



*The Unified Voice of Oklahoma Cities and Towns*

# 2020 Medical Marijuana Update

Daniel McClure - J.D., M.P.A.

Deputy General Counsel



It's been an interesting  
few years!



It's been an interesting  
few years!



It's been an interesting  
few years!



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few years!



It's been an interesting  
few years!





**BACK TO MARIJUANA!**







# New Leaf Enterprises - Seattle



# Hoop House v. Greenhouse





# BROKEN ARROW MARIJUANA CASE

\*Tulsa County District Court held SQ788 pre-empted the field.

\*“F. No city or local municipality may unduly change or restrict zoning laws to prevent the opening of a retail marijuana establishment.” – SQ788



**ORIGINAL**

IN THE SUPREME COURT OF THE STATE OF OKLAHOMA

CLOUDI MORNINGS, LLC, and  
AUSTIN MILLER, individually,  
  
Plaintiffs/Appellees,  
  
v.  
  
THE CITY OF BROKEN ARROW,  
  
Defendant/Appellant.

No. 117,500

**FILED**  
SUPREME COURT  
STATE OF OKLAHOMA  
JUN 24 2019  
JOHN D. HADDEN  
CLERK

Rec'd (date)	10-24-19
Posted	<input checked="" type="checkbox"/>
Mailed	<input checked="" type="checkbox"/>
Distrib	<input checked="" type="checkbox"/>
Publish	yes <input checked="" type="checkbox"/> no <input checked="" type="checkbox"/>

ORDER

The Tulsa County District Court's Order of October 17, 2018, granting declaratory judgment in Cloudi Mornings, LLC, and Austin Miller v. The City of Broken Arrow, CV-2018-01213, is vacated and remanded. The Honorable Patrick Pickerill or other assigned judge, is directed to enter Findings of Fact and Conclusions of Law specifically addressing: (1) whether Broken Arrow through its enactment of ordinances 3540 and 3542 has "unduly change[d] or restrict[ed] zoning laws" so as to prevent the opening of a retail marijuana establishment; (2) the impact of 63 O.S. Supp. 2018 §425(F), as amended by SB 1030 (effective August 30, 2019) on the validity of Broken Arrow ordinances 3540 and 3542.

The parties are directed to supplement the appellate record in this case with the Court's Findings and Conclusions within 90 days.

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## Medical marijuana ordinances prompt 5 lawsuits: How are cities across Oklahoma regulating businesses and patients?

By Anna Codutti Tulsa World Oct 17, 2018 Updated 2 hrs ago



Dozens of municipalities across the state have put in place local ordinances that would regulate medical marijuana in the months since State Question 788 passed with 57 percent support.

### Latest Headlines

- OSU baseball: Cowboys new home field named O'Brate Stadium
- All-World update: Week 7 area high

# Law Enforcement-63 O.S. § 420A

- With a license

- Section 420. A. A person in possession of a state-issued medical marijuana license shall be able to:
  - 1. Consume marijuana legally;
  - 2. Legally possess up to three (3) ounces (84.9 grams) of marijuana on their person;
  - 3. Legally possess six (6) mature marijuana plants;
  - 4. Legally possess six (6) seedling plants;
  - 5. Legally possess one (1) ounce (28.3 grams) of concentrated marijuana;
  - 6. Legally possess seventy-two (72) ounces (2,037.6 grams) of edible marijuana; and
  - 7. Legally possess up to eight (8) ounces (226.4 grams) of marijuana in their residence.

OMMA Website enables license verification.



# Law Enforcement-63 O.S. § 420B

- Without a license – NEW CITE AND RELEASE PROVISION

- B. Possession of up to one and one-half (1.5) ounces (42.45 grams) of marijuana by persons who can state a medical condition, but not in possession of a state-issued medical marijuana license, shall constitute a misdemeanor offense with punishable by a fine not to exceed Four Hundred Dollars (\$400.00) and shall not be subject to imprisonment for the offense.
- Any law enforcement officer who comes in contact with a person in violation of this subsection and who is satisfied
  - as to the identity of the person,
  - as well as any other pertinent information the law enforcement officer deems necessary,
- shall issue to the person a written citation containing a notice to answer the charge against the person in the appropriate court. Upon receiving the written promise of the alleged violator to answer as specified in the citation, the law enforcement officer shall release the person upon personal recognizance unless there has been a violation of another provision of law.

# Title 63, Section 427.12 – Medical Marijuana Grown by Patient or Caregiver

- A. All medical marijuana grown by medical marijuana patient license holders or caregivers may only be grown on real property owned by the patient license holder or on real property for which the patient license holder has the property owner's written permission to grow marijuana on the property.
- B. All medical marijuana plants grown by a patient or caregiver shall be grown so that the marijuana is not accessible to a member of the general public. No marijuana plants shall be visible from any street adjacent to the property. For purposes of this section, "visible" means viewable by a normal person with 20/20 eyesight without the use of any device to assist in improving viewing distance or vantage point.
- C. It is expressly prohibited to operate extraction equipment or utilize extraction processes if the equipment or process utilizes butane, propane, carbon dioxide or any potentially hazardous material in a residential property.

# Air Drying



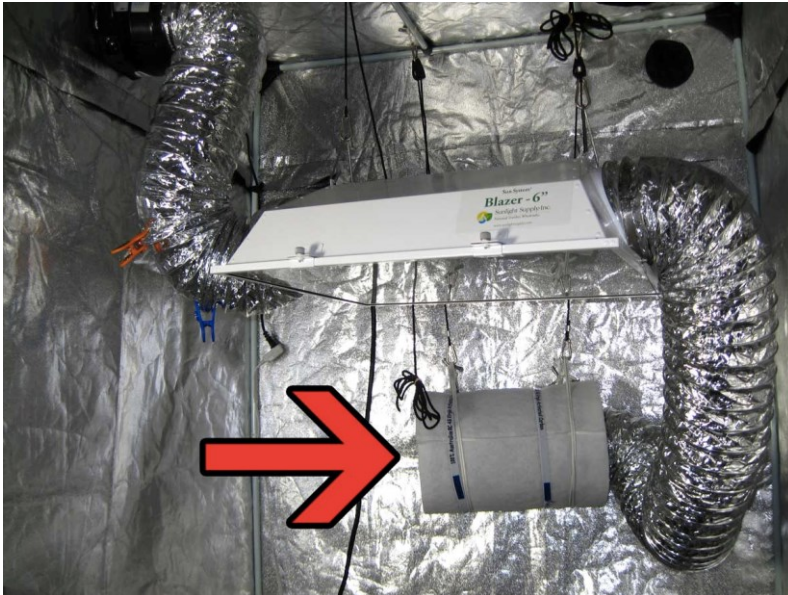
# Commercial Drying Systems (Darwin)





# Commercial areas of concern

- Potential Potent Odors
  - Regulatory options



# Enforcing Municipal Policy via the Certificates of Compliance

- **Now Title 63 Section 427 (E)**
- E. All marijuana-licensed premises, medical marijuana businesses or any other premises where marijuana or its by-products are licensed to be cultivated, grown, processed, stored or manufactured shall submit with their application, after notifying the political subdivision of their intent, a certificate of compliance from the political subdivision where the facility of the applicant or use is to be located certifying compliance with zoning classifications, applicable municipal ordinances and all applicable safety, electrical, fire, plumbing, waste, construction and building specification codes.

# Certificate of Compliance Form (1)

[CLEAR FORM](#)[PRINT FORM](#)

## CERTIFICATE OF COMPLIANCE FOR OMMA BUSINESSES

**Instructions:** This form is to be completed and submitted with the application or renewal of your OMMA business license. Your application or renewal will not be processed if the Certificate of Compliance is not completed and submitted.

Please visit [HERE](#) and type in the business address to determine whether the appropriate political subdivision to fill out and sign the form is the city or the county in which the business is located. After entering the address, the link provided will supply the information reflected in the EXAMPLE below. If the name of the city appears in the blank under the caption "City Name", then the city identified in the blank is the appropriate political subdivision to complete and sign the form. If the city name does not appear, but instead "UNINCORPORATED" appears in the blank under the caption "City Name", then the county is the appropriate political subdivision to sign and complete the form, and you should contact an appropriate county official, such as the Board of County Commissioners Chairperson.

### EXAMPLE

Address Range	City	Street Name	Type	Direction	Zip	State	County Name	County Code	County Zip	City Name
2000-2099		ANTHONY	CR	E	73110	OK	OKLAHOMA	0000	0000	Midwest City

→ - If "*City Name*" shows a city, please contact your city official(s).

Address Range	City	Street Name	Type	Direction	Zip	State	County Name	County Code	County Zip	City Name
1-999		VIVIAN	TER	E	74004	OK	POTTAWATOMIE	0000	1,000	Unincorporated

→ - If "*UNINCORPORATED*," contact your county as listed under "county name."

**APPLICANT INFORMATION** – PLEASE PRINT OR TYPE CLEARLY

# Certificate of Compliance Form (2)

COMPLIANCE CERTIFICATIONS			
Based upon information provided by applicant(s) to the political subdivision at this time.			
<b>1 The proposed uses satisfy the political subdivision's applicable zoning classifications and ordinances.</b>			
<input type="checkbox"/> YES	<input type="checkbox"/> NO	<input type="checkbox"/> The political subdivision has no applicable codes for which to certify compliance at this time. ←	DATE: <input type="text"/>
<input type="text"/>	<input type="text"/>	<input type="text"/>	
Printed Name of Official	Title	Signature of Official	



# Licenses Codified in Title 63

- 420A - Patient
- 420E - Temp (out-of-state)
- 420K - Caregiver (Also 427.11)
- 421A - Dispensary
- 422A - Grower
- 423A - Processor
- 424A - Transporter (Also 427.16)
- 425H - Research (Also 427.19)

# Additional Licenses Added in 2019 Legislative Session\*

## HB 2612 and SB 162 add five new license categories:

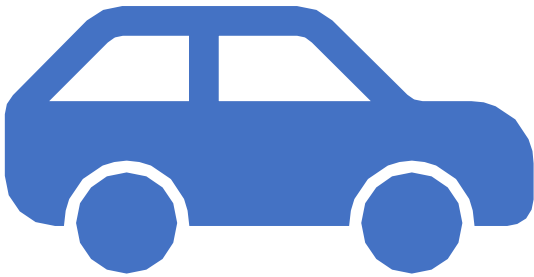
- **Title 63, 427.16 Transporter** (\$2,500)—In addition to the license granted to growers, processors, and dispensaries upon issuance of license, standalone transportation licenses will be made available for the distribution and storage of medical marijuana.
- **Title 63, 427.16 (M) Transporter Agent** (\$100)—Required for any agents, employees, officers, or owners of a transporter license holder in order to transport medical marijuana.
- **Title 63 Section 427.17 Testing Laboratory** (\$2,500)—Licenses a laboratory to perform testing on medical marijuana. This license is anticipated to be available by early 2020.
- **Title 63 Section 427.20 Education Facility** (\$500)—Licenses a nonprofit entity to provide training and education to individuals involved in the growing, processing, packaging, and testing of medical marijuana.
- **Short-Term Patient** — A sixty (60) day license to be issued to any patient applicant who meets the requirements for a two (2) year license but whose physician recommendation is only valid for sixty (60) days. Fee will be set by the Department during the rules promulgation process.

- \*OMMA Website - <http://omma.ok.gov/oklahoma-medical-marijuana-authority-outlines-upcoming-program-changes>

# Title 63 Section 427.16

All medical marijuana, concentrate and product shall be transported:

1. In vehicles equipped with Global Positioning System (**GPS**) **trackers**;
2. In a locked container and clearly labeled "Medical Marijuana or Derivative"; and
3. In a secured area of the vehicle that is not accessible by the driver during transit.



# What information is on the license?

- Digital Photograph
- Patient Name
- Parent/Legal Guardian name, if
- Patient DOB
- City and County of residence
- Type of license
- Expiration date
- Unique 24-character control number
- Used in OMMA verification system to confirm validity of license





# What information is on the license?

- Law Enforcement was concerned about accessing the license information in the field.
- Title 63 Section 420 (J) says: “The State Department of Health shall make available, both on its website and through a telephone verification system, an easy method to validate the authenticity of the medical marijuana license by the unique 24-character identification number”
- “The State Department of Health shall make available all information displayed on medical marijuana licenses, as well as whether or not the license is valid, to law enforcement electronically through the Oklahoma Law Enforcement Telecommunications System.” – Codified as Title 63 Section 420(I)
- **UPDATE → Significant fallout when implementing this system.**

# Zoning



- Law was silent on the majority of zoning approaches
- Title 63, Section 425
- SQ 788 original language –
- Section 6(F) read “no city or local municipality may unduly change or restrict zoning laws to prevent the opening of a retail marijuana establishment.”
  - Unduly
  - Retail
- Concerns about vagueness in this area prompted legislation **AND** litigation.

# Zoning Issues –

- F. 1. No city or local municipality may unduly change or restrict zoning laws to prevent the opening of a retail marijuana establishment.
- 2. For purposes of this subsection, an undue change or restriction of municipal zoning laws means an act which entirely prevents retail marijuana establishments from operating within municipal boundaries as a matter of law. Municipalities may follow their standard planning and zoning procedures to determine if certain zones or districts would be appropriate for locating marijuana-licensed premises, medical marijuana businesses or any other premises where marijuana or its by-products are cultivated, grown, processed, stored or manufactured. – Codified as Title 63, Section 425 F2
- 3. For purposes of this section, "retail marijuana establishment" means an entity licensed by the State Department of Health as a medical marijuana dispensary. Retail marijuana establishment does not include those other entities licensed by the Department as marijuana-licensed premises, medical marijuana businesses or other facilities or locations where marijuana or any product containing marijuana or its by-products are cultivated, grown, processed, stored or manufactured. – Codified as Title 63 Section 425 F3

# Zoning Solutions...(cont).

- Title 63 Section 427 (D) **“The Department shall make available to political subdivisions a list of:**
  - marijuana-licensed premises,
  - medical marijuana businesses or
  - any other premises where marijuana or its by-products are licensed to be cultivated, grown, processed, stored or manufactured to aid county and municipal governments in identifying locations within their jurisdiction and ensure compliance with local regulations.”



# Confidential Records Exempt from the ORA Title 63 Section 427.22

- A. An application or renewal and supporting information submitted by a qualifying patient or designated caregiver under the provisions of this act including, without limitation, information regarding the physician of the qualifying patient shall be considered confidential medical records that are exempt from the Oklahoma Open Records Act.
- B. The dispensary records with patient information shall be treated as confidential records that are exempt from the Oklahoma Open Records Act.
- C. All financial information provided by an applicant in its application to the Authority shall be treated as confidential records that are exempt from the Oklahoma Open Records Act.
- D. All information provided by an applicant that constitutes private business information shall be treated as confidential records that are exempt from the Oklahoma Open Records Act.
- E. As used in this section, "private business information" means information that, if disclosed, would give advantage to competitors or bidders including, but not limited to, information related to the planning, site location, operations, strategy, or product development and marketing of an applicant, unless approval for release of those records is granted by the business.

- Section 427.8 of Title 63
- ...B. Municipal and county governing bodies **may not enact medical marijuana guidelines which restrict or interfere** with the rights of a licensed patient or caregiver to possess, purchase, cultivate or transport medical marijuana within the legal limits set forth in this act or Section 420 et seq. of Title 63 of the Oklahoma Statutes or **require patients or caregivers to obtain permits or licenses in addition to the state-required licenses provided herein.**

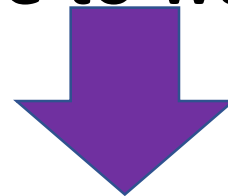
# Building/Fire Code Placed–

- N. A licensed medical marijuana business premises shall be subject to and responsible for compliance with applicable provisions for medical marijuana business facilities as described in the most recent versions of the Oklahoma Uniform Building Code, the International Building Code and the International Fire Code, unless granted an exemption by the Authority or municipality. – Codified as Title 63 Section 427.14 L



## Buffer Restrictions

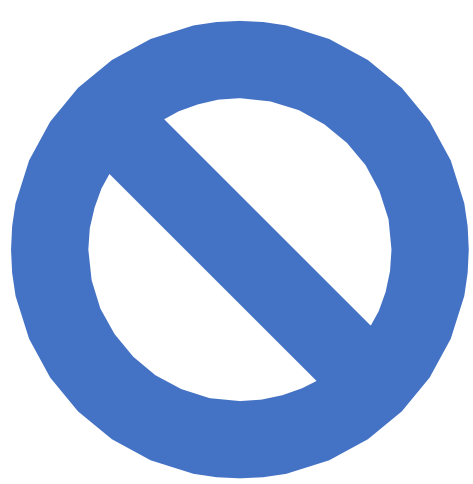
- G. The location of any retail marijuana establishment is specifically prohibited within one thousand (1,000) feet from any public or private school entrance.” - Title 63, Section 425G
- SB882 expanded this rule to waste disposal facilities



# Additional Setback Information

- Title 63, Section 425C
- It's also worth mentioning that Title 63, Section 427.8 mentions someone consuming MM 10ft from the entryway of a residential or commercial property.
- Nothing in this act or Section 420 et seq. of Title 63 of the Oklahoma Statutes shall prohibit a residential or commercial property or business owner from prohibiting the consumption of medical marijuana or medical marijuana product by smoke or vaporization on the premises, within the structures of the premises or within ten (10) feet of the entryway to the premises. However, a medical marijuana patient shall not be denied the right to consume or use other medical marijuana products which are otherwise legal and do not involve the smoking or vaporization of cannabis when lawfully recommended pursuant to Section 420 of Title 63 of the Oklahoma Statutes.



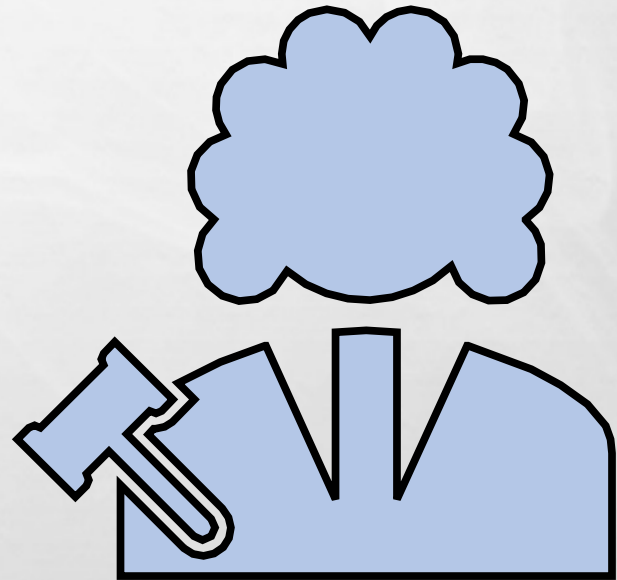


## Agency Rules –Buffer/Set Back

- How do we measure the set-back?
  - Original Rules: The distance specified shall be measured from any entrance of the school to the nearest property line point of the dispensary
  - New Rules: The distance specified shall be measured in a straight line from any entrance of any public and private school to the nearest point of the location of the dispensary”

# Public use

- Prior to the 2019 Legislative session, the only rules applying to public smoking/consumption were in agency rules.
  - Rules incorporate the public tobacco rules to apply to marijuana use
    - **No enforcement provisions in the rules**
  - Nuisance Laws
    - Multiple municipalities have incorporated nuisance sections in their marijuana ordinances
- **MM Bill Vetoed by the Governor in 2020**



# Law Enforcement – New Tools

- – A. Non patient license revocations shall be recorded
- **Additional Language: Except for revocation hearings concerning licensed patients, as defined in Section 2 of Enrolled House Bill No. 2612 of the 1st Session of the 57th Oklahoma Legislature, all licensure revocation hearings conducted pursuant to marijuana licenses established in the Oklahoma Statutes shall be recorded. A party may request a copy of the recording of the proceedings. Copies shall be provided to local law enforcement if the revocation was based on alleged criminal activity.**
- **B. The State Department of Health shall assist any law enforcement officer in the performance of his or her duties** upon such request by the law enforcement officer or the request of other local officials having jurisdiction. Except for license information concerning licensed patients, as defined in Section 2 of Enrolled House Bill No. 2612 of the 1st Session of the 57th Oklahoma Legislature, **the Department shall share information with law enforcement agencies upon request without a subpoena or search warrant.**
- **HB2612** – “The Department **shall refer complaints** alleging criminal activity that are made against a licensee to appropriate Oklahoma state or local law enforcement authorities.”

# Topics we are seeing:

- Hours of Operation
- Public Nuisance
- Public Consumption Odors
- Conflict of Law – Local Control Issues
- Edibles Policy

# Pending Legislation

- SB1245, by Sen. Dave Rader, R-Tulsa and Rep. Carol Bush, R-Tulsa, clarifies that retail marijuana establishments may not be located within **1,000 feet of the entrance of a public school**. **The bill also adds child care centers** as defined by statute to the proximity prohibition, except for family child care homes or large family child care homes as defined by statute. It provides that any retail marijuana establishment licensed and operating on July 1, 2020, will not be subject to the limitation or will any licensed and operating retail marijuana establishment be deemed in violation should a school or childcare facility locate within the prohibited distance of such licensed establishment after July 1, 2020. (Amended by Senate, Emergency Measure) Last Action 4/6/20: Withdrawn from Rules, Direct to Calendar



# Pending Legislation

- SB0959, by Sen. Nathan Dahm, R-Broken Arrow, Rep. Jon Echols, R-Oklahoma City, and Rep. Sean Roberts, R-Hominy, **makes it illegal for a person under the influence of medical marijuana to carry or use shotguns, rifles or pistols.** It provides that the Oklahoma State Bureau of Investigation cannot deny an otherwise qualified applicant from obtaining a handgun license pursuant to the Oklahoma Self-Defense Act solely on the basis of the applicant being a lawful holder of a medical marijuana patient license. (Amended by Senate, Carryover Bill, Committee Substitute) Last action 5/6/20: Second Reading, direct to Calendar

# Pending Legislation

- SB0887, by Sen. Greg McCortney, R-Ada and Rep. Jon Echols, R-Oklahoma City, allows counties to establish, assess and collect fees from medical marijuana licensees or caregivers who, upon request and approval by the county where the person resides, **exceeds the maximum possession limits. The act only authorizes the person to exceed the set limits of possession within the borders of the county.** (Amended by Senate, Carryover Bill, Emergency Measure) Last action 4/9/20: CR; Do Pass Rules Committee

# Pending Legislation

- SB0765, by Sen. Greg McCortney, R-Ada and Rep. Jon Echols, R-Oklahoma City, prohibits the smoking of marijuana in public places. **The bill permits institutions of the Oklahoma State System of Higher Education to declare themselves marijuana free, including free of marijuana and marijuana products.** It exempts from the restrictions on marijuana smoking medical research or treatment centers, if marijuana smoking is integral to the research or treatment. (Amended by House, Amended by Senate, Stricken Title, Carryover Bill, Emergency Measure, Stricken enacting clause)
- Last action 4/9/20: Enacting clause stricken

# Pending Legislation

- SB0756, by Sen. Greg McCortney, R-Ada and Rep. Jon Echols, R-Oklahoma City, requires all medical marijuana and medical marijuana products shall be packaged in child resistant packages as required by the federal Poison Prevention Packaging Act of 1970. It prohibits medical marijuana packaging from bearing a reasonable resemblance to any commercially available product. It requires medical marijuana products shall be packaged to minimize appeal to children and shall not depict shapes, images, text or designs appealing to children. It requires medical marijuana product packages to be plain; be designed to maximize the shelf life of contained medical marijuana products; be tamper-evident; be child proof; protect the product from contamination and shall not impart any toxic or deleterious substance to the product; be opaque; and not depict any images or commercial logos. (Amended by Senate, Carryover Bill)

# Pending Legislation

- SB1296 – **Authorizes municipal governments to** designate municipal property as nonsmoking may **prohibit** tobacco smoking or vaping, **marijuana smoking or vaping** or other lawful products which are consumed or used in a smoked or vaporized manner.
- Last Action 4/6/20: Withdrawn from Public Safety, Direct to Calendar



***QUESTIONS OR COMMENTS?***

# WRAPPING UP



Daniel McClure  
Deputy General Counsel  
Oklahoma Municipal League

[Daniel@oml.org](mailto:Daniel@oml.org)

405-528-7515

