

## ORDINANCE 1223

AN ORDINANCE ADDING SECTION 11, MEDICAL MARIJUANA TO TITLE 9, LICENSING AND BUSINESS REGULATIONS.

BE IT ORDAINED BY THE MAYOR, CITY COUNCIL AND THE PEOPLE OF THE CITY OF SEMINOLE, OKLAHOMA, THAT THE FOLLOWING SECTIONS OF THE CITY OF SEMINOLE CODE OF ORDINANCES SHALL BE ADDED AND INCORPORATED TO THE EXISTING CODE OF ORDINANCES TO READ AS FOLLOWS:

### **TITLE 9, LICENSING AND BUSINESS REGULATIONS SECTION 11, MEDICAL MARIJUANA**

#### **A. INTENT AND PURPOSE**

1. The City Council of the City of Seminole intends to regulate the use, acquisition, cultivation, production and distribution of medical marijuana in a manner that is consistent with Oklahoma State Department of Health regulations.
  - a. The regulations are intended to apply to all medical marijuana operations in the City of Seminole, whether by a patient or caregiver under the Medical Marijuana Statute, or any other medical marijuana business permitted under state law. Medical Marijuana cultivation and production can have an impact on health, safety, and community resources, and the Code is intended to permit medical marijuana cultivation where it will have a minimal impact.
  - b. Use, distribution, cultivation, production, possession and transportation of medical marijuana remains illegal under federal law and marijuana remains classified as a “controlled substance” by federal law.
  - c. The regulations for medical marijuana uses are not adequate at the state level to address the impacts on the City of medical marijuana, making it appropriate for local regulation of the impacts of medical marijuana uses.
  - d. Nothing in this chapter is intended to promote or condone the production, distribution, or possession of marijuana in violation of applicable law.
  - e. This chapter is to be construed to protect the public over medical marijuana business interests. Operation of a medical marijuana business is a revocable privilege and not a right in the City. There is no property right for an individual or business to have medical marijuana in the City.
  - f. Medical marijuana is a heavily regulated industry in the City, all licensees are assumed to be fully aware of the law, the City shall not therefore be required to issue warnings before issuing citations for violations of this chapter.

2. **PURPOSE:** The purpose of this chapter is to protect the public health, safety and welfare of the residents and patients of the City by prescribing the manner in which medical marijuana businesses can be conducted in the City. Further, the purpose of this chapter is to:
  - a. Provide for a means of cultivation, production, and distribution of marijuana to patients who qualify to obtain, possess and use marijuana for medical purposes under the Oklahoma State Statutes.
  - b. Protect public health and safety through reasonable limitations on business operations as they relate to noise, air and water quality, food safety, neighborhood and patient safety, security for the business and its personnel, and other health and safety concerns.
  - c. Promote lively street life and high quality neighborhoods by limiting the concentration of any one type of business in specific areas.
  - d. Impose fees to cover the cost to the City of licensing medical marijuana businesses in an amount sufficient for the City to recover its cost of the licensing program.
  - e. Adopt a mechanism for monitoring compliance with the provisions of this chapter.
  - f. Create regulations that address the particular needs of the patients and residents of the City and coordinate with laws that may be enacted by the State regarding the issue.
  - g. Facilitate the implementation of the State Statute without going beyond the authority granted by it.
  - h. Issue medical marijuana business licenses only to individuals and entities that have demonstrated an intent and ability to comply with this chapter without monitoring by City officials.
  - i. Exclude from the definition of a medical marijuana business the private possession, production, and medical use of marijuana by an individual patient or the private possession, production, distribution, and medical use of marijuana by an individual caregiver for one patient, in the residence of the patient or caregiver, to the extent permitted by Oklahoma State Statutes.
3. **RELATIONSHIP TO STATE LAW:** The provisions in this chapter that are different from the State law are consistent with the City's responsibility to protect the public health, safety and welfare as authorized by State Statute, and by the home rules authority granted to the City by State Statute and the charter of the City. The City intends that both state law and this chapter apply within the City. Where this chapter conflicts with state law, this chapter shall apply on all matters authorized by state statute, and all matters of local concern.

## **B. DEFINITIONS**

As used in this chapter, the following words shall have the following meanings, unless the context clearly requires otherwise:

**APPLICANT:** A corporation, partnership, or other business entity, or individual person or persons over twenty-one (21) years of age, who has submitted an application for a license pursuant to this chapter.

**APPLICATION:** An application for license submitted pursuant to this chapter

**CITY:** The City of Seminole, Oklahoma

**CULTIVATION:** The process by which a person promotes the germination and/or growth of a seed to a mature marijuana plant. Cultivation does not include the storing or watering of mature marijuana plants without the aid of grow lighting.

**DAY:** A calendar day, unless otherwise noted.

**GOOD CAUSE:** For the purpose of denying a license or renewal under this chapter:

1. The licensee has violated, does not meet, or has failed to comply with any of the terms, conditions or provisions of this chapter and any rule and regulation promulgated pursuant to this chapter or any state law or regulation or federal law except any federal law that conflicts with Proposition 412.
2. The licensee has failed to comply with any special terms or conditions that were placed on its license at the time the license was issued, or that were placed on its license at the time the license was issued, or that were placed on its license in prior disciplinary proceeding or that arose in the content of potential disciplinary proceedings; or
3. The licensee's medical marijuana center has been operated in a manner that adversely affects the public health, welfare or safety of the City. Evidence to support such a finding can include, but is not limited to:
  - a. A continuing pattern of offenses against the public peace, as defined in Title 8, Health and Sanitation, and Title 10, Offenses and Crimes ;
  - b. A continuing pattern of drug related criminal conduct within the premises of the medical marijuana center;
  - c. A continuing pattern of criminal conduct directly relating to or arising from the operation of the medical marijuana center;
  - d. A felony associated with the center, one or more of its owner(s) or manager;
  - e. Failure to provide correct information for each person required in subsection E of this chapter;
  - f. Failure to pay sales taxes in full by the deadlines specified by Oklahoma Tax Commission code.

**LICENSE:** A license to operate a medical marijuana center issued by the City pursuant to this chapter.

**LICENSEE:** The person to whom a license has been issued pursuant to this chapter.

**MARIJUANA:** 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.

**MEDICAL MARIJUANA CENTER OR CENTER:** A person licensed pursuant to this chapter to operate a business as described in this section that sells medical marijuana to registered patients or primary caregivers.

## **C. LICENSE REQUIRED**

1. **License Required:** It shall be unlawful for any person to operate a medical marijuana business without obtaining a license to operate pursuant to the requirements of this chapter.
2. **Additional Licenses and Permits:** The license requirement set forth in this chapter shall be in addition to, and not in lieu of, any other licensing and permitting requirements imposed by any other federal, state or local law, including, by way of example, a retail sales and use tax license, a retail food establishment license or any applicable zoning or building permit.
3. **Exemption from Other Laws:** The issuance of any license pursuant to this chapter does not create an exemption, defense, or immunity to any person in regard to any potential criminal liability the person may have for the production, distribution, or possession of marijuana.

4. **Separate License for Each Location:** A separate license shall be required for each premises from which a medical marijuana business is operated. Except as specifically provided in this chapter, no two or more different medical marijuana businesses may be treated as one premises. Unless higher performance is required by applicable law, there must be a minimum of a one-hour fire separation wall between a medical marijuana business and any adjacent business.
5. **Nontransferable; Exceptions:** A medical marijuana business license is not transferable or assignable, including, without limitation, not transferable or assignable to a different premises, to a different type of business, or to a different owner or licensee. A medical marijuana business license is valid only for the owner named thereon, the type of business disclosed on the application for the license, and the location for which the license is issued. The licensees of a medical marijuana business license are only those persons disclosed in the application of subsequently disclosed to the City in accordance to this chapter. A transfer of a licensed medical marijuana business shall be permitted in the following circumstance:
  - a. The new owner and all licensees of the business have submitted completed applications and passed a background check by the City;
  - b. The new owner is not making changes to any of the plans or conditions that are part of the license; and
  - c. The license transfer location is permitted without the exceptions of Subsection 6-14-7(c) of this chapter

## **D. GENERAL PROVISIONS**

1. **General Licensing Provisions:** The general procedures and requirements of licenses, as more fully set forth in Title 9, Chapter 1, General License and Permit Provisions, shall apply to medical marijuana business licenses. To the extent there is any conflict between the provisions of this chapter and Title 9 Chapter 1, the provisions of this chapter shall control for medical marijuana business licenses.
2. **Defense to Criminal Prosecutions:** Compliance with the requirements of this chapter shall not provide an exception, immunity, or defense to criminal prosecution under any applicable law, except in the City of Seminole Municipal Court, for a violation of this chapter as specifically provided herein.
3. **Cost of Inspection and Clean-Up:** In the event the City incurs costs in the inspection, clean-up, surrender of plants, or any other requirements to removed medical marijuana of any medical marijuana business, or any person cultivating, producing, distributing, or possessing marijuana, the business and responsible person shall reimburse the City all actual costs incurred by the City for such inspection or clean-up.
4. **Forfeiture of License:** In the event that a medical marijuana business does not commence operations within thirty (30) days of issuance of a license from the City, the license shall be deemed forfeited and the business may not commence operations. Nothing shall prohibit the licensee from reapplying for another permit after 180 days from the date of forfeiture.
5. **Landlord duty:** It shall be unlawful for the owner of a building to lease space or allow the use of any portion of the building by a medical marijuana business unless the tenant has a valid medical marijuana business license or has applied for and not been denied a medical marijuana business license or no marijuana is located on the premises until a license has been issued by the City. In the event that the City has an articulable reason to believe that a medical marijuana business is being operated in a building, it shall be unlawful for the owner of the building to refuse to allow the City access to the portion of the building in which the suspected medical marijuana business is located to determine whether any marijuana is on the premises.

## **E. APPLICATION**

1. Requirements: An application for a medical marijuana business license shall be made to the City on forms provided by the Community Development Director for that purpose. The applicant shall use the application to demonstrate its compliance with this chapter and any other applicable law, rule or regulation. In addition to the information required by Title 9, Licensing and Business Regulations, the application shall include the following information:
  - a. Name and address of the owner or owners of the medical marijuana business in whose name the license is proposed to be issued.
    - i. If an owner is a corporation, the name and address of any officer or director of the corporation and of any person holding issued and outstanding capital stock of the corporation.
    - ii. If an owner is a partnership, association or company, the name and address of any person holding an interest therein and the managing members. If a managing member is an entity rather than an individual, the same disclosure shall be required for each entity with an ownership interest until a managing member that is a natural person is identified.
    - iii. If an owner is not a natural person, the organizational documents for all entities identified in the application, identification of the natural person that is authorized to speak for the entity and contact information for that person.
  - b. Proof of ownership or legal possession of the restricted area for a medical marijuana business for the term of the proposed license. If the medical marijuana business is not the owner of the premises of the business, the applicant shall provide written authorization to the City from the owner to enter the property for inspection of the premises on a form approved by the City.
  - c. Proof of insurance
  - d. An operating plan for the proposed medical marijuana business, including the following information:
    - i. A description of the products and services to be provided by the medical marijuana business;
    - ii. A dimensioned floor plan, clearly labeled, showing:
      1. The layout of the structure and the floor plan in which the medical marijuana business is to be located;
      2. The principal uses of the floor area depicted on the floor plan, including, but not limited to, private consulting areas, storage areas, retail areas, and restricted areas where medical marijuana will be located;
      3. Areas where any services other than the distribution of medical marijuana are proposed to occur in the premises.
    - iii. For cultivation facilities, a plan that specifies the methods to be used to prevent the growth of harmful mold and other harmful elements. Said plan shall also set forth a procedure for compliance with limitations on discharge into the wastewater system of the City as set forth in Title 17, Utilities.
  - e. A zoning confirmation from the City, to ascertain within a radius boundaries of the property upon which the medical marijuana business is located, the proximity of the property to any school or place of worship, to any other medical marijuana business or to any residential zone district.

- f. A plan for disposal of any medical marijuana or medical marijuana-infused product that is not sold to a patient or primary caregiver in a manner that protects any portion thereof from being possessed or ingested by any person or animal.
        - g. A plan for ventilation of the medical marijuana business that describes the ventilation systems that will be used to prevent any odor of medical marijuana off the premises of the business. For medical marijuana businesses that grow medical marijuana plants, such plan shall also include all ventilation systems used to control the environment for the plants and describe how such systems operate with the systems preventing any odor leaving the premises. For medical marijuana businesses that producer medical marijuana-infused products, such plan shall also include all ventilation systems used to mitigate noxious gases or other fumes used or created as part of the production process.
        - h. A description of all toxic, flammable or other materials regulated by a federal, state or local government that would have authority over the business if it was not a marijuana business, that will be used or kept at the medical marijuana business, the location of such materials, and how such materials will be stored.
        - i. Modifications to approved license. Prior to making a modification of a marijuana business that would require a building permit or change items required by this chapter, the licensees shall submit to the City and have approved, when necessary a completed application for modification of premises in the form provided by the City.
2. FEE REQUIRED. Any application for a medical marijuana business permit shall be accompanied by the application fee, criminal background check fee, business entity check and annual license fee, and any other applicable fees.
3. APPROVAL REQUIREMENTS. The Community Development Director may issue a medical marijuana business license if the inspection, background checks, and all other information available to the City verify that the applicant has submitted a full and complete application, has made improvements to the business location consistent with the application, and is prepared to operate the business with other owners and managers as set forth in the application, all in compliance with this code and any other applicable law, rule or regulation. The Director will deny any application that does not meet the requirements of this chapter or any other applicable law, rule or regulation, or that contains any false or incomplete information. The conditions of an approval of a medical marijuana business license shall include, at a minimum, operation of the business in compliance with all of the plans and information made part of the application.

## **F. LOCATIONS OF MEDICAL MARIJUANA BUSINESSES**

1. Fixed Location Required. It shall be unlawful to operate a medical marijuana business or to grow medical marijuana outside of an enclosed building. All medical marijuana business licenses shall be issued for a specific fixed location within an enclosed building. The portion of such premises upon which the floor plan shows medical marijuana may be produced, dispensed, or possessed shall be considered the “restricted area” portion of the business premises.
2. Location – Permitted Use in Zoning District. A medical marijuana business license may be issued only if the business qualified as a use permitted as a matter of right in the zone district where it is proposed to be located as follows:
  - a. As “personal services” for a medical marijuana center;
  - b. As “greenhouse/nursery” for a cultivation facility; or
  - c. As “manufacturing +/- 15,000 square feet” for a cultivation facility, medical marijuana-infused product manufacturer or marijuana testing facility.

3. No Medical Marijuana Business in Building with Residences or Residential Zone Districts. It shall be unlawful to operate a medical marijuana business in a building which contains a residence, or within a dwelling unit within any zone district, or within a residential zone district, or within a mixed use development that includes a residence. This restriction shall not apply to a medical marijuana wellness center that had submitted an application or held a license from the City prior to any residences constructed in a zone other than residential.
4. No Retail Sales in Cultivation Facilities or Manufacturing. It shall be unlawful for any person to permit retail sales within a medical marijuana business that is a cultivation facility or medical marijuana-infused product manufacturer.

## **G. SEPARATION**

1. No medical marijuana retail distribution or wellness center licenses shall be issued for a location within one thousand feet (1,000') of any of the following locations:
  - a. Private or public preschool, elementary, secondary, vocational or trade school, college or university
2. No medical marijuana retail distribution or wellness center licenses shall be issued for a location within five hundred feet (500') of the following locations:
  - b. Any place of worship or religious assembly;
  - c. Any residentially zoned district; or
  - d. Another medical marijuana store.
3. Exemption: Central Business District. No medical marijuana dispensary license shall be issued within two hundred fifty feet (250') of the above mentioned locations, with the exception of any and all public and/or private schools and institutions of learning, where the one thousand foot rule still applies.
  - b. The Central Business District is identified as the boundaries of Seminole Main Street Association.
5. Distances shall be measured by the City on official maps as the radius from the closest points on the applicant's building to the closest point of the building of any location outlined in subsection G, 1 and 2.
  - a. To determine the proximity to other medical marijuana businesses and the priority of applications, businesses shall have priority in the following order:
    - i. Businesses that are open and operating;
    - ii. Businesses whose applications have been approved;
    - iii. Applications for medical marijuana business license that have been submitted by the applicant and declared complete by the City;
    - iv. No other applications shall be considered "businesses" for this determination.
6. For purposes of this paragraph, school, college, or university shall include properties owned by such entities only if they are used to provide services, teaching facilities, or living facilities to students. No distance is required between a marijuana business and properties owned by a school, college or university that are not used to provide teaching facilities, living facilities or services to students.
7. Limitations for Dispensaries. The following shall be the minimum requirements for a medical marijuana dispensary:
  - a. The area of the business is one thousand five hundred square feet;

- b. The business includes a secured and locked medical marijuana dispensary room, one or more private rooms for consultation on the medical use of marijuana, and a separate reception area for screening of patients.

## **H. OFFENSES**

1. Consumption of Marijuana in Public Prohibited
  - a. No person shall consume any marijuana in public.
  - b. For purposes of this section, public means:
    - i. In or upon any public way or public right of way, whether in a vehicle or not;
    - ii. On any property or in any building that is owned, leased, used by, or open to the public; or
    - iii. In or upon those portions of any private property upon which the public has an express or implied license to enter or remain.
    - iv. No person shall drive or sit in the driver's seat of any motor vehicle, other than one licensed to carry passengers for hire, in which a violation of subsection i. of this section is occurring.
2. No person shall sell, serve, deliver, or give away any marijuana or any product containing marijuana to any underage person or purchase marijuana or marijuana-infused product for an underage person. This passage shall not apply to a licensed caregiver tending to a licensed patient.
3. Marijuana Odor Emissions
  - a. No person, tenant, occupant, or property owner shall permit the emission of marijuana odor from any source to result in detectable odors that leave the premises upon which they originated and interfere with the reasonable and comfortable use and enjoyment of another's property.
  - b. Whether or not a marijuana odor emission interferes with the reasonable and comfortable use and enjoyment of a property shall be measured against the objective standards of a reasonable person of normal sensitivity.
  - c. A marijuana odor emission shall be deemed to interfere with the reasonable and comfortable use and enjoyment of property if marijuana is detectable outside the premises.
4. No person shall be convicted of a violation of this section Section H-3 unless the City Manager or his designee has delivered or posted a written warning, in the previous twelve months, that conduct violating this section is occurring or has occurred.
  - a. The person, tenant, occupant, or property owner must abate the marijuana odor emission within seven days after the warning is delivered or posted.
  - b. Seven or more days after a warning is posted or delivered, a separate violation of this section occurs on each day the marijuana odor emission repeats or continues.
  - c. The warning shall cite this section.
  - d. The warning may be delivered personally or posted on the property.
  - e. It shall be presumed that a person charged under this section received the warning if the warning was either (i) delivered to the property owner, a tenant or an occupant; or (ii) posted on the property.
5. Extended grace period for licensed marijuana cultivation facilities. No person who receives a warning at a licensed marijuana cultivation facility shall be convicted of a violation that allegedly

occurred within 90 days after the first warning issued pursuant to Subsection (d), of all of the following conditions are met:

- a. A first warning within twelve months was previously issued pursuant to Subsection (d) of this section for the person's property, and the subject property is licensed as a marijuana cultivation facility by the City and the state;
  - b. Seven or fewer days after the warning was posted or delivered, the person submitted a written document to the City Manager or his designee which explained (i) why the marijuana odor emissions could not be abated within seven days feasibly, and (ii) how the person planned to abate the marijuana odor emission in the following ninety days;
  - c. The person receiving the warning has diligently pursued to completion the plans for abating the marijuana odor emission; and
  - d. The written document described in paragraph b was submitted fewer than ninety days before the date of the violation.
6. Unlawful to Transport Marijuana
- a. It shall be unlawful for any person to distribute, or contract to distribute, any marijuana using any freight or package service, community rideshare, or other commercial transportation network, not including the United States Postal Service.
7. Unlawful to Produce Marijuana Without a License
- a. It shall be unlawful for any person to:
    - i. Produce any marijuana without a license from the City;
    - ii. Possess extraction vessels, and butane, propane, compressed CO<sub>2</sub>, ethanol, isopropanol, acetone, heptane, hexane or any other volatile materials used in the production of solvent-based marijuana concentrate, in the same premise as marijuana without a license from the City.
8. ENFORCEMENT: Any personal use of cannabis and cannabis products within the City in violation of this section, including any commercial cannabis activity in residential zone districts, is hereby declared to be unlawful and a public nuisance.
- a. Any person who willfully or knowingly: 1) engages in a violation of this section, or 2) owns, possesses, controls, or has charge of any parcel of real property in the City upon which a violation of this section is maintained and who has actual knowledge of such violation (or would have actual knowledge of such violation after a reasonable inquiry), shall be subject to the penalties and remedies provided by this section.
  - b. Any violation of this section shall constitute a separate offense for each and every day the violation occurs or persists.
  - c. Any person in violation of any provision of this section or who causes another person to be in violation of this section shall have committed a misdemeanor. In addition which shall be punishable by a fine of one thousand dollars (\$1,000.00) for each violation and for each day the applicable violation continues to persist.
  - d. Any person in violation of any provision of this section shall be punishable by an administrative fine of one thousand dollars (\$1,000.00) per offense.
9. REVOCATIONS: Nothing shall prohibit the City Manager or his designee from revoking the license of any medical marijuana facility without notice upon a showing of irreparable harm to the public health, safety or welfare. In the event said license is revoked, a hearing shall be held within three (3) business days before the City Manager. Any adverse decision may be appealed to the City Council, who shall hold a hearing on the matter within thirty (30) days.

PASSED AND APPROVED this 14<sup>th</sup> day of August, 2018, by the Mayor and City Council of the City of Seminole, Oklahoma.

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Mayor H. Chayne Fisher

ATTEST:

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Jay F. Cox, City Clerk

(SEAL)

Approved:

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Brad Carter, City Attorney

#### EMERGENCY CLAUSE

WHEREAS, it being immediately necessary for the preservation of the peace, health and safety of the City of Seminole, and the inhabitants thereof, that the provisions of this ordinance be put into full force and effect, an emergency is hereby declared to exist by reason whereof this ordinance shall take effect and be in full force form and after its passage, and provided by law.

THE EMERGENCY CLAUSE SEPARATELY APPROVED this 14<sup>th</sup> day of July, 2018, by the Mayor and City Council of the City of Seminole, Oklahoma.

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Mayor H. Chayne Fisher

ATTEST:

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Jay F. Cox, City Clerk

(SEAL)

Approved:

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Brad Carter, City Attorney