and a licensed caregiver.

~~**"Disqualifying Criminal Conviction"** means:~~

~~(a) Any non-violent felony conviction within last two (2) years of submitting an application to the Department;~~

~~(b) Any violent felony conviction for an offense listed in 57 O.S. § 571(2) within last five (5) years of submitting an application to the Department; or~~

~~(c) Incarceration for any reason during submission of application to the Department.~~

~~**"Entity"** means a sole proprietorship, a general partnership, a limited partnership, a limited liability company, a trust, an estate, an association, a corporation, or any other legal or commercial entity.~~

"Food" has the same meaning as set forth in 63 O.S. § 1-1101 and the Oklahoma Administrative Code ("OAC") 310:257-1-3 ("food" means (1) articles used for food or drink for man, (2) chewing gum, and (3) articles used for components of any such article") and set forth in OAC 310:260-1-6 ("food" means any raw, cooked, or processed edible substance, ice, beverage or ingredient used or intended for use or for sale in whole or in part for human consumption").

"Grower" or **"Commercial Grower"** means an individual or entity that has been licensed by the Department pursuant to 63 O.S. § 422A, which allows the grower to grow, harvest, dry, cure, and package medical marijuana according to this Chapter for the purpose of selling to a dispensary or processor.

"Information Panel" has the same definition as set forth in 21 CFR § 101.2 and means "that part of the label immediately contiguous and to the right of the principal display panel as observed by an individual facing the principal display panel."

"Label" carries the same definition as set forth in 63 O.S. § 1-1101 and "means a display of written, printed, or graphic matter upon the immediate container of any article; and a requirement made by or under authority of this article that any word, statement, or other information appearing on the label shall not be considered to be complied with unless such word, statement, or other information also appears on the outside container or wrapper, if there be any, of the retail package of such article, or is easily legible through the outside container or wrapper."

"License" means a state issued license or other state issued documentation proving the holder of such license is a member of a state regulated medical marijuana program.

"License Number" means the unique multi-character identifier issued and printed upon each license.

"Licensee" means any natural born person or entity that holds a medical marijuana license provided for in this Chapter, excluding inmates of any local, county, state, or federal correctional facility or jail.

"Licensed Packager" as used in 63 O.S. § 422A(C) means a processor.

~~**"Lot"** means the food produced during a period of time indicated by a specific code.~~

"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 or fiber produced from the stalks; oil 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; the sterilized seed of the plant that is incapable of germination; or industrial hemp, from the plant Cannabis sativa L. and any part of such plant, whether growing or not, with a delta-9 tetrahydrocannabinol concentration of not more than three-tenths of one percent (0.3%) on a dry weight basis.

~~**"Mature Plant"** means harvestable female marijuana plant that is flowering.~~

~~**"Medicaid"** means the federal program that is also commonly known as "Sooner Care."~~

"Medical Marijuana" means marijuana that is grown, processed, dispensed, tested, possessed, or used for a medical purpose, and includes medical marijuana concentrate and medical marijuana products.

"Medical Marijuana Concentrate" ("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.

"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, and other derivative 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.

"Minor" means any natural person younger than eighteen (18) years of age.

~~**"Mother Plant"** means a marijuana plant that is grown or maintained for the purpose of generating clones; and that will not be used to produce plant material for sale to a processor or dispensary.~~

"Oklahoma Resident" ("Resident") means an individual who resides in the State of Oklahoma and can provide proof of residency as required by 63 O.S. § 420A et seq. and OAC 310:681-1-6.

"Oklahoma Uniform Symbol" means the image, established by the Department and made available to commercial licensees, indicating the package contains marijuana and must be printed at least one-half inch in size by one-half inch in size in color.

"Out-of-State Medical Marijuana Patient License" means an unexpired medical marijuana patient license issued by another U.S. state, which is the substantial equivalent of the Oklahoma medical marijuana patient license issued pursuant to OAC 310:681-2-1 and OAC 310:681-2-2.

"Package" or **"Packaging"** means any container or wrapper that a grower or processor may use for enclosing or containing medical marijuana or medical marijuana products.

"Patient" or **"Qualified patient"** means a person that has been properly issued a medical marijuana license pursuant to 63 O.S. § 420A et seq. and these rules.

"Physician" means a doctor of medicine or a doctor of osteopathic medicine who holds a valid, unrestricted and existing license to practice in the State of Oklahoma and meets the definition of "board certified" under rules established by either the Oklahoma Board of Medical Licensure or the Oklahoma Board of Osteopathic Examiners.

~~**"Plant Material"** means the leaves, stems, buds, and flowers of the marijuana plant, and does not include seedlings, seeds, clones, stalks, or roots of the plant or the weight of any non-marijuana ingredients combined with marijuana.~~

"Principal Display Panel" has the same definition as set forth in 21 CFR § 101.1 and "means the part of a label that is most likely to be displayed, presented, shown, or examined under customary conditions of display for retail sale."

"Private School" means an elementary, middle, or high school maintained by private individuals, religious organizations, or corporations, 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.

"Process" means to distill, extract, manufacture, prepare, or otherwise produce a medical marijuana product or medical marijuana concentrate.

"Processor" means an individual or entity that has been licensed by the Department pursuant to 63 O.S. § 423A, which allows the processor to: purchase medical marijuana from a grower or processor; process, package, and sell medical marijuana to a dispensary or processor; and may process medical marijuana received from a qualified patient into a medical marijuana concentrate, for a fee.

"Public School" means an elementary, middle, or high school established under state law, regulated by the local 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.

"Retailer" as used in 63 O.S. § 420A et seq. means a dispensary.

"Revocation" means the Department's final decision in accordance with the Oklahoma Administrative Procedures Act, 75 O.S. § 250 et seq., that any license issued pursuant to 63 O.S. § 420A et seq. and this Chapter is rescinded.

"Rules" means, unless otherwise indicated, the rules as adopted and set forth in OAC 310:681.

~~**"Seedling"** means a marijuana plant that has no flowers.~~

"State Question" means Oklahoma State Question No. 788 and Initiative Petition Number 412.

"Transportation License" means a license issued automatically to commercial licensees upon approval of a commercial license, which allows growers, processors, or dispensaries, or their authorized agent(s), to deliver medical marijuana from their licensed locations to the licensed locations of other growers, processors, or dispensaries.

SECTION 2. That section 8-542 of the Shawnee City Code is hereby amended to read as follows:

Section 8-542: Medical Marijuana Establishments

1. All Commercial Marijuana Growers, Commercial Marijuana Processors, Commercial Marijuana Transporters, Retail Marijuana Dispensaries, Licensed Packagers, Wholesale Facilities, and Research Facilities are required to obtain a permit from the City Clerk or their designee. These establishments are defined as any medical marijuana establishment licensed by the State of Oklahoma. The Permit shall be issued by the City upon the Applicant's proof and verification of the Applicant's License from the State Department pursuant to 63 O.S. § 420A et seq. and Title 310 of the Rules of the Oklahoma State Department of Health: 681-1 et seq., and payment of the Permit Fee.
2. The City Commission will establish by resolution a fee to obtain the Permit for each of the above described entities. The fee shall be used to offset municipal expenses covering costs related to licensing, inspection, administration and enforcement of the above described entities.
3. Only Commercial Marijuana Processors, Commercial Marijuana Growers limited to indoor growing only, and Retail Marijuana Dispensaries shall be located in areas zoned C-3 and C-4.
4. Commercial Marijuana Research Facilities may be located in areas zoned C-3 and C-4 by conditional use permit.
5. Only Commercial Marijuana Processors, Commercial Marijuana Growers, Commercial Marijuana Research Facilities, Licensed Packagers, and Wholesale Facilities shall be located in areas zoned I-2 and I-3.
6. Commercial Marijuana Growers shall be prohibited from being located in areas zoned A-1. Only Marijuana Growing Facilities for Personal Medical Use shall be located in areas zoned A-1.
7. Only Commercial Marijuana Dispensaries shall be located in areas zoned CP.
8. A Permit will not be granted to any applicants where the proposed location would be located within 1,000 feet of a Private School or Public School.
9. For the distance requirements outlined in this ordinance, the distances described shall be computed by direct measurement in a straight line from the nearest property line of the parcel of land on which the use described in paragraph 4 is located to the nearest property line of the building or unit in which the proposed retail marijuana establishment would be located.
10. Buildings or transportation vehicles where marijuana is stored or dispensed must be equipped with ventilation/air filtration systems so that no odors are detectable off premises.
11. Any violations of this section will result in the revocation of the permit, and a fine of \$200.00 per day while the violation exists.
12. Nothing in this Ordinance shall be construed to: 1) allow persons to engage in conduct that endangers or causes a public nuisance or 2) allow any activity that is otherwise illegal and not permitted by state law; in particular, the above municipal regulations in this section are intended to comport with, follow, but not exceed, those state regulations promulgated in 63 O.S. 420A et seq. and OAC 310-681-1 et seq.

SECTION 3. That section 8-543 of the Shawnee City Code is hereby amended to read as follows:

Section 8-543: Marijuana Growing Facilities for Personal Medical Use; Security.

1. Growing marijuana shall not be conducted in a manner that constitutes a public nuisance. A public nuisance may be deemed to exist if growing marijuana produces light, glare, heat, noise, odor or vibration that is detrimental to public health, safety or welfare or interferes with the reasonable enjoyment of life and property.

2. The primary use of the residential property in which marijuana is grown shall remain at all times a residence, with legal and functioning cooking, eating, sleeping and sanitation/bathing facilities with proper ingress and egress. No room shall be used for growing marijuana where such cultivation will impair or prevent the primary uses of cooking, eating, sleeping or sanitation/bathing.

3. The above municipal regulations in this section are intended to comport with, follow, but not exceed, those state regulations promulgated in 63 O.S. 420A et seq. and OAC 310-681-1 et seq.

SECTION 4. Severability:

If any one or more of the sections, sentences, clauses or part of this ordinance, chapter or section shall for any reason be held invalid, the invalidity of such section, clause or part shall not affect or prejudice in any way the applicability and validity of any other provision of this ordinance. It is hereby declared to be the intention of the City Commission of the City of Shawnee that this ordinance would have been adopted had such unconstitutional, illegal or invalid sentence, clause, section or part thereof not been included herein.

SECTION 3. Emergency Clause:

It being immediately necessary for the preservation of public health, peace, and safety, an emergency is hereby declared to exist, by reason whereof this Ordinance shall take effect and be in full force from and after its passage and approval.

PASSED AND APPROVED this 3rd day of September, 2019.

RICHARD FINLEY, MAYOR

ATTEST:
(SEAL)

LISA LASYONE, CMC, CITY CLERK

Emergency clause separately passed and approved on this 3rd day of September, 2019.

RICHARD FINLEY, MAYOR

ATTEST:
(SEAL)

LISA LASYONE, CMC, CITY CLERK

Approved as to form and legality this 3rd day of September, 2019.

JOSEPH VORNDRAN, CITY ATTORNEY