

Re-Posted at Warr Acres City Hall 06 -08-2020 @ 11:30 a.m.

The Planning Commission Meeting will begin at 7 pm, or immediately following the Special City Council Meeting.

CITY OF WARR ACRES
REGULAR PLANNING COMMISSION MEETING

AMENDED AGENDA

5930 NW 49th Street, Warr Acres, OK 73122
Meeting will be remote to include use of teleconferencing and video conference
Tuesday, June 9th, 2020
7:00 P.M.

All Planning Commissioners will appear remotely by videoconference. Pursuant to 25 O.S. 2020 §307.1(C)(3), Commissioners listed as attending remotely may appear at the meeting site instead. Members of the public attending remotely will be allowed to participate in the public hearings in the same manner and to the same extent as those members of the public who attend in person.

Chairman Bob Wehba will be attending by: ZOOM – REMOTELY BY VIDEO FROM CITY HALL
Vice Chairman Barry Curl will be attending by: ZOOM - REMOTELY BY VIDEO FROM CITY HALL
Commissioner Doug Johnson will be attending by: ZOOM - REMOTELY BY VIDEO
Commissioner Lois Watson will be attending by: ZOOM - REMOTELY BY VIDEO
Commissioner Barbara Adams will be attending by: ZOOM – REMOTELY BY VIDEO FROM CITY HALL
Commissioner Von Crahan will be attending by: ZOOM – REMOTELY BY VIDEO

1. Call to Order, declaration of a quorum present and Flag Salute.
2. Approve the Minutes of the Warr Acres Planning Commission Meeting held on May 12, 2020.
3. Discussion and possible action to make a recommendation to the City Council for adoption of an Ordinance Adopting a New Section 19.41.140 (Commercial Medical Marijuana Business Uses Prohibited; Exceptions) and providing for repeal of conflicting ordinances, severability and declaring an emergency.
4. **PUBLIC HEARING:** Use Subject to review: Discussion and possible action to make a recommendation to the City Council on a medical marijuana dispensary located at the MacArthur Medical & Professional Center. The building was previously divided into 4 units addressed as 7313, 7315, 7317 and 7319 all on North MacArthur. Applicant has already been approved to operate the dispensary out of the unit addressed at 7317 North MacArthur and now seeks approval to expand that use to the remaining portions of the building. Business Name: Urban Flora Applicant Name: Kari Cunningham.
5. **PUBLIC HEARING:** Use Subject to review: Discussion and possible action to make a recommendation to the City Council concerning a medical marijuana dispensary, Budhead 2
Dispensary/Applicant: Keith Davis, located at 5930 NW Expressway, Warr Acres, OK, 73122.
6. **PUBLIC HEARING:** Discussion and possible action to make a recommendation to the City Council On St. Charles Parking lot expansion project. Applicant: Russell Kent, P.E CFM, LEED AP, DBIA, located at St. Charles Borromeo Catholic Church.

7. Questions or comments from the audience.
8. Questions or comments from staff.
9. Questions or comments from the commission members.
10. Any old or new business.
11. Adjournment.

INSTRUCTIONS FOR JOINING THE ZOOM MEETINGS ARE LISTED BELOW:

Topic: June 9, 2020 Special City Council /Planning Commission Meetings

Time: June 9, 2020 Special City Council 06:00 PM /Planning Commission Meeting 07:00 PM Central Time (US and Canada)

Join Zoom Meeting

<https://us02web.zoom.us/j/84118010787>

Meeting ID: 841 1801 0787

One tap mobile

+12532158782

Meeting ID: 841 1801 0787

Find your local number: <https://us02web.zoom.us/j/ku9r7mJgu>

Topic: June Planning Commission Meeting

Time: Jun 9, 2020 07:00 PM Central Time (US and Canada)

**MATTHEW J. LOVE
CITY ATTORNEY
CITY OF WARR ACRES**

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June 7, 2020

To: Members of the Warr Acres Planning Commission & City Council

Re: Proposed New Section 19.41.140
Generally Prohibiting Medical Marijuana Business Uses and Establishing
Exceptions

All,

The Mayor has requested that I draft an ordinance that would prohibit dispensaries from engaging in the commercial growth and/or processing of medical marijuana. A short history lesson on how we got here:

When medical marijuana was first legalized, Warr Acres enacted a new Chapter 5.57 just prior to the implementation date of the medical marijuana statutes. Chapter 5.57 made it unlawful to engage in any commercial medical marijuana business activities unless a City license had been acquired, and established a condition precedent to obtaining such a City license on the use being explicitly authorized in the zoning district. At that time, commercial medical marijuana uses were not explicitly authorized in any zoning district – effectively creating a moratorium. Pursuant to the new medical marijuana statutes, 63 O.S. 2018 §425(F), cities and towns could not outright prohibit dispensaries in their zoning code. As such, we authorized dispensaries in C3, C4 and C5 and have since narrowed the authorized districts to C4 and C5. The City Council also voted in 2019 not to pursue any zoning amendments to allow for commercial growth or processing of medical marijuana, effectively banning those standalone uses in the City limits.

At the beginning of 2019, we were forced to confront the question of whether authorized dispensaries could engage in commercial growth of medical marijuana for end sale at the dispensary. Simply put, the feedback we were getting was that there was a shortage of medical marijuana. After much discussion, we decided to interpret the Code as allowing lawful dispensaries to engage in growth and/or processing at their dispensary so long as the growth and/or processing was for their own dispensary. The logic being – dispensaries are retail properties, while growth and processing are not. Use for commercial growth and processing was not consistent with any zoning district, but dispensing, as a retail activity, was consistent with existing districts. If the growth or processing was a secondary, ancillary use for the property designed to effectuate the primary and lawful retail use, then we would allow it. But no medical marijuana could be sold by the entity to another dispensary and could only be used for the retail sale at the on-site dispensary.

While this interpretation was viewed as a viable compromise at the time (2019), the medical marijuana growth and processing capacity has since increased. That, coupled with the City's own experience with the retail industry have led the City to revisit prior decisions. The decision to allow dispensaries in C3 was revisited and reversed late last year. Now the Mayor has asked to reconsider allowing dispensaries to engage in growth and/or processing for their own dispensary.

If adopted, 19.41.140 would ban all commercial growth or processing of medical marijuana in the Warr Acres City Limits, including at dispensaries.

For dispensaries who are already open and have already started to engage in lawful commercial growth or processing of medical marijuana, they will be allowed to continue such uses as legally nonconforming. Pursuant to Chapter 19.56 of the zoning code, if a nonconforming use is discontinued for a period of 3 months, legal nonconformance is lost. As such, if a dispensary that is currently engaging in commercial medical marijuana growth and/or processing ceases that portion of the operation for 3 months, then the property will be forever barred from engaging in that use.

Lastly, I would remind both bodies that use follows the land not the user. A property is approved for dispensary use, not a particular business. Once a lot is approved for a dispensary, the lot may change hands over and over and, so long as the use continues without 3 month interruption, the fact that the user has changed is irrelevant.

ORDINANCE NO. ____

AN ORDINANCE ADOPTING A NEW SECTION 19.41.140 IN TITLE 19, CHAPTER 19.41 OF THE WARR ACRES MUNICIPAL CODE ESTABLISHING A GENERAL PROHIBITION ON THE USE OF PROPERTY FOR COMMERCIAL MEDICAL MARIJUANA BUSINESS USES AND ESTABLISHING EXCEPTIONS; PROVIDING FOR REPEAL OF CONFLICTING ORDINANCES, SEVERABILITY AND DECLARING AN EMERGENCY.

EMERGENCY ORDINANCE

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF WARR ACRES, OKLAHOMA:

SECTION 1. That a new Section 19.41.140 be adopted in Title 19, Chapter 19.41 of the Warr Acres Municipal Code to read as follows:

19.41.140: COMMERCIAL MEDICAL MARIJUANA BUSINESS USES PROHIBITED; EXCEPTIONS:

The City of Warr Acres has followed its 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. With the exception of retail medical marijuana establishments (those licensed as a dispensary), the City has determined that there are no zones or districts where other, non-retail medical marijuana business activities would be appropriate. As such, it is hereby declared unlawful to engage in any non-retail, commercial medical marijuana business activities including, but not limited to, the commercial growth and/or processing of medical marijuana.

Use of property for a retail medical marijuana establishment (dispensary) shall only be allowed under the following conditions:

1. The use is explicitly authorized in the zoning district ordinances;
2. All City ordinances related to businesses licensing have been complied with; and
3. No medical marijuana business related activities except those authorized by State law pursuant to the issuance of a dispensary license are allowed. Commercial growth and/or processing by a dispensary is prohibited.

SECTION II. REPEAL. All ordinances conflicting with Section I of this ordinance are hereby repealed upon the effective date of this ordinance.

SECTION III. SEVERABILITY. The provisions of this ordinance are severable and if any part or provision thereof shall be adjudged invalid by any court of competent jurisdiction, such adjudication shall not effect or impair any of the remaining parts or provisions hereof.

SECTION IV. EMERGENCY. Whereas, it being immediately necessary for the preservation of the peace, health, welfare and safety of the City of Warr Acres, Oklahoma and the inhabitants thereof that the provisions of this ordinance be put into full force and effect, an emergency is hereby declared to exist by reason whereof this ordinance shall take effect and be in full force and effect from and after its passage as provided by law.

ADOPTED AND PASSED by the Council of the City of Warr Acres, Oklahoma after a public hearing thereon and in compliance with the Oklahoma Open Meeting Act on this 17th day of June, 2020.

MAYOR

ATTEST:

CITY CLERK

APPROVED as to form this 17th day of June, 2020.

CITY ATTORNEY