

AN ORDINANCE AMENDING SECTIONS OF ARTICLE I, ARTICLE II, AND ARTICLE IV OF THE MEDICAL MARIJUANA CODE; PROVIDING FOR REPEALER, SAVINGS, SEVERABILITY, AND CODIFICATION; AND DECLARING AN EMERGENCY

BE IT ORDAINED BY THE MAYOR AND THE CITY COUNCIL OF THE CITY OF MARIETTA, OKLAHOMA:

SECTION 1. Chapter 7 of the code of Ordinances, City of Marietta, Oklahoma, also known as the Medical Marijuana Code, is hereby amended as follows:

Chapter 7

MEDICAL MARIJUANA CODE

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ARTICLE V. MARIJUANA GROWING FACILITIES FOR PERSONAL MEDICAL USE

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ARTICLE I. IN GENERAL

Sec. 7-1. Legislative intent and purpose.

(a) The intent of this chapter is to ensure the health and safety of all citizens of the City of Marietta and provide reasonable and orderly regulation of medical marijuana as authorized by the lawful passage of State Question 788. Only the powers enumerated under this chapter shall be proper. Any power not specifically enumerated is prohibited.

(1) Any person, persons, or entity violating any provisions of this article, either by doing anything which is prohibited or by failing to do anything which is commanded, shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined in an amount not exceeding five hundred dollars (\$500) plus court costs. Each separate violation of this article shall constitute a separate offense. Where a lesser fine is mandated by state law then the lesser amount of fine shall be applicable.

(2) The regulations are intended to apply to all medical marijuana for personal use or any medical marijuana business permitted under the State Question 788. The Code is intended to provide regulations to limit the impact that medical marijuana cultivation and production will have on health, safety, and community resources.

(3) 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.

(4) The regulations for medical marijuana uses are not adequate at the state level to address the impacts of medical marijuana on the city, making it appropriate for local regulation of the impacts of medical marijuana uses.

(5) Nothing in this chapter is intended to promote or condone the production, distribution, or possession of marijuana in violation of any applicable law.

(6) 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.

(7) Medical marijuana is a heavily regulated industry in the city and all permittees 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.

(b) 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:

(1) 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 State Question 788.

(2) 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.

(3) Impose fees to cover the cost to the city of permitting medical marijuana businesses in an amount sufficient for the city to recover its costs of the permitting program.

(4) Adopt a mechanism for monitoring compliance with the provisions of this chapter.

(5) 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.

(6) Facilitate the implementation of State Question 788 without going beyond the authority granted by it.

(7) Issue medical marijuana business permits only to individuals and entities that have demonstrated an intent and ability to comply with this chapter without monitoring by city officials.

Sec. 7-2. Oklahoma State Department of Health Regulations Title 310, Chapter 681, Medical Marijuana Control Program Adopted by Reference.

(a) Oklahoma State Department of Health Regulations, Title 310, Chapter 681, Medical Marijuana Control Program as it may from time to time be amended is adopted by reference and is made a part of the ordinances of the City, as if fully set forth in this Code. The provisions of these regulations shall take effect and be controlling with the city limits so that a violation of the provisions of the regulations will be a violation of this code. Nothing in this section shall grant to the city the power or jurisdiction to prosecute offenses that a city is not authorized to prosecute. Copies of the rules are on file in the office of the City Clerk.

(b) Any crimes specified in the rules or other laws as felonies are specifically excluded from inclusion in this chapter.

(c) The penalty for a misdemeanor violation of the rules as adopted by this chapter shall be the maximum penalty allowed by state law but not exceeding the jurisdictional limits of the Marietta Municipal Court.

Sec. 7-3. Definitions.

The following words and terms, when used in this chapter, shall have the following meaning, unless the context clearly indicates otherwise:

- (a) *Applicant* means the natural person in whose name a permit would be issued.
- (b) *Complete Application* means a document prepared in accordance with the rules and the forms and instructions provided by the City of Marietta, including any supporting documentation required as well as the application fee.
- (c) *Dispense* means the selling of medical marijuana or a medical marijuana product to a qualified patient or the patient's designated caregiver that is packaged in a suitable container appropriately labeled for subsequent administration to or use by a qualified patient.
- (d) *Dispensary* means an entity that has been licensed by the Oklahoma State Health Department pursuant to Title 63 O.S. § 421A and permitted by the City of Marietta pursuant to this chapter, which allows the entity to purchase medical marijuana from a processor permittee or grower permittee and sell medical marijuana only to qualified patients and caregivers.
- (e) *Domicile* means a person's true, fixed, primary permanent home and place of habitation and the tax parcel on which it is located. It is the place where the person intends to remain and to which the person expects to return when the person leaves without intending to establish a new domicile elsewhere.
- (f) *Entity* means an individual, general partnership, a limited partnership, a limited liability company, a trust, an estate, an association, a corporation or any other legal or commercial entity.
- (g) *Grower or Commercial Grower* means an entity that has been licensed by the Oklahoma State Department of Health and permitted by the City of Marietta, which allows the entity to grow, harvest, and package medical marijuana to a dispensary, processor or researcher.
- (h) *Manufacture* means the process of converting harvested plant material into medical marijuana concentrate by physical or chemical means for use as an ingredient in a medical marijuana product.
- (i) *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.

(j) *Mature Plant* means harvestable female marijuana plant that is flowering. Mature plants are not authorized under this section prior to sixty (60) days after the enactment of Title 63 O.S. § 420A, et. seq.

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

(l) *Medical Marijuana Business* means any business licensed by the Oklahoma State Health Department and permitted by the City of Marietta to dispense, grow, research or process medical marijuana.

(m) *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, intended to be refined for use as an ingredient in a medical marijuana product and not for administration to a qualified patient.

(n) *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 nebulizer, patches, tinctures, and liquids excluding live plant forms.

(o) *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.

(p) *Permittee* means any natural born person or entity that holds a marijuana permit provided for in this chapter.

(q) *Processor* means an entity that has been licensed by Oklahoma State Department of Health and permitted by the City of Marietta, which allows the entity to: purchase marijuana from a commercial grower; prepare, manufacture, package, sell to and deliver medical marijuana products to a dispensary permittee or other processor permittee; and may process marijuana received from a qualified patient into a medical marijuana concentrate, for a fee.

(r) *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.

(s) 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.

~~(+)~~(t) Retailer as used in Title 63 O.S. § 421A et seq. means a dispensary.

~~(s)~~(u) Resident means an individual who is an income tax payer 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.

~~(+)~~(v) Revocation means the City of Marietta's final decision that any permit issued pursuant to this chapter is rescinded because the individual or entity does not comply with the applicable requirements in this chapter.

~~(u) School means either public or private nurseries, kindergartens, elementary, which may include either K-6 or K-8, secondary schools, and technology center schools, not to exceed two (2) years of junior college work, night schools, adult and other special classes, vocational and technical instruction and such other school classes and instruction as may be authorized by laws which are now in effect or which may hereafter be enacted.~~

~~(+)~~(w) Seedling means an immature marijuana plant that has no flowers.

~~(+)~~(x) State Question means Okla. State Question No. 788 and Initiative Petition Number 412.

Sec. 7-4 – 7-14. Reserved.

ARTICLE II. COMMERCIAL MEDICAL MARIJUANA BUSINESS PERMIT

Sec. 7-15. Permit required.

It shall be unlawful for any person, persons or other business entity to operate as a commercial medical marijuana dispensary, commercial medical marijuana grower, commercial medical marijuana manufacturer, or commercial medical marijuana processor within the corporate limits of the City of Marietta without first having obtained a permit therefor as provided herein. The fees for the permits required hereunder shall be established by resolution of the City Council of the City of Marietta.

Sec. 7-16. Additional licenses and permits may be required.

The permit requirement set for 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, any applicable building permit.

Sec. 7-17. Permit does not provide any exception, defense, or immunity from other laws.

The issuance of any permit pursuant to this chapter does not create an exception, 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.

Sec. 7-18. Separate permit required for each location.

A separate permit shall be required for each premise from which a commercial medical marijuana business is operated. Except as specifically provided in this chapter, no two or more different commercial medical marijuana businesses may be treated as one premise.

Sec. 7-19. Permit nontransferable.

A permit that has been issued by the City Clerk for medical marijuana is nontransferable. A commercial medical marijuana business permit is not transferable or assignable, including, without limitation, not transferable or assignable to a different premise, to a different type of business, or to a different owner or permittee. A commercial medical marijuana business permit is valid only for the owner named thereon, the type of business disclosed on the application for the permit, and the location for which the permit is issued. The permittee of a commercial medical marijuana business permit are only those persons disclosed in the application or subsequently disclosed to the city in accordance with this chapter.

Sec. 7-20 – 7-24. Reserved.

Sec. 7-25. Ventilation, fire, and life safety requirements.

In addition to state and local building and fire codes, the following requirements shall be enforced:

(a) Ventilation. A plan for ventilation of all medical marijuana facilities that describes the ventilation systems that will be used to prevent any odor of marijuana off the premises of the establishment must be submitted to the city. For retail and cultivation facilities, 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.

(1) The required outdoor ventilation rate required for each retail marijuana establishment or a medical marijuana cultivation facility will be as follows:

(i) For marijuana cultivation facilities, eight persons per 1,000 square feet with a ventilation rate of 60 cubic feet per minute per person;

(ii) For retail marijuana stores, the licensed premises for marijuana transporters, retail marijuana product manufacturing facilities, and retail marijuana testing facilities and medical marijuana testing facilities eight persons per 1,000 square feet with 15 cubic feet per minute per person.

(2) Fire Separation Requirements. For medical marijuana dispensaries, a minimum of a two-hour fire separation will be required between all medical marijuana dispensaries and any adjacent business; unless higher performance is required by applicable law.

(3) Fire Suppression Requirements. ~~For all buildings regardless of size containing medical marijuana cultivation, production, storage, or manufacturing a Type 13 automatic sprinkler system will be required.~~ For all buildings with a fire area of five-thousand (5,000) square feet or greater, containing medical marijuana cultivation, production, storage, or manufacturing, an automatic sprinkler system is required. This requirement may be waived by the City for buildings with a fire area of less than ten-thousand (10,000) square feet if the building contains only noncombustible construction.

(4) Exterior Electrical Disconnect Required. For all buildings containing medical marijuana cultivation, production, storage, or manufacturing, a NEMA Type 3 Electrical Disconnect will be required on the exterior of the building. The electrical disconnect must be labeled and in an accessible location.

Sec. 7-26 – 7-30. Reserved.

ARTICLE III. GENERAL PROVISIONS

Sec. 7-31. 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 Marietta Municipal Court, for a violation of this chapter as specifically provided herein.

Sec. 7-32. Inspections.

Every medical marijuana dispensary, commercial grower, and processor shall permit the local permitting authority, and any agent of the local permitting authority, or anyone authorized to inspect the premises of the business pursuant to the city Code, or State Question 788, and any of the rules and regulations adopted pursuant thereto.

Sec. 7-33. Costs 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 remove 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.

Sec. 7-34. Reserved.

Sec. 7-35. Forfeiture of permit.

In the event that a commercial medical marijuana business does not commence operations within thirty days of issuance of a permit from the city, the permit shall be deemed forfeited and the business may not commence operations. This requirement will go in effect beginning January 1, 2019.

Sec. 7-36. 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 commercial medical marijuana business unless the tenant has a valid commercial medical marijuana business permit or has applied for and not been denied a commercial medical marijuana business permit or no marijuana is located on the premises until a permit has been issued by the city. In the event that the city has a reasonable cause to believe that a commercial 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 commercial medical marijuana business is located to determine whether any marijuana is on the premises.

Sec. 7-37. Locations of medical marijuana businesses.

(a) Fixed Location Required.

(1) Mobile medical marijuana sales of all types are prohibited within the City of Marietta. This includes but is not limited to trailers, recreational vehicles, and trucks.

(2) With the exception of a commercial grower, it shall be unlawful to operate a medical marijuana business outside of an enclosed, fixed building. All medical marijuana business permits shall be issued for a specific fixed location within an enclosed building.

(b) Permitted Use in Zoning District.

A commercial medical marijuana business permit may be issued only if the business qualifies as a use permitted as a matter of right in the zoning district where it is proposed to be located. Conditional use permits shall not be applicable for medical marijuana businesses. Commercial medical marijuana business permits are permitted by right:

(1) As “retail sales” for a medical marijuana dispensary;

(2) As “agriculture” for a medical marijuana grower;

(3) As “manufacturing and production” for a medical marijuana manufacturer, storage, or processor

Sec. 7-38. Commercial medical marijuana businesses prohibited.

(a) No Commercial Medical Marijuana Business in Buildings with Residences or Residential Zoning Districts.

It shall be unlawful to operate a commercial medical marijuana business in a building which contains a residence, or within a dwelling unit within any zoning district, or within a residential zoning district, or within a mixed-use development that includes a residence.

(b) 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 processes medical marijuana.

(c) Separation from Uses.

No commercial medical marijuana permit shall be issued for a location within one thousand (1,000') feet of any private or public school.

(1) Distances shall be measured from any entrance of the school to the nearest property line point of the medical marijuana business.

Sec. 7-39. Application requirements.

An application for a commercial medical marijuana permit shall be made to the city on forms provided by the City Clerk for that purpose. The applicant shall use the application to demonstrate its compliance with this chapter and any other applicable law, rule, or regulation. The application shall include the following information:

(a) The Oklahoma Medical Marijuana Authority Business License Number

(b) Name and address of the owner or owners of the medical marijuana business in whose name the permit is proposed to be issued.

(1) 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.

(2) 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.

(3) 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.

(c) An operating plan for the proposed medical marijuana business, including the following information:

(1) A description of the products and services to be provided by the medical marijuana business.

(2) A dimensioned floor plan, clearly labeled, showing:

(i) The layout of the structure and the floor plan in which the medical marijuana business is to be located;

(ii) The principal uses of the floor area depicted on the floor plan, including, but not limited to, the areas where non-patients will be permitted, private consulting areas, storage areas, retail areas, and restricted areas where medical marijuana will be located;

(iii) Areas where any services other than the distribution of medical marijuana are proposed to occur in the premises; and

(iv) The separation of the areas that are open to persons who are not patients from those areas open to patients.

(3) For cultivation facilities, a plan that specifies the methods to be used to prevent the growth of harmful mold, humidity, and other related problems.

(d) A lighting plan showing the lighting outside of the medical marijuana business for security purposes and compliance with applicable city requirements.

(e) A fire separation plan showing a minimum of a two-hour fire separation between a medical dispensary and any adjacent business, or a fire suppression plan for all buildings containing cultivation, production, and manufacturing.

(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 produce 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.

Sec. 7-40. Modifications to approved commercial medical marijuana business permit.

Prior to making a modification of a commercial medical marijuana business that would require a building permit or change items required by subsections (d), (e), or (g) of the above section, the permittee shall submit to the city and have approved a completed application for modification of premises on a form provided by the city. The application shall be accompanied by a nonrefundable modification application fee.

Sec. 7-41. Fees required.

Any application for a commercial medical marijuana permit shall be accompanied by a nonrefundable application fee in an amount established by the City Council of the City of Marietta. After the application review period, if the City Clerk deems the application to be complete, a nonrefundable permit fee in an amount determined by the City Council of the City of Marietta will be due prior to the issuance of the commercial medical marijuana permit.

Sec. 7-42. Inspection.

An inspection of the proposed medical marijuana business by the city shall be required prior to issuance of a permit. Such inspection shall occur after the premises are ready for operation, but prior to the stocking of the business with any medical marijuana, and prior to the opening of the business to any patients or the public. The inspection is to verify that the business facilities are constructed and can be operated in accordance with the application submitted and the applicable requirements of the code and any other applicable law, rule, or regulation.

Sec. 7-43. Application processing.

The processing of the application by the City Clerk is not complete until the city has:

- (a) determined the application is complete, and
- (b) determined the medical marijuana business is prepared and able to operate in compliance with all applicable laws, and
- (c) conducted an inspection of the business, and
- (d) obtained all other information the city determines necessary to make a decision whether to approve or deny the permit application, or approve it with conditions, and
- (e) prepared the documentation necessary to support the decision made by the city on the application.

Sec. 7-44. Approval requirements.

The City Clerk may:

- (a) Issue a commercial medical marijuana business permit if:
 - (1) The inspection, and all other information available to the city verify that the applicant has submitted a full and complete application; and
 - (2) Improvements have been made to the business location consistent with the application; and
 - (3) The applicant is prepared to operate the business with other owners and managers as set forth in the application; and

(4) The applicant and the business location are in compliance with this code and any other applicable law, rule, or regulation.

(b) 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 permit shall include, at a minimum, operation of the business in compliance with all of the plans and information made part of the application.

Sec. 7-45. Persons prohibited as permittees.

It shall be unlawful for any of the following persons to have an ownership or a financial interest in a medical marijuana business, and no permit provided by this chapter shall be issued to or held by, and no medical marijuana business shall be managed by:

(a) Any person until the annual fee for the permit has been paid;

(b) Any natural person who is under eighteen (18) years of age;

(c) Any person who operates or manages a medical marijuana business contrary to the provisions of this chapter, any other applicable law, rule, or regulation or conditions imposed on land use or permit approvals, or contrary to the terms of the plans submitted with the permit application, as such plans may be amended as provided in this chapter, or has operated a business in violation of any law;

(d) A sheriff, deputy, police officer, or prosecuting officer, or an officer or employee of the state licensing authority or a local permitting authority;

(e) A person whose authority to be a primary caregiver has been revoked by the state health agency;

Sec. 7-46 - 49. Reserved.

ARTICLE IV. REQUIREMENTS RELATED TO THE OPERATION OF MEDICAL MARIJUANA BUSINESSES.

Sec. 7-50. Onsite use prohibited.

No marijuana shall be smoked, eaten, or otherwise consumed or ingested within the medical marijuana business.

Sec. 7-51. Restriction on access to restricted area.

(a) No person, other than ~~an employee, operator, or agent of a medical marijuana business, or a patient, permittee, employee, or a licensed medical marijuana patient or caregiver,~~ shall enter or be allowed to enter the restricted area of a commercial medical marijuana business. No patient ~~or caregiver~~ shall be allowed entry into the restricted area without ~~showing~~having shown a valid Oklahoma ~~Medical Marijuana Patient License~~medical marijuana license and a valid government issued identification card.

(b) No access to the restricted area may be permitted to non-Oklahoma residents or for compensation.

~~(c) No person, other than an employee or caregiver of the business shall be permitted in the restricted area of a commercial medical marijuana business.~~

~~(d)~~(c) A log shall be maintained on the business premises of all persons allowed to enter the restricted area of a commercial medical marijuana business. Said log shall be available for inspection upon request by the city.

Sec. 7-52. Display of permit required.

A valid city issued commercial medical marijuana business permit shall be conspicuously posted in the business.

Sec. 7-53. Business conducted within building.

Any and all cultivation, production, distribution, possession, storage, display, sales, or other distribution of marijuana shall occur only within the restricted area of a commercial medical marijuana business and shall not be visible from the exterior of the business.

Sec. 7-54. Use of pesticides.

No pesticides or insecticides which are prohibited by applicable law for fertilization or production of edible produce shall be used on any marijuana cultivated, produced, or distributed by a medical marijuana business.

Sec. 7-55. Ventilation required.

A commercial medical marijuana business shall be ventilated so that the odor of marijuana cannot be detected by a person with a normal sense of smell at the exterior of the medical marijuana business or at any adjoining use or property.

Sec. 7-56. Use of metals, butane, propane or other flammable products.

No medical marijuana business may use metals, butane, propane, or other flammable product, or produce flammable vapors, to process marijuana unless the process used and the premises are verified as safe and in compliance with all applicable codes by a qualified industrial hygienist.

(a) The city may require the business to obtain verification from a qualified industrial hygienist that the manner in which the business is producing medical marijuana complies with all

applicable laws and does not produce noxious or dangerous gases or odors or otherwise create a danger to any person or entity in or near the businesses.

Sec. 7-57. Disposal of medical marijuana and marijuana byproducts.

All medical marijuana and any product containing a usable form of marijuana must be made unusable and unrecognizable prior to removal from the business in compliance with all applicable laws. This provision shall not apply to licensed law enforcement, including, without limitation, the City of Marietta Police Department and the City of Marietta Fire Department.

Sec. 7-58. Delivery between medical marijuana businesses.

It shall be unlawful for any person to transport medical marijuana, except as specifically allowed by applicable law, unless the medical marijuana being transported meets the following requirements:

(a) All medical marijuana is transported in a locked container, shielded from public view and labeled "Medical Marijuana or Derivative."

(b) Unless otherwise specifically allowed by applicable law, medical marijuana may be transported only between medical marijuana businesses.

(c) The medical marijuana must be accompanied by the manifest in accordance with state requirements for transport of marijuana.

Sec. 7-59. Advertisement.

A commercial medical marijuana business may not advertise in a manner that is inconsistent with the medicinal use of medical marijuana. A medical marijuana business may not advertise in a manner that is misleading, deceptive, false, or designed to appeal to minors. Advertisement that promotes medical marijuana for recreational or any use other than for medicinal purposes shall be a violation of this code. The following conditions shall apply:

(a) Any person permitted as a medical marijuana business shall include in any advertisement for medical marijuana or any medical marijuana-infused product the following language: "For registered Oklahoma medical marijuana patients only." Provided, however, this language shall not be required to be displayed upon any sign identifying a medical marijuana business, as permitted by Subparagraph (b)(1) of this section.

(b) Except as otherwise provided in this paragraph, it shall be unlawful for any person permitted under this chapter or any other person to advertise any medical marijuana or medical marijuana-infused product anywhere in the city where the advertisement is in plain view of or in a place open to the general public, including advertising utilizing any of the following media: any billboard or other outdoor general advertising device as defined by the zoning code; any sign mounted on a vehicle; any handheld or other portable sign; or any handbill, leaflet, or flier directly handed to any person in a public place, left upon a motor vehicle, or posted upon any public or private property. The prohibition set forth in this paragraph shall not apply to:

(1) Any sign located on the same zoned lot as a medical marijuana business which exists solely for the purpose of identifying the location of the medical marijuana business and which otherwise complies with this code and any other applicable city laws and regulations;

(2) Any advertisement contained within a newspaper, magazine, or other periodical of general circulation within the city or on the internet, which may include coupons;

(3) Any products marked with the name or logo of a marijuana business, including wearable or non-consumable merchandise, packaging in which marijuana is sold, or on medical marijuana accessories sold;

(4) Advertising which is purely incidental to sponsorship of a charitable event by a medical marijuana business;

(5) A booth at a job fair or educational seminar where the only items distributed are company or educational materials, and no other items are distributed, shown or sold;

(6) A booth at an adult event where the only items distributed are company or educational materials, and no other items are distributed, shown or sold.

(c) It is an affirmative defense if a medical marijuana business employee provided another individual, upon request, a business card for the purpose of providing that person's name and business affiliation, including, without restriction, title, mailing address, email address, and telephone number.

(d) No medical marijuana business shall distribute or allow the distribution of any marijuana or products marked with its name or logo without charge within a marijuana business or any place open to the public for the purpose of promotion or advertising except as permitted in subsections (b)(5) and (6) of this section.

(e) No medical marijuana business shall distribute or allow the distribution of any coupon or similar writing, electronically or on paper, which purports to allow the bearer to exchange the same for any marijuana product, either free or at a discount except as permitted in subsections (b)(5) and (6) of this section.

(f) No medical marijuana business shall sell, distribute, or provide, or allow the sale, distribution, or provision of, products marked with its name or logo, in child sizes, designed for the use of minors, or which is misleading, deceptive, false, or appealing to minors.

Sec. 7-60. Organization of cultivation facilities.

All cultivation facilities shall be organized in orderly rows with aisles at least three feet wide, and no more than eight feet between an aisle and the next aisle or an aisle and a wall, and with clear access to all exits, unless the City Clerk determines that the business has provided a

dimensioned floor plan that provides equivalent access and separation between plants and to exits.

Sec. 7-61. Owner or manager responsibility.

The owner or manager is required to respond by phone or email within twenty-four hours of contact by a city official concerning their medical marijuana business at the phone number or email address provided to the city as the contact for the business. Each twenty-four-hour period during which an owner or manager does not respond to the city official shall be considered a separate violation.

Sec. 7-62. Consent to inspection.

Application for a commercial medical marijuana business permit or operation of a commercial medical marijuana business, or leasing property to a commercial medical marijuana business, constitutes consent by the applicant, and all owners, managers, and employees of the business, and the owner of the property to permit the city to conduct routine inspections of the medical marijuana business to ensure compliance with this chapter or any other applicable law, rule, or regulation. The owner or manager on duty shall retrieve and provide the records of the business pertaining to the inspection. Application for a commercial medical marijuana business permit constitutes consent to inspection of the business as a public premise without a search warrant, and consent to seizure of any surveillance records, camera recordings, reports, or other materials required as a condition of a medical marijuana permit without a search warrant.

Sec. 7-63. Reporting of source, quantity, and sales.

The records to be maintained by each medical marijuana business shall include the source and quantity of any marijuana distributed, produced, or possessed within the premises. Such reports shall include, without limitation, for both acquisitions from wholesalers and transactions to patients or caregivers, the following:

- (a) Name and address of seller or purchaser; and
- (b) Date, weight, type of marijuana, and dollar amount or other consideration of transaction

Sec. 7-64. Requirements for public health and labeling.

(a) The production of any medical marijuana-infused product shall be at a medical marijuana-infused product manufacturer that meets all requirements of a retail food establishment as set forth in 63 O.S. § 1-1101 et seq., 63 O.S. § 1-1401 et seq., OAC 310:257, and OAC 310:240. The production of any product containing medical marijuana shall comply with all health and safety standards thereof. The permittee shall comply with all applicable state and local health regulations related to the production, preparation, labeling, and sale of prepared food items as if the medical marijuana-infused products were food items.

(b) All medical marijuana sold or otherwise distributed by the permittee shall be packaged and labeled in a manner that advises the purchaser that it contains marijuana and specifies the amount of marijuana in the product, that the marijuana is intended for medical use solely by the

patient to whom it is sold, and that any resale or redistribution of the medical marijuana to a third person is prohibited. In addition, the label shall comply with all applicable requirements of the State of Oklahoma and any other applicable law.

(c) The product shall be packaged in a sealed container that cannot be opened without obvious damage to the packaging.

Sec. 7-65. Compliance with other applicable law.

Except as may be provided otherwise in this chapter, or rules adopted pursuant to this chapter or interpretations by the city, any law or regulation adopted by the state governing the cultivation, production, possession, or distribution of marijuana for medical use shall also apply to medical marijuana businesses in the city. Provided however, if a state law or regulation permits what this chapter prohibits, this chapter shall prevail. Compliance with any applicable state law or regulation that does not permit what this chapter prohibits shall be deemed an additional requirement for issuance or denial of any permit under this chapter, and noncompliance with any applicable state law or regulation is unlawful and shall be grounds for revocation or suspension of any permit issued under this chapter. No medical marijuana business shall continue operations in violation of an additional state law or regulation, which does not permit what this chapter prohibits, applicable within the city after the effective date of the state law or regulation.

Sec. 7-66. Revocation of permit upon denial or revocation of state license or applicable federal prohibition.

If the state prohibits the cultivation, production, possession, or other distribution of marijuana through medical marijuana businesses, or if a medical marijuana business is denied a commercial medical marijuana business permit or has such permit revoked, or if a court of competent jurisdiction determines that the federal government's prohibition of the cultivation, production, possession, or other distribution of marijuana through medical marijuana businesses supersedes state law, any permit issued pursuant to this chapter shall be deemed to be immediately revoked by operation of law, with no ground for appeal or other redress on behalf of the permittee.

Sec. 7-67. Revocable privilege.

A commercial medical marijuana business permit is a revocable privilege, and no applicant therefor or holder thereof shall be deemed to have acquired any property interest therein.

Sec. 7-68. Prohibited Acts.

(a) It shall be unlawful for any person to commit any of the following acts unless such act is permitted under the provisions of State Question 788 or the Oklahoma Health Department regulations:

(1) Cultivate, distribute, or produce marijuana in plain view of or in a place open to the general public.

(2) Smoke, use, or ingest any marijuana on the premises of the commercial medical marijuana business.

(3) Operate or be in physical control of any commercial medical marijuana business, liquor establishment, vehicle, aircraft, or motorboat while under the influence of alcohol, medical marijuana, or other intoxicant.

(4) Possess medical marijuana that is not in a sealed package in a location where the possessor is not authorized to possess or consume medical marijuana.

(5) Possess more than six (6) mature and six (6) seedling marijuana plants without a commercial medical marijuana business permit for a cultivation facility.

(6) Possess any marijuana without a medical marijuana license or a marijuana business permit; further a holder of a medical marijuana license shall not possess more than three (3) ounces of marijuana on their person.

(7) Possess more than one (1) ounce of concentrated marijuana without a commercial medical marijuana permit for a business or a medical marijuana-infused product manufacturer.

(8) Possess more than seventy-two (72) ounces of edible marijuana without a commercial medical marijuana permit for a business or a medical marijuana-infused product manufacturer.

(9) Possess more than eight (8) ounces of marijuana in their residence.

(10) Obtain marijuana from a person who is not permitted as a commercial medical marijuana business.

(11) Possess or operate a commercial medical marijuana business in violation of this chapter.

(12) Produce, distribute, or possess more medical marijuana than allowed in this chapter than disclosed in the application to the state for a medical marijuana business permit or other applicable law.

(13) Distribute medical marijuana without a commercial medical marijuana business permit or outside of the restricted area of the medical marijuana business.

(14) Possess medical marijuana, own or manage a medical marijuana business, or own or manage a building with a medical marijuana business, where there is possession of medical marijuana by a person who is not a patient, caregiver, or a permittee of a medical marijuana business.

(15) Possess or operate a medical marijuana business in a location or in a manner for which a medical marijuana business permit is prohibited by the terms of this chapter.

(16) Operate a medical marijuana business without a commercial medical marijuana business permit from the city.

(17) Operate a medical marijuana business in a manner that is not consistent with the items disclosed in the application for the medical marijuana business or is in violation of any plan made part of the permit application.

(18) Distribute, or own or manage a medical marijuana business where distribution occurs, from a medical marijuana business, a medical marijuana-infused product that was produced in a manner that is not in compliance with this chapter.

(19) Cultivate, manufacture, distribute, or possess any medical marijuana at a location without a commercial medical marijuana business permit prior to passing the inspection required by this chapter.

(20) Make any changes, or for the permittee to allow any changes, to the items included in the plans submitted with the permit application and approved by the city, or the individuals identified in the application, without prior approval of the city.

(21) Attempt to use or display a medical marijuana business permit at a different location or for a different business entity than the location and business entity disclosed on the application for the issued permit.

(22) Cultivate, produce, distribute, or possess medical marijuana, or own or manage a medical marijuana business in which another cultivates, produces, distributes, or possesses medical marijuana, in violation of this chapter or any other applicable law.

(23) Own, manage, or possess a medical marijuana business where medical marijuana is outside of the restricted area portion of such business. It shall be an affirmative defense to a violation of this section if the medical marijuana outside of the restricted area was:

- (i) in the custody and control of a patient;
- (ii) purchased by that patient from the business and the patient has not left the business since purchase; and
- (iii) the amount of medical marijuana in the custody and control of the patient does not exceed the amount the patient may possess lawfully.

(24) Dispose of medical marijuana or any by-product of medical marijuana containing marijuana in a manner contrary to this chapter.

(25) Deliver or transport medical marijuana between medical marijuana businesses except in strict compliance with this chapter.

(26) Refuse to allow inspection of a medical marijuana business upon request of a city employee. Any permittee, owner, or operator of a medical marijuana business, or the owner of the property where a medical marijuana business is located, may be charged with this violation.

(27) Advertise or publish materials, honor coupons, sell or give away products, or display signs that are in violation of this code;

(28) Violate any provision of this code or any condition of an approval granted pursuant to this code or any law, rule, or regulation applicable to the use of medical marijuana or the operation of a medical marijuana business.

(29) Permit any other person to violate any provision of this code or any condition of an approval granted pursuant to this code, or any law, rule, or regulation applicable to the use of medical marijuana or the operation of a medical marijuana business.

(30) Lease any property to a medical marijuana business that has marijuana on the property without a medical marijuana business permit from the city.

(31) Label or distribute a marijuana-infused product that is not labeled as required by this code or other applicable law.

(32) Distribute or deliver marijuana from a medical marijuana cultivation facility to any location other than a medical marijuana business.

(33) Fail to respond by phone or email as required by this chapter.

(34) Printing or allowing the printing of a coupon that is not a newspaper, magazine, or other periodical of general circulation within the city or on the internet.

(35) Fail to provide a copy or record of a coupon authorized under this chapter upon request of an authorized city employee.

Sec. 7-69. Suspension or revocation of permit; Imposition of fines.

(a) A medical marijuana business permit may be suspended or revoked for any of the following violations:

(1) Conviction of the business, a permittee, or any owner, or primary caregiver of any violation of this chapter or any other law, rule, or regulation applicable to the use of medical marijuana or operation of a medical marijuana business.

(2) Misrepresentation or omission of any material fact, or false or misleading information, on the application or any amendment thereto, or any other information provided to the city related to the medical marijuana business.

(3) Violation of any law by which, if occurring prior to submittal of the application, could have been cause for denial of the permit application.

(4) Distribution of medical marijuana, including, without limitation, transporting marijuana, in violation of this chapter or any other applicable law, rule, or regulation.

(b) In the event a business or permittee is charged with violation of any law, upon which a final judgment would be grounds for suspension or revocation of the permit, the city may suspend the permit pending the resolution of the alleged violation.

(c) Fines for violations of this chapter may be imposed by the city against the person or any permittee up to \$500 plus court costs per person and any permittee per occurrence. Any person or permittee subjected to fines, revocation or suspension of its permit shall be entitled to a hearing before the Judge of the Marietta Municipal Court to contest such penalties.

(d) If the city revokes or suspends a permit, the business may not move any marijuana from the premises except under the supervision of the City of Marietta Police Department.

(e) In the event of the suspension of a marijuana business permit, during the period of suspension, the business:

(1) Shall post two notices provided by the City Clerk, in conspicuous places, one on the exterior and one on the interior of its premises for the duration of the suspension; and

(2) Shall not distribute or produce or test or transport marijuana, nor allow any customers into the permitted premises.

Sec. 7-70. Term of permit; Renewals, expiration of permit.

(a) Term of Permit. A commercial medical marijuana business permit shall be valid for one (1) year. The permit shall expire on the last day of the month in which the permit is issued of the year following issuance or renewal of the permit.

(b) Renewal of Permit. The permittee shall apply for renewal of the commercial medical marijuana business permit at least forty-five (45) days before the expiration of the permit. The permittee shall apply for renewal using forms provided by the city. If the applicant fails to apply for renewal at least forty-five (45) days before the expiration of the permit but does apply for renewal prior to expiration of the permit, the city may process the renewal application if the applicant submits a late-renewal fee at the time of submittal of the renewal application.

(1) The renewal application fee, and laFete fee if applicable, shall accompany the renewal application. Once the application is deemed approved by the City Clerk, the permit fee will be due prior to permit issuance. Such fees are nonrefundable.

(2) In the event there has been a change to any of the plans identified in the permit application which were submitted to and approved by the city with the application or an earlier renewal, the renewal application shall include specifics of the changes or proposed changes in any of such plans.

(3) In the event any person who has an interest as described in the disclosures made to the city pursuant to this chapter, or any agent as defined herein, or employee has been charged with or accused of violations of any law since such disclosure, the renewal application shall include the name of the violator, the date of the violation, the court and case number where the violation was filed, and the disposition of the violation with the renewal application.

(4) In the event the business permit has been suspended or revoked or a permittee has received any notice of violation of any law, the renewal application shall include a copy of the notice, suspension, or revocation.

(5) The renewal application shall include verification that the business has a valid state license and the state license is in good standing.

(6) The renewal application shall include a summary report for the previous twelve months showing the amount of marijuana purchased, the amount of marijuana sold, the forms in which marijuana was sold, the number of patients and the number of primary caregivers who received marijuana, the police report numbers or case numbers of all police calls to the medical marijuana business and, for calls resulting in a charge of a violation of any law, the charge, case number, and disposition of any of the charges.

(7) The city shall not accept renewal applications after the expiration of the permit, but instead shall require the applicant to file a new permit application.

(8) In the event there have been allegations of violations of this code by any of the permittees or the business submitting a renewal application, the city may hold a hearing prior to approving the renewal application. The hearing shall be to determine whether the application and proposed permittees comply with this chapter and whether the operation of the business has been in compliance with this code. If the city does not hold a hearing and the application and the permittees do not meet the requirements of this chapter, or the business has been operated in the past in violation of this code, the renewal application may be denied or issued with conditions, and the decision shall be final subject the City Manager and Hearing Officer's review.

(c) Expiration of Permit. Expiration of a commercial medical marijuana business permit for any reason shall be considered an inactive local permit.

Sec. 7-71 – 7-80. Reserved.

ARTICLE V. MARIJUANA GROWING FACILITIES FOR PERSONAL MEDICAL USE

Sec. 7-81. Permit required.

(a) It shall be unlawful for a person to grow marijuana for personal medical use within the corporate limits of the City of Marietta, Oklahoma without first obtaining a permit from the City Clerk of the City of Marietta.

(b) A residential medical marijuana grow permit will only be granted to a caregiver if:

- (1) The caregiver is licensed as a caregiver by the State of Oklahoma; and
- (2) The medical marijuana grown is for use by their custodial, minor child

Sec. 7-82. Permit does not provide any exception, defense, or immunity from other laws.

The issuance of any permit pursuant to this chapter does not create an exception, 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.

Sec. 7-83. Permit nontransferable.

A permit that has been issued by the City Clerk to grow medical marijuana for personal use is nontransferable.

(a) A personal use residential medical marijuana permit is not transferable or assignable, including, without limitation, not transferable or assignable to a different permittee. A personal use residential medical marijuana permit is valid only for the owner named thereon the permit and the location for which the permit is issued. The permittee of a personal use residential medical marijuana permit is only that person disclosed in the application or subsequently disclosed to the city in accordance with this chapter.

Sec. 7-84. Location and security.

All marijuana growing facilities for personal medical use shall be subject to security provisions as stated herein prior to the granting of a permit. Failing to comply with security provisions as stated herein will result in revocation of the city permit for one (1) calendar year.

(a) All homegrown medical marijuana plants must be grown so that the marijuana is not accessible to a member of the general public and is only accessible to the patient or caregiver. If grown outdoors, it must be grown behind a sight-proof fence that is at least six (6) feet in height. The marijuana plants must be completely enclosed by the fence and the fence must be secured with a commercial quality lock and key.

(b) Growing marijuana shall not be visible from the public right of way.

(c) The growing area including any lighting, plumbing or electrical components used shall comply with municipal building and fire codes. The growing area must be properly ventilated so as not to create humidity, mold or other related problems. Lighting shall not exceed 1,000 watts per light. The use of gas products (CO₂, butane, etc.) and ozone generators in the growing area is prohibited.

(d) 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.

(e) The primary use of the residential property in which marijuana is grown for personal use shall remain at all times a residence, with legal and functioning cooking, eating, sleeping, sanitation/bathing facilities, working water and electric services, 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.

Sec. 7-85. Application requirements.

An application for a personal medical marijuana grow permit shall be made to the city on forms provided by the City Clerk for that purpose. The applicant shall use the application to demonstrate its compliance with this chapter and any other applicable law, rule, or regulation. The application shall include the following information:

- (a) The Oklahoma Medical Marijuana Authority Patient License Number
- (b) Name and address of the owner in whose name the permit is proposed to be issued.
- (c) Proof of ownership or legal possession of the premise for the term of the proposed permit.
 - (1) The applicant shall provide a copy of the property deed showing proof of ownership; or
 - (2) If the applicant for a residential medical marijuana grow permit is not the owner of the premises, the applicant shall provide the city a copy of the premises lease for the period of time that the permit will be valid.

Sec. 7-86. Fees required.

After the application review period, if the City Clerk deems the application to be complete, a nonrefundable permit fee will be due prior to the issuance of the personal medical marijuana grow permit.

Sec. 7-87. Application processing.

The processing of the application by the City Clerk is not complete until the department has:

- (a) determined the application is complete, and
- (b) determined the permittee is prepared and able to grow personal use medical marijuana in compliance with all applicable laws, and
- (c) obtained all other information the city determines necessary to make a decision whether to approve or deny the permit application, or approve it with conditions, and
- (d) prepared the documentation necessary to support the decision made by the department on the application.

Sec. 7-88. Approval requirements.

The City Clerk may:

- (a) Issue a residential medical marijuana grow permit if:
 - (1) The applicant is licensed by the State of Oklahoma under Title 63 O.S. § 420A; and
 - (2) All information has been made available to the city to verify that the applicant has submitted a full and complete application; and
 - (3) The applicant and the location of the residence are in compliance with this code and any other applicable law, rule, or regulation.
- (b) 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.

Sec. 7-89. Penalty.

Except as otherwise provided by state law, whenever in this chapter an act is prohibited or is made or declared to be unlawful, an offense, or a misdemeanor, or whenever the doing of any act is required or the failure to do any act is declared to be unlawful the violation of any provision of this code or of any ordinance, upon conviction, shall be punished by a fine not exceeding \$500, plus costs. Each day or any portion of a day during which any violation of this code or of any ordinance shall continue shall constitute a separate offense.

Sec. 7-90 – 7-99. Reserved.

Section 2. All ordinances or parts thereof, which are inconsistent with this Ordinance are here by repealed.

Section 3. Nothing in this Ordinance hereby adopted shall be construed to affect any suit or proceedings now pending in any court, or any rights acquired, or liability incurred, nor any cause or causes of action accrued of existing, under any act or Ordinance repealed hereby. Nor shall any right or remedy of any character be lost, impaired, or affected by this Ordinance.

Section 4. If any one or more of the sections, sentences, clauses, or parts of this Ordinance shall, for any reason, be held invalid, the invalidity of such section, sentence, 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 Mayor and City Council of the City of Marietta that this section of the Code of Ordinances for the City of Marietta would have been adopted had such unconstitutional, illegal, or otherwise invalid section, sentence, clause, or part had not been included.

Section 5. This Ordinance shall be codified as Chapter 7 of the Code of Ordinances for the City of Marietta, Oklahoma.

Section 6. It being immediately necessary for the preservation of the public peace, health, safety, and welfare of the City of Marietta and the inhabitants thereof that this ordinance be put into full effect, an emergency is hereby declared to exist by reason whereof this ordinance shall be in full force and effect from and after its passage and approval.

PASSED by the City Council and **SIGNED** by the Mayor of the City of Marietta, Oklahoma on this 13th day of November 2018.

ATTEST:

Dottie Gwin
DOTTIE GWIN, CITY CLERK



CITY OF MARIETTA

BY: [Signature]
KIMBERLY FRAIRE, MAYOR