

**ORDINANCE NO. 2019-178 (Amendment)**

**AN EMERGENCY ORDINANCE OF THE CITY COUNCIL OF THE CITY OF THOMAS, OKLAHOMA, ADOPTING A NEW CHAPTER SIXTEEN (16) ENTITLED "RETAIL MEDICAL MARIJUANA DISPENSARIES, MEDICAL MARIJUANA CULTIVATION, AND MEDICAL MARIJUANA PROCESSORS PROPERLY LICENSED BY THE STATE OF OKLAHOMA, AND NOT LOCATED WITHIN ANY DISTANCE FROM ANY OTHER USE OR BUILDING PROHIBITED BY STATE LAW"; PROVIDING FOR SECTION 16-101 ENTITLED "DEFINITION OF TERMS"; PROVIDING FOR SECTION 16-102 ENTITLED "MEDICAL MARIJUANA LICENSES"; PROVIDING FOR SECTION 16-103 ENTITLED "PROHIBITED FACILITIES"; PROVIDING FOR SECTION 16-104 ENTITLED "MARIJUANA GROWING FACILITIES FOR PERSONAL MEDICAL USE"; PROVIDING FOR SECTION 16-105 SMOKING MARIJUANA IN PUBLIC PLACES PROHIBITED; PROVIDING FOR REPEALER; SAVINGS; CODIFICATION; SEVERABILITY; PENALTY; MORATORIUM ORDINANCE REPEALED; AND DECLARING AN EMERGENCY.**

**EMERGENCY ORDINANCE**

**BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF THOMAS, OKLAHOMA:**

WHEREAS, the voters enacted certain legislation which permitted medical dispensaries, medical cultivator and medical processors for marijuana and other THC based products;

WHEREAS, the City of Thomas, Oklahoma, has determined to exercise its police power through zoning and land use controls with regard to this new industry;

WHEREAS, although many legal actions have been taken against cities and towns of this state which may be similar to this ordinance, since no final unappealable decision has been issued by any court of competent jurisdiction, the City Council of the City of Thomas, Oklahoma, has legislatively determined to adopt this ordinance at this time, and which regulations and ordinance will be re-reviewed in the event the Oklahoma Supreme Court, or other lower competent lower court, issues a final, unappealable decision, whose decision may provide guidance to the governing body;

WHEREAS, the provisions contained in this ordinance are consistent with the opinions of leading attorneys from Colorado, who have dealt with these issues concerning local government regulation of the marijuana industry, and who made presentations to the Oklahoma Municipal Attorneys Association at a recent conference; and

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF THOMAS, OKLAHOMA, THAT CHAPTER 16 OF THE THOMAS MUNICIPAL CODE 2015 IS HEREBY ESTABLISHED HEREIN AND SHALL READ AS FOLLOWS:

**SECTION I.** That Chapter 16 of the Thomas City Code is hereby adopted and shall read as follows:

**16-101 Definition of Terms**

1. "Application" means an Application for a Permit under this Chapter and includes all supplemental documentation attached or required to be attached thereto; the Person filing the Application shall be known as the "Applicant".
2. "Clerk" means the Thomas City Clerk or his/her designee.
3. "Code Enforcement Officer" means the Thomas Code Enforcement Officer or his/her designee.
4. "License" means a current and valid License for a Medical Marijuana Dispensary facility issued by the State of Oklahoma.
5. "Licensee" means a person holding a current and valid Oklahoma license for a Medical Marijuana Dispensary facility.
6. "Permit" means a current and valid permit for a Medical Marijuana Dispensary facility issued under this Chapter, which shall be granted to a permit holder only for and limited to a specific Permitted Premises and specific Permitted Property.
7. "Permit Holder" means the person that holds a current and valid permit issued under this Chapter.
8. "Permitted Premises" means the particular building or buildings within which the permit holder will be authorized to conduct the facility's activities pursuant to the permit.
9. "Permitted Property" means the real property comprised of a lot, parcel or other designated unit of real property upon which the permitted premises is situated.
10. "Person" means a natural person, company, partnership, profit or non-profit corporation, limited liability company or any joint venture for a common purpose.
11. "Medical Marijuana Cultivation" means an establishment licensed under Title 63, Section 422 of the Oklahoma Statutes whereby the growing of medical Marijuana is conducted on the premises and then sold to a licensed retailer or processor.

12. "Medical Marijuana Dispensary" means an establishment licensed under Title 63, Section 421 of the Oklahoma Statutes whereby the retail sale of medical Marijuana is conducted on the premises.
13. "Medical Marijuana Processor" means an establishment licensed under Title 63, Section 423 of the Oklahoma Statutes, whereby Marijuana plants are processed (packaged) into the concentrates, edible, and other forms for consumption.

#### **16-102 Medical Marijuana Licenses**

1. No person shall operate a Medical Marijuana Dispensary at any time or any location within the City of Thomas unless a currently-effective permit for that person at that location has been issued under this Chapter.
2. Medical Marijuana establishments (dispensaries) shall operate only as allowed under this Chapter.
3. The requirements set forth in this Chapter shall be in addition to, and not in lieu of, any other licensing or permitting requirements imposed by applicable federal, state or local laws, regulations, codes or ordinances.
4. Each Applicant shall pay such application fees, renewal fees or other fees determined by the City to defray the costs incurred by the City for inspection, administration and enforcement of the local regulations regarding Medical Marijuana Establishments. The Thomas City Council shall by Resolution set the fees in an amount not to exceed any limitations imposed by Oklahoma law.
5. A Permit and Renewal Permit shall not confer any vested rights or reasonable expectations of subsequent renewal on the Applicant or Permit Holder, and shall remain valid only until the 30<sup>th</sup> day of June immediately following its approval.
6. It is the sole and exclusive responsibility of each Permit Holder or Person applying to be a Permit Holder at all times during the Application period and during its operation to immediately provide the City of Thomas with all material changes in any information submitted on an Application and any other changes that may materially affect any state license or its City Permit.
7. No Permit issued under this Chapter may be assigned or transferred to any person unless the assignee or transferee has submitted an Application and all required fees under this Chapter and has been granted a Permit by the City of Thomas. No Permit issued under this Chapter is transferrable to any other location except for the Permitted Premises on the Permitted Property.

8. The original Permit issued under this Chapter shall be prominently displayed at the Permitted Premises in a location where it can be easily viewed by the public, law enforcement and administrative authorities.
9. Acceptance by the Permit Holder of a Permit constitutes consent by the Permit Holder and its owners, officers, manager, agents and employees for any state, federal or local law enforcement to conduct random and unannounced examinations of the facility and all articles of property in that facility during business hours to ensure compliance with this Chapter, and other local regulations, and with the Permit.
10. A Permit holder may not engage in any other Commercial Medical Marijuana Facility in the Permitted Premises or on the Permitted Property, or in its name at any other location within the City of Thomas, without first obtaining a separate Permit.
11. No Permit shall be granted or renewed for a Medical Marijuana Dispensary in a residence
12. In addition to the terms of this Chapter, any Medical Marijuana Dispensary shall comply with all Chapter, including without limitation the City Zoning Ordinances, and with all other applicable federal, state and local ordinance, laws, codes and regulations. To the extent that the terms of this Chapter are in conflict with the terms of any other applicable federal, state, or local ordinances, laws, codes or regulations, the terms of the most restrictive ordinance, law, code or regulation shall control.
13. **Application.** An application for a Permit for a Retail Marijuana Establishment shall be submitted to the City Clerk, and shall contain the following information:
  - A. The name, address, phone number and email address of the proposed Permit Holder and the proposed Retail Medical Marijuana Dispensary location.
  - B. The names, home addresses and personal phone numbers for all owners, directors, officers and managers of the Permit Holder and the Retail Marijuana Establishment facility.
  - C. One (1) copy of all the following:
    1. All documentation showing the proposed Permit Holder's valid tenancy, ownership or other legal interest in the proposed Permitted Property and Permitted Premises. If the applicant is not the owner of the proposed Permitted Property and Permitted Premises, a notarized

statement from the owner of such property authorizing the use of the property for a Medical Marijuana Dispensary.

2. If the proposed Permit Holder is a corporation, non-profit organization, limited liability company or any other entity other than a natural person, indicate its legal status, attach a copy of all company formation documents (including amendments), proof registration with State of Oklahoma, and a certificate of good standing.
  3. A valid, unexpired driver's license or state issued ID for all owners, directors, officers and managers of the proposed Establishment.
  4. Evidence of a valid sales tax license for the business if such a license is required by state law or local regulations.
  5. Non-refundable Application fee.
  6. Submit a Business and Operations Plan, showing in detail the Retail Medical Marijuana Establishment's proposed plan of operation, including the anticipated number of employees, a security plan, a description by category of all products to be sold, a description and plan of all equipment and methods that will be employed to stop any impact to adjacent uses, including enforceable assurances that no odor will be detectable from the outside of the Permitted Premises, and a plan for the disposal of Marijuana and related by-products that will be used at the establishment.
  7. Whether the applicant has ever applied for or has been granted any commercial license or certificate issued by a licensing authority in the State of Oklahoma or any other jurisdiction that has been denied, restricted, suspended, revoked, or not renewed and a statement describing the facts and circumstances concerning the application, denial, restriction, suspension, revocation, or non-renewal, including the licensing authority, the date each action was taken, and the reason for each action.
  8. Information regarding any other Medical Marijuana Dispensary that the Licensee is authorized to operate in any other jurisdiction within the State of Oklahoma, or any other State, and the Applicant's involvement in each facility.
- D. Any other information reasonably requested by the City of Thomas to be

relevant to the processing or consideration of the Application.

14. A Medical Marijuana Dispensary Permit will not be granted to any applicants for a Main Street Address between Roh Street and South Street or a Broadway Street (Highway 33) address between 1<sup>st</sup> Street and 15<sup>th</sup> Street within the municipal boundaries of the City of Thomas, Oklahoma.
15. A Retail Marijuana Establishment will not be granted to any applicants where the proposed location would be located within one thousand (1,000) feet of any of the following uses:
  - a. public school, elementary, secondary, K-12;
  - b. within one thousand (1,000) feet of another medical marijuana or retail marijuana store.
16. For the distance requirements outlined in this Chapter, the distances described shall be computed by direct measurement in a straight line from the nearest property line of the proposed Medical Marijuana Dispensary to the nearest entrance of the building or unit described above.
17. Sign Restrictions. No pictures, photographs, drawings or other depictions of marijuana or marijuana paraphernalia shall appear on the outside of any Permitted Premises nor be visible outside of the Permitted Premises on the Permitted Property. The words "Marijuana", "Cannabis" and other words used or intended to convey the presence or availability of Marijuana shall not appear on the outside of the Permitted Premises nor be visible outside of the Permitted Premises on the Permitted Property.
18. Use of Marijuana. The sale, consumption or use of alcohol or tobacco products on the Permitted Premises is prohibited. Smoking or consumption of controlled substances, including Marijuana, on the Permitted Premises is prohibited.
19. Indoor Operation. All activities of a Medical Marijuana Dispensary, including without limitation, distribution or the sale of Marijuana, and all other related activity permitted under the Permit Holder's License or Permit must occur indoors. The Facility's operation and design shall minimize any impact to adjacent uses, including the control of any odor by maintaining and operating an air filtration system so that no odor is detectable outside the Permitted Premises.
20. Distribution. No person operating a dispensary shall provide or otherwise make available Marijuana to any person who is not legally authorized to receive medical Marijuana under state law.

21. Permits. All necessary building, electrical, plumbing, and mechanical permits must be obtained for any part of the Permitted Premises in which electrical, wiring, lighting or other utilities that support the retail sale of medical marijuana are located.
22. Security. Permit Holders shall at all times maintain a security system that meets State law requirements, and shall also include the following:
- A. Security surveillance cameras installed to monitor all entrances, along with the interior and exterior of the Permitted Premises.
  - B. Robbery and burglary alarm systems which are professionally monitored and operated 24 hours a day, 7 day a week.
  - C. A limited access room in the Permitted Premises that shall store all Marijuana and cash remaining in the Facility overnight.
  - D. All Marijuana in whatever form stored at the Permitted Premises shall be kept in a secure manner and shall not be visible from outside the Permitted Premises, nor shall it be grown, processed, exchanged, displayed or dispensed outside the Permitted Premises.
  - E. All security recordings and documentation shall be preserved for at least 7 days by the Permit Holder and made available to any law enforcement upon request for inspection.
23. Renewal Applications shall require approval by the Code Enforcement Officer and shall be submitted to and received by the City Clerk not less than sixty (60) days prior to the expiration of the annual permit, except that an Application requesting a change in the location of the Permitted Premises shall be submitted and received not less than ninety (90) days prior to the expiration of the Permit. A Permit Holder whose Permit expires and for which a complete Renewal Application has not been received by the expiration date shall be deemed to have forfeited the Permit under this Chapter. The City will not accept Renewal Applications after the expiration date of the Permit. Any denial must be in writing and must state the reasons for such denial. Any final denial of a Permit may be appealed to the Thomas City Council.
24. Each Medical Marijuana Dispensary shall be operated from the Permitted Premises on the Permitted Property. No Medical Marijuana Dispensary shall be permitted to operate from a moveable, mobile, or transitory location. No person under the age of eighteen (18) shall be allowed to enter the Permitted Premises without a parent or legal guardian.

25. It is the intent of the City Council of the City of Thomas, Oklahoma, that nothing in this Chapter be construed to: 1) allow persons to engage in conduct that endangers or causes a public nuisance; 2) allow the use of Marijuana for non-medical purposes; or 3) allow any activity that is otherwise illegal and not permitted by state law.

26. Penalties and Consequences for Violation. In addition to other penalties or legal consequences provided under applicable federal, state and local law, regulations, codes and ordinances:

- A. Willful violations of the provisions of this Chapter or failure to comply with any of the requirements of this Chapter shall constitute a misdemeanor.
- B. Violations of the provisions of the Chapter will result in the revocation of the Medical Marijuana Dispensary Permit.
- C. In addition to any other remedies, the City of Thomas may institute proceedings for injunction, mandamus, abatement or other appropriate remedies to prevent, enjoin, abate or remove any violations of this Chapter. The rights and remedies provided herein are both civil and criminal in nature. The imposition of any fine, jail sentence or forfeiture shall not exempt the violator from compliance with the provisions of this Chapter.

#### **16-103 Prohibited Facilities**

- 1. Medical Marijuana Cultivator Facilities are hereby prohibited within the municipal boundaries of the City of Thomas, Oklahoma.
- 2. Medical Marijuana Processors are hereby prohibited within the municipal boundaries of the City of Thomas.

#### **16-104 Marijuana Growing Facilities for Personal Medical Use**

- 1. All owners of Marijuana growing facilities for personal medical use who do not own the said property, are required to notify the owner of the proposed Medical Marijuana Growing property and obtain a notarized statement from the owner of such property authorizing the use of the property for a Personal Medical Use Marijuana Growing Facility.
- 2. Any access or entry point to residential facilities used for Marijuana cultivation for personal medical use must be secured by lock and key or equivalent, at all times except when the residential facility is actively being



supervised in person by the permit holder or tenant (if applicable).

3. All Marijuana plants grown for personal medical use shall be grown so 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 where Medical Marijuana is being grown.
4. The primary use of the residential property which Marijuana is grown shall remain at all times a residence, with legal and functioning cooking, eating, sleeping and sanitation/bathing facilities with proper ingress and egress. No room shall be used for growing Marijuana where such cultivation will impair or prevent the primary uses of cooking, eating, sleeping or sanitation/bathing.

#### **16-105 Smoking Marijuana in Public Places Prohibited**

1. Smoking Marijuana in any public place is prohibited and subject to a fine of \$150

**Section II.** REPEALER. All ordinances or parts thereof which are inconsistent with this ordinance are hereby repealed.

**Section III.** SAVINGS CLAUSE. Nothing in this ordinance hereby adopted shall be construed to affect any suit or proceeding now pending in any court, or any rights acquired or liability incurred nor any cause or causes of action accrued or 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 IV.** CODIFICATION. This ordinance shall be codified as Chapter 16 of the Thomas Municipal Code 2015.

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

**Section VI.** PENALTY. Except as otherwise provided in this ordinance, whenever in this ordinance an act or omission is prohibited or is made or declared to be unlawful or an offense or a misdemeanor, or whenever in this ordinance the doing of any act is required or the failure

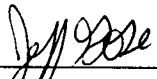
to do any act is declared to be unlawful, the violation of any provision of this ordinance, upon conviction, shall be punished by a fine of not exceeding Four Hundred Dollars (\$400.00), plus costs. Each day or any portion of a day during which any violation of this code or of any ordinance shall continue shall constitute a separate offense. Any person who shall aid, abet or assist in the violation of any provision of this ordinance shall be deemed guilty of a misdemeanor and upon conviction shall be punished as provided hereinabove.

**SECTION VII. MORATORIUM ORDINANCE REPEALED.** The moratorium ordinance adopted on the 14<sup>th</sup> day of May, 2019, is hereby repealed.

**Section VIII. EMERGENCY.** In order to protect the health, safety and welfare of the general public of the City of Thomas, Oklahoma, and in order to immediately provide for this Chapter 16 which provides for certain land use and zoning controls on the marijuana industry in the City of Thomas, Oklahoma, an emergency is hereby declared; therefore, this ordinance shall become effective from and after its date of publication.

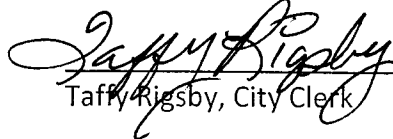
Approved and executed this 14<sup>th</sup> day of May 2019.

THE CITY OF THOMAS, OKLAHOMA

  
\_\_\_\_\_  
Jeff Gose, Mayor

(Seal)

ATTEST:

  
\_\_\_\_\_  
Taffy Rigsby, City Clerk

**RESOLUTION No. 18-19-13**

BE IT REMEMBERED that on the 14<sup>th</sup> day of May 2019 at the regular meeting of the Thomas City Council, Custer County, Oklahoma, the following Resolution was presented and passed.

BE IT RESOLVED: The Thomas City Council determined that it was in the best interest of the residents of the City of Thomas to establish permit fees to defray the costs incurred by the City for inspection, administration and enforcement of the local regulations regarding Medical Marijuana Establishments and Marijuana Growing Facilities for Personal Medical Use.

The following Permit Fee was approved:

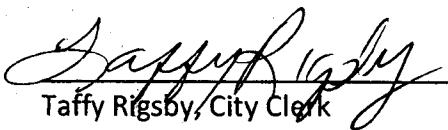
**Medical Marijuana Dispensaries** - \$2,500 for initial permit application

WHEREAS, it is in the best interest of the residents of the City of Thomas to expedite the fees of the above permits and therefore the new permit fees will take affect immediately.

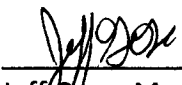
NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Thomas that the Mayor is hereby authorized and directed to sign and execute this resolution providing such permit fees.

PASSED, APPROVED AND ADOPTED by the City Council of the City of Thomas this 14<sup>th</sup> day of May, 2019

ATTEST:

  
Taffy Rigsby, City Clerk

City of Thomas

  
Jeff Gose, Mayor