

## BID REVIEW RECOMMENDATION

**Date:** August 20th, 2018  
**Project:** 2017 CDBG Project Johnstone Park Parking Lot  
**Bid No:** **2018-2019-009**  
**Department:** Engineering Department  
**Budget Amount / Fund / Dept:** 170,000.00 / half 467 & half 449 / 431

### PROJECT DESCRIPTION:

This project consists of furnishing all materials, labor, & expenses necessary to construct a new parking lot and sidewalk in Johnstone Park just south of Kiddie Park.

This project includes ADA signage and striping to complete the parking lot. All work shall be done within City-owned property.

### COMMENTS:

In addition to advertising in the local newspaper, Dodge Reports, Southwest Construction News, E-Plan Bidding, & The Blue Book Building & Construction Network, bid invitations were mailed to thirteen (13) regional contractors. Nine (9) of those contractors showed interest and picked up construction documents. All nine (9) attended the mandatory pre-bid meeting and five (5) submitted a bid:

- Diversified Civil Contractors (Tulsa, OK) ..... \$159,118.50
- Whaling Construction (Bartlesville, OK) ..... \$161,432.75
- KSL Dirtworks LLC (Bartlesville, OK) ..... \$185,770.50
- Jeff Graham Construction (Coffeyville, KS) ..... \$191,983.50
- Triangle Construction (Tulsa, OK) ..... \$297,146.00

The bids were evaluated for addendums, bid bonds, line item prices, and arithmetic. All bids have all the necessary components and no errors were found.

### BUDGET AMOUNT:

\$170,000.00 is the total budgeted amount for this project. The low bid of \$159,118.50 from Diversified Civil Contractors is \$10,881.50 under the available budget. Remaining available funds will be used for additional work on this project that will be added at a later date.

### RECOMMENDATION:

Diversified Civil Contractors is a Tulsa based, general contracting company that has the experience and qualifications needed to complete this project and has demonstrated the necessary technical and project-related expertise to be approved as the contractor for this project. The company has sufficient bonding capacity to bond this project. Thus, staff recommends awarding the project to Diversified Civil Contractors for the bid amount of \$159,118.50.

  
\_\_\_\_\_  
Council Member/or Staff Member

8/20/2018  
\_\_\_\_\_  
Date

**DATE:** 09.04.2018

**BID NO:** 2018-2019-012

## **BID REVIEW RECOMMENDATION**

**DEPARTMENT:** Fire

**BUDGET AMOUNT:** 610,000.00

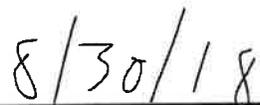
**SOURCE OF FUND:** 482-250-53410

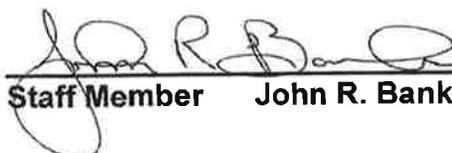
**PROJECT / EQUIPMENT DESCRIPTION:** One (1) New 1500 GPM Pumper Type Apparatus Fire Truck

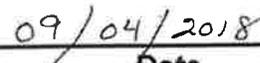
**COMMENTS:** A notice to bidders was published in the Examiner Enterprise on July 22, 25 & 29<sup>th</sup>. In addition, bid packets were sent out to 3 vendors with 2 bids being received from the following: Chief Fire & Safety located in Chickasha, Oklahoma and Conrad Fire Equipment located in Olathe, Ks. The low bid was from Chief Fire & Safety of Chickasha, Ok. in the amount of \$589,266.00. The next lowest bid was \$679,966.62 from Conrad Fire Equipment of Olathe, Ks. This new Fire Truck will replace the truck that is currently housed at Fire Station 3 located at Madison & Tuxedo. This fire truck will be equipped with the latest and most up to date equipment including a full complement of Fire Hose, Jaws of Life and Self Contained Breathing Apparatus.

**RECOMMENDATION:** It is recommend that Chief Fire & Safety be awarded the bid in the amount of \$589,266.00.

  
\_\_\_\_\_  
Council Member John J. Kane

  
\_\_\_\_\_  
Date

  
\_\_\_\_\_  
Staff Member John R. Banks

  
\_\_\_\_\_  
Date

# MEMO

**TO:** Mike Bailey, City Manager  
**FROM:** Lisa Beeman, Community Development Director  
**CC:** Laura Sanders, HR Manager  
Rocky Bevard, Interim Police Chief  
Terry Lauritsen, Utilities Director  
Jerry Maddux, City Attorney  
**DATE:** August 27, 2018  
**RE:** Consider and take action on an ordinance amending the Bartlesville Municipal Code regulating medical marijuana

## BACKGROUND

State Question 788, entitled Medical Marijuana, approved by the voters of Oklahoma on June 26, 2018, legalized marijuana for medical use. Codified as Title 63, Chapter 15, Section 420A et. seq., this law went into effect on July 26, 2018. Attached as Exhibit A is a summary of this new State Law. A copy of the text of State Question 788 can be found at the following link: <http://omma.ok.gov/Websites/ddeer/images/SQ%20788.pdf>.

Oklahoma joins 29 other states that have legalized marijuana for medicinal use. The Oklahoma State Department of Health has prepared emergency administrative rules to create a process to receive, review and issue license applications within timeframes established by State Questions 788. A copy of these rules can be found at the following link: <http://omma.ok.gov/Websites/ddeer/images/310-681%20EME2%20Medical%20Marijuana%20Rules%208-1-18%20wRedMark%20Revisions.pdf>.

On August 25, 2018, the Oklahoma Medical Marijuana Authority, established under the Oklahoma State Department of Health, began receiving and reviewing applications for medical license recipients, dispensaries, growers, and packagers. The State Department has two weeks to review and approve or reject applications, which would be roughly September 10, 2018 at the earliest before applications could be approved.

Because State Question 788 was approved by the voters as a statutory rather than constitutional measure, the State legislature is able to amend the law through subsequent bills. Information provided by the OSDH and our area State Legislators indicates that the laws and final administrative rules are still being reviewed at the State level and will likely change in the next legislative session which begins on February 4, 2019.

## IMPACT OF STATE LAW UPON CITY REGULATIONS

The retail sale, cultivation and production of medical marijuana impact the operations of the City and its resources, specifically with respect to licensing, zoning, building and fire codes, nuisance regulations, workplace issues, and criminal offenses. This memo discusses these impacts.

### Zoning and Land Use

Licensed Retail Medical Marijuana Dispensary: The new State law (Section 425A Subsection F) states that no city may change or restrict zoning laws to prevent the opening of a retail marijuana establishment. The State emergency administrative rules define a retailer as a licensed medical marijuana dispensary. Therefore, it is clear that the State law requires cities in Oklahoma to permit a licensed retail medical marijuana dispensary as a legal land use.

Under the current Zoning Regulations for the City of Bartlesville, retail sales of medical marijuana products, or a medical marijuana dispensary, would be deemed a commercial land use, similar to a drug store or pharmacy, which is permitted in five of the commercial zoning districts (C-2, C-3, C-4, C-5, and C-7).

Section 425A Subsection (G) of the new State law also states that the location of any retail marijuana establishment is specifically prohibited within 1,000 feet from any public or private school entrance. The emergency administrative rules adopted by the Oklahoma State Department of Health defines a public school and a private school as follows:

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.

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.

Using those definitions, Exhibit B is a map identifying areas in Bartlesville that are within 1,000 feet of a public or private school entrance. As shown on this map, the majority of the areas which are zoned to accommodate a medical marijuana dispensary are not affected by the 1,000' limitation.

Other Licensed Commercial Medical Marijuana Establishments: The State law provides little to no guidance with regard to a city's regulation of other commercial medical marijuana licensees, which include a licensed establishment for a commercial grower, processor, or researcher.

Because the State law is silent on a requirement for Cities to permit the location of other State-licensed commercial medical marijuana establishments, including growers, processors, and researchers, staff recommends that no action be taken at this time by the City Council to permit such establishments until further direction is provided by the State and the Oklahoma State Department of Health (OSDH).

**City of Bartlesville Personnel Manual/ Drug-Free Workplace/Substance Abuse Policy**

Section 425A Subsection (B) of the new law prohibits employers from discriminating against an employee for holding a marijuana license. Action may be taken against these employees if the holder of the license uses or possesses marijuana in his or her place of employment or during hours of employment. Action may not be taken against a marijuana license holder due to results of a drug test showing positive for marijuana or its components.

Oklahoma Statute Title 40 § 554 in the Standards for Workplace Drug and Alcohol Testing Act allows Oklahoma employers to require employees to take a drug test following a workplace accident that results in injury or property damage, at random, as part of a routine fitness for-duty exam, or as a follow-up to a rehabilitation program. Employers may also test if they have a reasonable belief that an employee is under the influence of drugs at work. Under current law, if an employer has in place a complying workplace drug and alcohol testing policy, and the applicant tests positive for a prohibited substance, such as marijuana, the applicant may be denied employment. Additionally, if an employee tests positive for a prohibited substance, the employer has the options of discipline, suspension or termination of the employee. Title 40 § 552(6) defines “drug” as amphetamines, **cannabinoids**, cocaine, phencyclidine (PCP), hallucinogens, methaqualone, opiates, barbiturates, benzodiazepines, synthetic narcotics, designer drugs, or a metabolite of any of the substances listed.

Section 6-1 of the City of Bartlesville Personnel manual sets out the reasons for disciplinary action up to termination, which includes the “use, sale, possession, unlawful manufacture, distribution, dispensing or being under the influence of alcohol or drugs during working hours.” The use of the term “drugs” refers to any substance, legal or illegal, prescribed or non-prescribed, which impairs an employee's ability to perform the normal job duties.

The City's Substance Abuse Policy states the City of Bartlesville has a vital interest in providing for the safety and well-being of all employees and the public and maintaining efficiency and productivity in all of its operations. The City is committed to the maintenance of a drug and alcohol free workplace.

At this time, no amendment is needed to City of Bartlesville workplace regulations as a result of the passage of State Question 788 or the State emergency administrative rules.

### **Offenses Involving Controlled Substances**

The Bartlesville Municipal Code would regulate medical marijuana under Chapter 12 Offenses, Article V, Controlled Substances, and, further, as provided by the Uniform Controlled Dangerous Substances Act of the State of Oklahoma. Therefore, the possession, use, cultivation, distribution, and/or transportation of marijuana or any marijuana-derived product for non-medical purposes remains illegal with the City of Bartlesville. The only legal possession, use, cultivation, distribution, and/or transportation of marijuana or any marijuana-derived product is restricted to those persons or establishments that are in possession of a State of Oklahoma issued medical marijuana license, whether as a patient or caregiver, or as a commercial establishment.

Under the State law, unlicensed persons caught with possession of marijuana, but who “can state a medical condition” can be punished by a fine not exceeding \$400. A person could state he/she has a subjective medical condition and pay the fine.

The State administrative rules which accompany the State Law also state that smoking of marijuana or marijuana-derived product shall be subject to the same restrictions for tobacco under the Smoking in Public Places and Indoor Workplaces Act.

### **Taxation**

The new law creates a 7% sales tax paid to the State for marijuana sales. Municipalities may collect a sales tax on purposes the state also collects a tax on, unless specifically prohibited by law (Oklahoma Statutes, Title 68 Section 2701).

### **Federal Laws**

While marijuana is still illegal under the federal level, enforcement of federal marijuana laws has not been strictly implemented against medical marijuana user licenses authorized by individual states. On January 4, 2018, U.S. Attorney General Jeff Sessions rescinded the Cole Memo, a 2013 directive that deprioritized the enforcement of federal marijuana laws in states where marijuana had been legalized. This allows federal prosecutors to decide whether or not to enforce federal law regarding marijuana even in states where its use has been legalized by individual states.

## **REQUESTED ACTION**

At this point the only thing certain about medical marijuana regulation in Oklahoma is that the laws and rules are still evolving and will very likely change. Staff will continue to evaluate new information

regarding State regulation of medical marijuana as it is available. This issue was reviewed at length with the City Council at its Monday, August 13 workshop meeting.

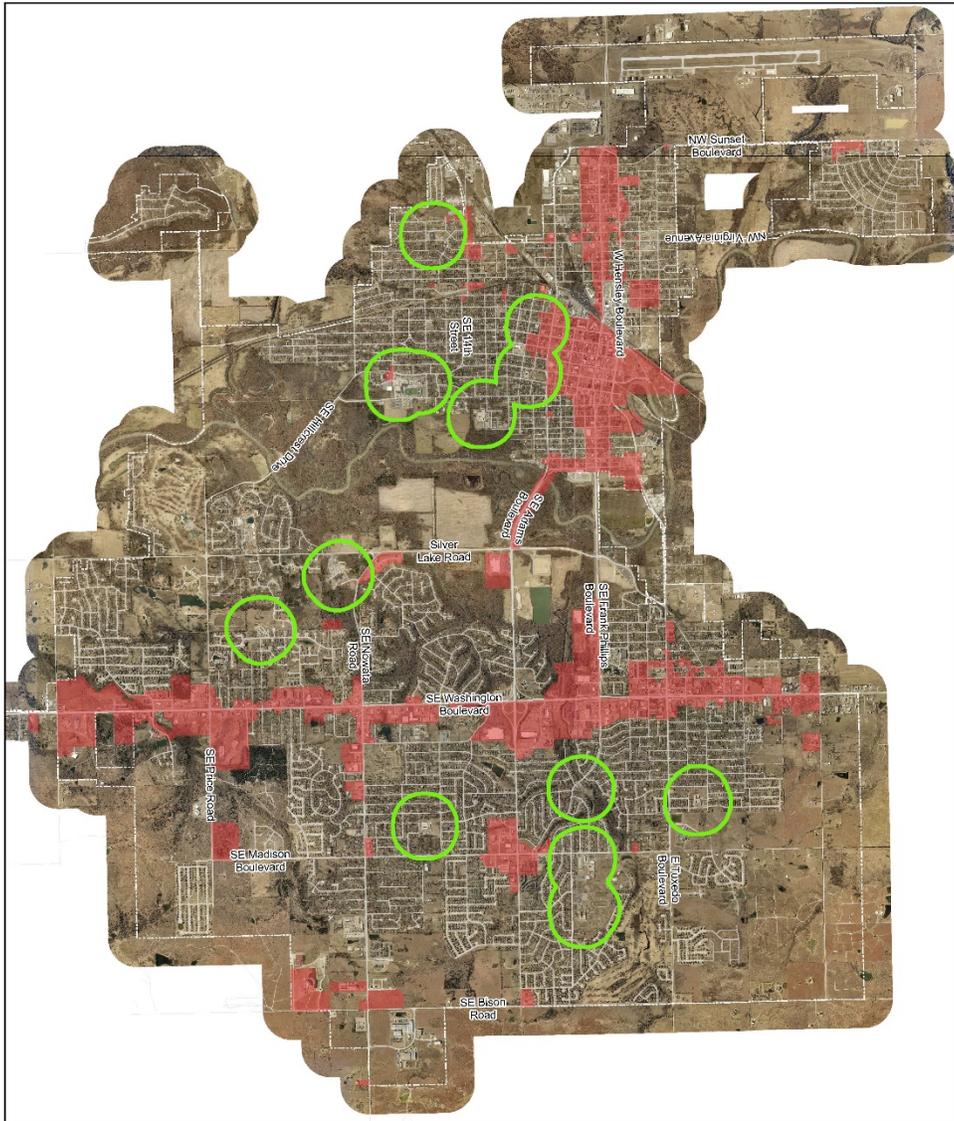
For the time being, Staff has prepared an ordinance which would amend the Municipal Code of the City of Bartlesville to regulate medical marijuana in accordance with current Oklahoma state law and emergency administrative rules. The attached ordinance provides regulations for the establishment of a retail medical marijuana dispensary within the city limits, provides regulations for growing marijuana for personal medical use; identifies acts which are not authorized (smoking in public, intoxication, disposal, as well as the use of marijuana by an unlicensed person), and provides for the collection of sales tax on medical marijuana.

Please schedule this ordinance for Council review and action at its Tuesday, September 4 regular Council meeting.

**Exhibit A**  
**Summary of Oklahoma Medical Marijuana Law**

1. The State law provides methods for obtaining the following types of licenses:
  - a) a patient license for which a physician has recommended the use of medical marijuana;
  - b) a caregiver's license for which a physician has certified that the patient is homebound or does not have the capability to self-administer or purchase medical marijuana due to a developmental disability or a physical or cognitive impairment;
  - c) a medical marijuana dispensary license to sell medical marijuana and medical marijuana products,
  - d) a commercial grower license to grow, harvest, and package medical marijuana,
  - e) a commercial marijuana processing license to prepare, manufacture, package, sell, and deliver medical marijuana products to a licensed dispensary,
  - f) a medical marijuana transportation license will be provided with an approved grower, processor or dispensary license to legally transport medical marijuana; and
  - g) a marijuana research license to product, process, transport, and possess marijuana solely for human and plant research purposes.
2. A person in possession of a state issued medical marijuana license shall be able to:
  - a) Consume marijuana legally;
  - b) Legally possess up to 3 ounces of marijuana on their person;
  - c) Legally possess 6 mature marijuana plants;
  - d) Legally possess 6 seedling plants;
  - e) Legally possess 1 ounce of concentrated marijuana;
  - f) Legally possess 72 ounces of edible marijuana; and
  - g) Legally possess up to 8 ounces of marijuana in their residence.
3. Counties and cities may enact medical marijuana guidelines allowing medical marijuana license holders or caregivers to exceed the State's limits set forth above.
4. All applications for a medical marijuana license must be signed by an Oklahoma Board certified physician; there are no qualifying conditions. Applications may only be rejected based on the applicant not meeting stated criteria or an improper completion of the application.
5. All applicants must be over the age of 18; a special exception is made for a minor if the signature of two physicians are obtained along with the signature of the applicant's parent or legal guardian.
6. A school or landlord cannot refuse to enroll or lease to an individual based on their status as a medical marijuana license holder, unless failing to do so would imminently cause the entity to lose a monetary or licensing related benefit under federal law.
7. No medical marijuana license holder may be denied custody of or visitation with a minor unless there is a presumption of neglect or child endangerment;
8. No city or local municipality may unduly change or restrict zoning laws to prevent the opening of a retail marijuana establishment;
9. The location of any retail marijuana establishment is prohibited within one thousand feet of any public or private school entrance; and
10. A tax on retail medical marijuana sales will be established at 7% of the gross amount received by the seller and revenue from the tax would finance regulatory costs. Any surplus would be distributed 75% to the General Fund to be used for education, and 25% to the Oklahoma State Department of Health to be used for drug and alcohol rehabilitation.

**Exhibit B**  
**MAP SHOWING LOCATIONS FOR LICENSED DISPENSARIES**



**Dispensaries**

**Legend**

- 1,000 Foot Buffer Around All Primary & Secondary Schools
- Commercial Districts

ORDINANCE NO. \_\_\_\_\_

**AN ORDINANCE OF THE COUNCIL OF THE CITY OF BARTLESVILLE, OKLAHOMA AMENDING CHAPTERS 5, 12, AND 18 OF THE CODE OF THE CITY OF BARTLESVILLE, OKLAHOMA, PROVIDING REGULATIONS FOR THE ESTABLISHMENT OF A RETAIL MEDICAL MARIJUANA DISPENSARY WITHIN THE CITY OF BARTLESVILLE; PROVIDING REGULATIONS FOR GROWING MARIJUANA FOR PERSONAL USE; IDENTIFYING ACTS THAT ARE NOT AUTHORIZED; PROVIDING FOR THE COLLECTION OF SALES TAX; DECLARING AN EMERGENCY; AND PROVIDING FOR THE SEVERABILITY THEREOF.**

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**WHEREAS**, on June 26, 2018, the voters of the State of Oklahoma approved State Question 788, which was intended to legalize marijuana for medicinal use; and

**WHEREAS**, the State of Oklahoma codified a new section of law in Title 63, Sections 420A through 426, inclusive, cited “Medical Marijuana”, which became effective on July 26, 2018; and

**WHEREAS**, this law impacts the City’s regulation of a retail medical marijuana establishment, and as such, requires the City of Bartlesville to update its regulations concerning same to comply with Oklahoma State Law; and

**WHEREAS**, this law impacts the City’s regulation of a person’s medical growth, cultivation, and use of marijuana on private property, and, as such, requires the City of Bartlesville to update its regulations concerning same to comply with Oklahoma State Law.

**NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF BARTLESVILLE, OKLAHOMA:**

§ 1. Code Amendment. That Chapter 5, Business Taxes, Licenses, and Regulations, Article IV, Reserved, Sections 5-56 through 5-70 of the Code of the City of Bartlesville shall be amended to read as follows:

**Article IV. Medical Marijuana**

**Sec. 5-56. Adoption of State Statutes and Rules.** The City of Bartlesville hereby adopts by reference all regulations now contained or hereafter contained in Title 63, Sections 420A through 426, inclusive, of the Oklahoma Statutes, concerning Medical Marijuana. Further, the City of Bartlesville hereby adopts by reference the final rules for the Oklahoma Medical Marijuana Control Program now contained or hereafter contained in Title 310, Chapter 681 of the Oklahoma Administrative Code.

**Sec. 5-57. Medical Marijuana Establishments for Commercial Purposes.**

- (a) Retail Medical Marijuana Dispensary.
  - 1) Business License Required. All establishments licensed by the State of Oklahoma as a retail medical marijuana dispensary shall obtain a business license and pay the required business tax as set forth in Article II of this Chapter prior to operating within the city limits.
  - 2) Location. The location of any retail medical marijuana dispensary is permitted by right in any commercial zoning district that permits a drug store or pharmacy, however, such location is specifically prohibited if it is within one thousand (1,000) feet of any public or private school entrance.
  - 3) Regulations. A licensed dispensary shall conform to all regulations set forth for those zoning districts, along with all other applicable building and development codes adopted by the City. All licensed dispensaries shall comply with all other applicable City, County, and State regulations.
  - 4) Home Occupation Prohibited. Dispensing of medical marijuana as a home occupation is prohibited.
  - 5) Sales. Only a State-licensed medical marijuana retail dispensary may conduct retail sales of marijuana, or marijuana derivatives in the form provided by State-licensed processors, and these products can only be sold to a State-licensed medical marijuana patient or caregiver.
- (b) Paraphernalia. Any device used for the consumption of medical marijuana shall be considered legal to be sold, manufactured, distributed, and possessed. No merchant, wholesaler, manufacturer, or individual may unduly be harassed or prosecuted for selling, manufacturing, or possession of medical marijuana paraphernalia.

**Sections 5-58 through 5-70, inclusive. Reserved.**

- § 2. Code Amendment. That Chapter 12, Offenses, Article V, Controlled Substances, Sections 12-76, 12-77, and 12-80 of the Code of the City of Bartlesville shall be amended to read as follows:

**Sec. 12-76. Medical Marijuana.**

**(a) Adoption of State Statutes and Rules.** The City of Bartlesville hereby adopts by reference all regulations now contained or hereafter contained in Title 63, Sections 420A through 426, inclusive, of the Oklahoma Statutes, concerning Medical Marijuana. Further, the City of Bartlesville hereby adopts by reference the final rules for the Oklahoma Medical Marijuana Control Program now contained or hereafter contained in Title 310, Chapter 681 of the Oklahoma Administrative Code.

**(b) Cultivation of Marijuana for Personal Medical Use.** A person in possession of a State-issued medical marijuana patient license or caregiver license shall be able to legally possess

marijuana on their person and in their legally zoned and occupied full-time permanent private residence, and cultivate marijuana for personal medical use, in quantities as allowed by applicable Oklahoma Statutes and Rules. The following regulations shall apply to the cultivation of medical marijuana for personal use as an accessory use within the City of Bartlesville:

- (1) All homegrown medical marijuana plants shall be grown in such a manner to be accessible only to the patient or caregiver.
- (2) If grown outdoors, plants shall be enclosed on all sides by an opaque fence or wall with a minimum height of six (6) feet and shall be secured at all times with a commercial quality lock and key that is accessible only to the patient or caregiver.
- (3) No marijuana plants, whether grown indoors or outdoors, shall be visible from any street or public right-of-way.
- (4) All indoor or outdoor areas used for medical marijuana growth shall comply with all applicable Codes as adopted by the City of Bartlesville.
- (5) The primary use of the residential property in which marijuana is grown for personal medical use 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 use of cooking, eating, sleeping, or sanitation/bathing.
- (6) If the residence is rented, consent of the property owner shall be obtained prior to any commencing any cultivation of marijuana for personal medical use. This consent must be evidenced by a signed and notarized statement from the property owner permitting the growth of marijuana for personal medical use in the residence.

**(c) Restriction on Smoking of Medical Marijuana Products.** Smoking of medical marijuana products shall be restricted as set forth in:

- (1) Section 12-120 of this Code; and
- (2) In Section 13-6 of this Code; and
- (3) As per Title 63 of the Oklahoma Statutes, Section 1-1521 et. seq., commonly referred to as the “Smoking in Public Places and Indoor Workplaces Act.”

**(d) Public Intoxication Prohibited.** Any person who shall be under the influence of medical marijuana or any other medical marijuana product at a level that presents a danger to others or creates a disturbance of the peace in or upon any public or private road, in any vehicle, any public place or building, at any public gathering, place accessible to the public or open to being viewed by others, shall be guilty of an offense.

**(e) Medical Marijuana Waste Disposal.** All medical marijuana waste shall be stored, managed, and disposed of in accordance with all applicable local and State statutes and rules.

**Sec. 12-77. Non-Medical Marijuana.** The possession, use, cultivation, distribution, or transportation, including growing, manufacturing, extracting, or delivering, of any marijuana or marijuana-derived product in any form by any person or establishment, unless otherwise licensed by the City of Bartlesville and the State of Oklahoma for medical purposes and verified by possession of a State issued medical marijuana license, shall be illegal within the City of Bartlesville and regulated pursuant to the Uniform Controlled Dangerous Substances Act of the State of Oklahoma, hereby adopted by reference.

**Sec. 12-80. Possession of Drug Paraphernalia.** Except as otherwise provided by the Uniform Controlled Dangerous Substances Act of the State of Oklahoma and Title 63, Sections 420A through 426, inclusive, of the Oklahoma Statutes, concerning Medical Marijuana, it shall be unlawful for any person to possess drug paraphernalia.

§ 3. Code Amendment. That Chapter 18, Taxation and Finance, Article II, Sales Tax, Sections 18-20, Tax Rate – Sales Subject to Tax, shall be amended by adding the following paragraph (12):

(12) Retail sales of medical marijuana, medical marijuana-derived products, related paraphernalia.

§ 4. Severability. If any section, subsection, sentence, clause, phrase, or portion of this ordinance is, for any reason, held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent provision, and such holding shall not affect the validity of the remaining portions of this ordinance, except that the effective date provision shall not be severable from the operative provisions of the ordinance.

§ 5. Emergency Clause. An immediate necessity existing for the preservation of the public peace, health, and safety, an emergency is hereby declared to exist by reason of which this ordinance shall be in full force and effect from and after its passage, approval, and public or posting.

**PASSED** by the City Council and **APPROVED** by the Mayor of the City of Bartlesville, Oklahoma this 4th day of September, 2018

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Dale Copeland, Mayor

**ATTEST:**

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City Clerk

# MEMO

**TO:** Mike Bailey, City Manager  
**FROM:** Lisa Beeman, Community Development Director  
**DATE:** August 27, 2018  
**RE:** Consider and take action on an ordinance amending the Bartlesville Municipal Code regulating smoking in public places and indoor workplaces to include medical marijuana.

## BACKGROUND

The administrative rules adopted by the Oklahoma State Department of Health regulating medical marijuana apply the “Smoking in Public Places and Indoor Workplaces Act” to smokable medical marijuana products. As such, an amendment to the Bartlesville Municipal Code needs to be made to remain consistent with Oklahoma State Law.

The Municipal Code currently regulates smoking of tobacco products as per the State Statutes in Chapter 12, Article VII, Section 12-120 as an offense against property (see Exhibit A). The proposed amendment to this Chapter retains the locations that are currently restricted, but expands the current regulations to make it clear that smoking as regulated by this Section of the Code also applies to medical marijuana products. The proposed amendment also provides definitions for enforcement of the regulations, and adopts the State Statutes and rules by reference.

The ordinance also proposes prohibiting smoking of both tobacco and medical marijuana products in certain areas of City parks and recreational facilities as follows:

- i. In or within fifty (50) feet of any playground or play court;
- ii. In or within fifty (50) feet of the fenced confines of any swimming pool or any outdoor recreational facility;
- iii. In or within fifty (50) feet of all bleachers and stands used by spectators at public events;
- iv. On the travel or walking surface portion of the Pathfinder Parkway Trail System or within 5-feet thereof, and in the associated trailheads.

The Park Board, at its August 16 meeting reviewed the proposed amendment which would prohibit smoking in certain areas of City parks and recreational facilities as stated above, and after review and discussion, unanimously voted to recommend its approval to the City Council. Additionally, an unscientific poll taken on CityBeat during the week of August 22 expressed overwhelming support (80% of all respondents) for prohibiting smoking in public parks.

## REQUESTED ACTION

Please include the attached ordinance for consideration and possible action by the City Council at its Tuesday, September 4 regular meeting. The proposed ordinance would amend the Bartlesville Municipal Code in both Chapter 12, Offenses, and Chapter 13, Parks and Regulations.

**EXHIBIT A**  
**EXISTING REGULATIONS ON SMOKING**  
**Bartlesville Municipal Code**  
**(Proposed Amendments Contained in Red)**

**Chapter 12, Offenses, Article VII, Offenses Against Property**

**Sec. 12-120. - Smoking prohibitions.**

1. Smoking in any enclosed, indoor facility owned by the City of Bartlesville is hereby prohibited. (This remains as 3(b) in the proposed Section 12-120.)
2. For purposes of this section, "smoking" means the carrying by a person of a lighted cigar, cigarette, pipe, or other lighted smoking device. (This is replaced by a new definition in Section 2(c) of the proposed Section 12-120.)
3. This section shall not prohibit smoking in a private, enclosed room or office occupied exclusively by a smoker or smokers, even if the room or enclosed office may be visited by a nonsmoker. (This remains as Section 4 in the proposed Section 12-120.)
4. The city manager is authorized to promulgate and enforce reasonable rules and regulations not inconsistent with this section. (This remains as Section 5 in the proposed Section 12-120.)

ORDINANCE NO. \_\_\_\_\_

AN ORDINANCE OF THE COUNCIL OF THE CITY OF BARTLESVILLE, OKLAHOMA AMENDING CHAPTERS 12 AND 13 OF THE MUNICIPAL CODE OF THE CITY OF BARTLESVILLE, OKLAHOMA, TO PROVIDE CONSISTENCY WITH OKLAHOMA STATE LAWS AND REGULATIONS, COMMONLY CITED AS THE SMOKING IN PUBLIC PLACES AND INDOOR WORKPLACES ACT; PROHIBITING SMOKING IN CERTAIN AREAS OF ANY CITY PARK OR RECREATIONAL FACILITY; AND PROVIDING FOR THE SEVERABILITY THEREOF.

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**WHEREAS**, smoking is a proven health threat via direct and second hand smoke to both children and adults and sets an unhealthy example for children;

**WHEREAS**, the administrative rules adopted by the Oklahoma State Department of Health regulating medical marijuana as authorized by Title 63, Section 420A through 426, inclusive, place restrictions on smokable medical marijuana and medical marijuana products;

**WHEREAS**, State restrictions for tobacco under the “Smoking in Public Places and Indoor Workplaces Act” also apply to smokable medical marijuana products; and

**WHEREAS**, City Council of Bartlesville finds and declares that the purposes of this ordinance are (1) to comply with applicable State law; (2) to protect the public health and welfare by prohibiting smoking in enclosed places and specified outdoor areas within the City; and (3) to guarantee the right of nonsmokers to breathe smoke-free air, and recognize that the need to breathe smoke-free air shall have priority over the desire to smoke.

**NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF BARTLESVILLE, OKLAHOMA:**

§ 1. Code Amendment. That Chapter 12, Offenses, Article VII, Offenses Against Property, Sections 12-120 of the Code of the City of Bartlesville shall be amended to read as follows:

**Sec. 12-120. Smoking Prohibitions**

- (1) Adoption of State Statutes and Rules. The City of Bartlesville hereby adopts by reference the following:
  - a) All regulations now contained or hereafter contained in Title 63 of the Oklahoma Statutes, Section 1-1521 et. seq., commonly referred to as the

“Smoking in Public Places and Indoor Workplaces Act” and all administrative rules adopted by the Oklahoma State Department of Health to implement said act.

- b) All regulations now contained or hereafter contained in Title 63 of the Oklahoma Statutes, Section 420A et. seq., concerning medical marijuana and all administrative rules adopted by the Oklahoma State Department of Health to implement said act.

(2) Definitions:

- a) “Smoking Device” shall mean a lighted cigar, cigarette, pipe, or other lighted or heated device, pipe, or product, including electronic or battery operated devices, intended for inhalation of a product in any manner or in any form, including but not limited to vaping, inhaling, exhaling or burning, whether natural or synthetic.
- b) “Smoke” means the gases and particles released into the air by combustion, electrical ignition or vaporization, including from an Electronic Smoking Device, when the apparent or usual purpose of the combustion, electrical ignition or vaporization is human inhalation of the resulting gases, particles or vapor combustion products, such as, for example, tobacco smoke or marijuana smoke, except when the combusting material contains no tobacco, marijuana, or similar substance, and the purpose of inhalation is solely olfactory, such as, for example, smoke from incense.
- c) “Smoking” means engaging in an act that generates Smoke, such as for example, but not limited to: possessing a lighted pipe, a lighted hookah pipe, a lighted cigar, an operating Electronic Smoking Device, a lighted cigarette of any kind or a lighted smoke inhalation device of any kind that generates Smoke, or the act of lighting or igniting a pipe, a hookah pipe, a cigar, a cigarette or Smoke inhalation device of any kind that generates Smoke.
- d) "Tobacco Product" means:
  - 1. Any substance containing or derived from tobacco leaf, including but not limited to cigarettes, Electronic Smoking Devices, cigars, pipe tobacco, hookah tobacco, snuff, chewing tobacco, dipping tobacco, blunts, clove cigarettes, or any other preparation of tobacco; and
  - 2. Any product or formulation of matter containing biologically active amounts of nicotine that is manufactured, sold, offered for sale, or otherwise distributed with the expectation that the product or matter will be introduced into the human body by inhalation; but does not include any cessation product specifically approved by the U. S. Food and Drug Administration for use in treating nicotine or tobacco dependence.
- e) “Medical Marijuana Product” means any substance containing or derived from cannabinoids, including concentrates, 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 a nebulizer, patches, tinctures, and liquids excluding live plant forms.

- (3) Restriction on Smoking of Tobacco or Tobacco-Derived Products and Marijuana or Marijuana-Derived Products for Medicinal Purpose. The smoking of any tobacco or tobacco-derived product or any medical marijuana or marijuana products by any legally authorized person shall be prohibited in the following locations:
  - a) In any location prohibited or restricted by any State law or rule;
  - b) In any enclosed, indoor facility or within twenty-five (25) feet of the entrance or exit of any such facility which is now or which may hereafter be owned or under the jurisdiction and control of the City of Bartlesville, whether located within or outside the corporate boundaries of the City; and
  - c) In or within the following areas located within city parks, parkways, trails, recreation areas, and open space lands which are now or which may hereafter be owned or under the jurisdiction and control of the City of Bartlesville, whether located within or outside the corporate boundaries of the City, and as further set forth in Article 13:
    1. In or within fifty (50) feet of any playground or play court;
    2. In or within fifty (50) feet of the fenced confines of any outdoor recreational facility;
    3. In or within fifty (50) feet of all bleachers and stands used by spectators at public events; and
    4. On the travel or walking surface portion of the Pathfinder Parkway Trail System or within five (5) feet thereof, and in the associated trailheads.
- (4) This section shall not prohibit smoking in a private, enclosed room or office occupied exclusively by one or more smokers, even if the room or enclosed office may be visited by a nonsmoker.
- (5) The City Manager is authorized to promulgate and enforce reasonable rules and regulations not inconsistent with this Section.

§ 2. Code Amendment. That Chapter 13, Parks and Recreation, Article I, In General, Section 13-6 Prohibited Acts, be amended by adding the following paragraph (12):

- (12) Smoking.
  - a. To smoke any tobacco or tobacco-derived product or any medical marijuana or marijuana products by any legally authorized person in any of the following locations:

- i. In or within fifty (50) feet of any playground or play court;
  - ii. In or within fifty (50) feet of the fenced confines of any swimming pool or any outdoor recreational facility;
  - iii. In or within fifty (50) feet of all bleachers and stands used by spectators at public events;
  - iv. On the travel or walking surface portion of the Pathfinder Parkway Trail System or within five (5) feet thereof, and in the associated trailheads.
- b. For the purposes of this ordinance, the definitions contained in Section 12-120 of this Municipal Code along with the following definitions shall apply:
- i) A playground shall be defined as any portion of public park land that is designed and equipped with play structures such as swings, climbing structures, splash pads, water features or the like, primarily, but not exclusively, set aside for children’s play. This definition shall include a skateboard park.
  - ii) A play field or play court shall be defined as any portion of public park land that is designed, equipped, and prepared for playing of a game or match, such as soccer, football, baseball, softball, tennis, volleyball, or the like, either fenced or unfenced, that is used for recreational or competitive play.
- c. The regulations contained in Section 12-120 of this Municipal Code shall also apply to this Section.

§ 3. Severability. If any section, subsection, sentence, clause, phrase, or portion of this ordinance is, for any reason, held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent provision, and such holding shall not affect the validity of the remaining portions of this ordinance, except that the effective date provision shall not be severable from the operative provisions of the ordinance.

**PASSED** by the City Council and **APPROVED** by the Mayor of the City of Bartlesville, Oklahoma this \_\_\_\_\_ day of \_\_\_\_\_, 2018

\_\_\_\_\_  
Dale Copeland, Mayor

**ATTEST:**

\_\_\_\_\_  
City Clerk



**MEMO**

**TO:** Mike Bailey, City Manager  
**FROM:** Lisa Beeman, Community Development Director  
**DATE:** August 27, 2018  
**RE:** State Alcohol Modernization Laws

**BACKGROUND**

A new State alcohol law, passed by the voters as State Question 792 in November of 2016, overhauled Oklahoma’s alcohol laws paving the way for wine (up to 15% alcohol content) and full-strength beer (up to 8.99% alcohol content) sales in grocery stores. Codified as Title 37A and commonly cited as the Alcohol Alcoholic Beverage Control, this law goes into effect on October 1, 2018. While the higher alcohol content is perhaps the biggest change in the law, other key changes are also included, which impact several areas of City law as discussed herein.

**SIGNIFICANT CHANGES TO THE ALCOHOL BEVERAGE LAWS**

The End of Low-Point Beer. Currently, the Alcoholic Beverage Laws Enforcement Commission (ABLE) does not monitor low-point beer, sometimes called non-intoxicating beverages, which are defined as any beverage containing 3.2% or less alcohol by volume (ABV). This includes low-point beer, wine coolers, and other such beverages which can currently be purchased in grocery stores and similar retail establishments. Due to the changes in State law, it is anticipated that such retail facilities that currently sell these products will restock their shelves with full-strength beer and wine as allowed by the new State laws.

In its place, the sales and purchases of all alcohol, anything with a 0.05% alcohol content or higher, will be regulated by ABLE. Significant changes to the State alcohol beverage laws include the following:

1. Grocery stores, gas stations, convenience stores, and other retail establishments will be allowed to sell refrigerated full-strength beer up to 8.99% ABV and wine up to 15% ABV.
2. Liquor stores will be the only retailer permitted to sell spirits, but they will also be able to sell refrigerated beer and wine.
3. Liquor stores will also be the only retailer permitted to sell beer in excess of 8.99% ABV and wine in excess of 15% ABV.
4. Wine and spirits stores will be able to sell items other than alcohol (i.e. products you could normally find in a grocery or convenience store), provided those sales don’t exceed 20% of monthly sales.
5. On-premise consumption locations, such as restaurants and bars, may serve alcohol between 8:00 a.m. and 2:00 a.m. on any day.
6. Off-premises consumption locations, like grocery stores and convenience stores, can sell from 6:00 a.m. to 2:00 a.m. on any day.

7. Liquor stores will now be able to open at 8:00 a.m. and sell until midnight, Monday through Saturday. Previously, such stores were only allowed to be open from 10:00 a.m. to 9:00 p.m. Sunday's are still off limits for liquor stores unless changed by the County Commissioners with voter approval.
8. The 300-foot buffer area (from schools or churches) currently required for mixed-beverage and wine bars, and liquor stores remains in place and will now apply to new beer bars as well. Previously this buffer did not apply if the beer bar sold 3.2% or less. Existing low-point beer bars will be grandfathered.

## **IMPACT OF STATE LAW UPON CITY REGULATIONS**

With the adoption of the new State law, amendments need to be made to the Bartlesville Municipal Code in the following Chapters:

1. Chapter 5 - Business Taxes, Licenses, and Regulations. Proposed amendments to Chapter 5 include:
  - a. Adopting State laws;
  - b. Providing definitions;
  - c. Updating categories and fees for alcohol licenses to match State Statutes;
  - d. Including operating rules and regulations on alcohol-related businesses to match State Statutes;
  - e. Removing references to low-point beer.
2. Chapter 12 – Offenses. Proposed amendments to Chapter 12 include:
  - a. Adopting State laws;
  - b. Providing definitions relating to alcohol-related offenses;
  - c. Updating current regulations on alcohol-related offenses to match State Statutes;
  - d. Removing references to non-intoxicating beverages;
3. Chapter 13 – Parks and Recreation. Proposed amendments to Chapter 13 include:
  - a. Removing references to non-intoxicating beverages.
4. Chapter 18 – Taxation and Finance. Proposed amendments to Chapter 18 include:
  - a. Removing reference to non-intoxicating beverages.

Attached as Exhibit A is a document which identifies the changes between the existing regulations and the proposed regulations.

The proposed ordinance also provides for an interim period of time between now and October 1, 2018, which allows retail licensees to purchase, stock, and store wine and beer on the licensed premises, but not to actually sell such wine and beer to the public until October 1, 2018.

## **REQUESTED ACTION**

Attached for Council consideration and possible action is an ordinance which would amend the Municipal Code of the City of Bartlesville to regulate alcoholic beverages as per the Oklahoma State law. Please include this for consideration by the City Council at its Tuesday, September 4, 2018 meeting.

ORDINANCE NO. \_\_\_\_\_

AN ORDINANCE OF THE COUNCIL OF THE CITY OF BARTLESVILLE, OKLAHOMA AMENDING CHAPTERS 5, 12, 13, AND 18 OF THE MUNICIPAL CODE OF THE CITY OF BARTLESVILLE, OKLAHOMA, TO PROVIDE CONSISTENCY WITH OKLAHOMA STATE LAWS AND REGULATIONS, COMMONLY CITED AS THE OKLAHOMA ALCOHOLIC BEVERAGE CONTROL ACT; REMOVING ALL REFERENCES TO NON-INTOXICATING BEVERAGES OR LOW POINT BEER; PROVIDING FOR VIOLATIONS AND PUNISHMENT THEREOF; ACKNOWLEDGING AN INTERIM PERIOD; AND PROVIDING FOR THE SEVERABILITY THEREOF.

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**WHEREAS**, the State of Oklahoma codified a new section of law cited the “Oklahoma Alcoholic Beverage Control Act” which becomes effective on October 1, 2018; and

**WHEREAS**, this law impacts the City’s regulation of all businesses which involve the manufacture, distribution, and/or sale of alcoholic beverages, and as such, requires the City of Bartlesville to update its regulations concerning same to comply with Oklahoma State Law; and

**WHEREAS**, this law impacts the City’s regulation of a person’s use of alcoholic beverages on both public and private property.

**NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF BARTLESVILLE, OKLAHOMA:**

§ 1. Code Amendment. That Chapter 5, Business Taxes, Licenses, and Regulations, Article III, Alcoholic Beverages, Sections 5-36 through 5-55 of the Code of the City of Bartlesville shall be amended to read as follows:

**Article III. Alcoholic Beverages**

**Sec. 5-36. Adoption of Title 37A.** The City of Bartlesville hereby adopts by reference all regulations now contained or hereafter contained in Title 37A of the Oklahoma Statutes, known and cited as the Oklahoma Alcoholic Beverage Control Act.

**Sec. 5-37. Definitions.**

- (a) All beverages which contain alcohol, unless otherwise defined by law, shall be considered alcoholic beverages and therefore governed by this Article and all other applicable laws.
- (b) All terms and phrases used herein shall be defined in the Oklahoma Alcoholic Beverage Control Act, Title 37A, Oklahoma Statutes, effective October 1, 2018.

**Sec. 5-38. Occupational License and Tax.**

No person shall operate or maintain any business in this City involving the manufacture, distribution or sale of alcoholic beverages unless the appropriate license, if any, as provided in this Article is first obtained and the appropriate occupational tax as hereinafter levied has been collected.

- (a) An occupational tax, as hereinafter set forth, shall be levied and collected by the Clerk, or the Clerk’s representatives, prior to the issuance of any of the following occupation licenses or permits.

<b>License Type</b>	<b>Fee</b>
<b>Supplier</b>	
Brewer	\$1,250 per year
Small Brewer	\$125 per year
Small Brewer Self-Distribution	\$750 per year
Brew Pub Self-Distribution	\$750 per year
Winemaker	\$625 per year
Small Farm Winery	\$75 per year
Winemaker Self-Distribution	\$750 per year
Distiller or Rectifier	\$3,125 per year
Wine and Spirits Wholesaler	\$3,000 per year
Beer Distributor	\$750 per year
<b>Off Premise Consumption</b>	
Retail Spirits (includes retail wine and beer)	\$900 per year
Retail Wine (wine only)	\$1,000 per year
Retail Beer (beer only)	\$500 per year
<b>On Premise Consumption</b>	
Mixed Beverages	\$1,000 first year \$900 renewal
Beer and Wine	\$500 first year \$450 renewal
Brew Pub	\$1,000 per year
Brew Pub if licensee also holds a mixed beverage or wine and beer permit	\$50 per year
Mixed beverage/caterer combination	\$1,250 first year \$1,150 renewal
Caterer	\$1,000 first year \$900 renewal
Hotel or Airline/Railroad Beverage	\$1,000 first year \$900 renewal

<b>Events</b>	
Annual Special Event	\$55 per year
Quarterly Special Event	\$55 per quarter
Annual Public Event	\$1,000 per year
One-Time Public Event	\$255 per event
Charitable Auction	\$1 per auction
Charitable Alcoholic Beverage Event	\$55 per event

- (b) The occupational license fee for a mixed beverage license for those service organizations or fraternal beneficiary societies which are exempt under Section 501(c)(19), (8), or (10) of the Internal Revenue Code shall be five hundred dollars (\$500.00) per year.
- (c) All occupational licenses shall expire annually at midnight on June 30<sup>th</sup>. No renewal of a license shall be issued until payment has been made in full of all delinquent business licenses taxes. It shall be the responsibility of each business licensee to obtain and pay for a renewal license regardless of whether or not such licensee has received a renewal notice from the City. The annual fee for a new license granted after the commencement of the license year shall be prorated on a monthly basis. No proration shall be granted for existing license holders who are renewing late.
- (d) The issuance of all occupational licenses required herein are also subject to compliance with all other applicable City, County, State, and Federal laws, rules, and regulations.

**Sec. 5-39. Certificate of Compliance.**

The City Manager or his designee shall be authorized to issue a statement of compliance to the Alcohol Beverage Laws Enforcement Commission indicating compliance by a license applicant with all zoning, building, fire, health, and safety codes of the City. Prior to such certification, all appropriate inspections shall be made to ensure that all codes are complied with.

**Sec. 5-40. Operating Rules and Regulations.** All occupational license holders shall comply with the following regulations as applicable.

- (a) Brewers and Brewpubs.
  - 1) Hours of Operation. No brewery or brewpub nor any agent, servant or employee of such establishment shall sell, dispense, serve or allow to be consumed any beer on the premises between the hours of 2:00 a.m. and 8:00 a.m.

- (b) Wine, Beer, and Mixed Beverage Sales for On Premise Consumption
  - 1) Hours of Operation. No establishment licensed for the on premise consumption of wine, beer, and/or mixed beverage sales, nor any agent, servant or employee of such establishment shall sell, dispense, serve or allow to be consumed any mixed beverages, beer or wine on the premises between the hours of 2:00 a.m. and 8:00 a.m.
  - 2) Location. It shall be unlawful for any mixed beverage establishment or beer and wine establishment which has as its main purpose the selling or serving of alcoholic beverages for consumption on the premises to be located within three hundred (300) feet of any public or private school or church property primarily and regularly used for worship services and religious activities, unless otherwise exempted as per Oklahoma State Statute.
  
- (c) Retail Spirits or Package Stores Selling Spirits, Wine and/or Beer for Off Premise Consumption
  - 1) Hours of Operation. No establishment licensed as a retail spirits or package store, nor any agent, servant or employee of such establishment shall sell, or allow to be sold any alcoholic beverages at any hour other than between the hours of 8:00 a.m. through midnight, Monday through Saturday, and shall not be permitted to be open on Thanksgiving Day or Christmas Day.
  - 2) Location. It shall be unlawful for any retail spirits or package store to be located within three hundred (300) feet of any public or private school or church property primarily and regularly used for worship services and religious activities, unless otherwise exempted as per Oklahoma State Statute.
  
- (d) Retail Stores Selling Wine or Beer for Off Premise Consumption
  - 1) Hours of Operation. No establishment licensed as a retail wine or retail beer establishment, nor any agent, servant or employee of such establishment shall sell, or allow to be sold wine or beer for retail sale at any hour other than between the hours of 6:00 a.m. and 2:00 a.m. the following day, Monday through Sunday.
  
- (e) Prohibited performances, displays or acts. No owner, operator, partner, manager, or person having supervisory control of any establishment licensed to sell or serve alcoholic beverages pursuant to these regulations shall permit any of the following on or about any commercial premises where such beverages are dispensed or consumed:
  - 1) Any display, act, action, activity, or performance involving nudity or specified sexual activities as defined by the Bartlesville Zoning Regulations.
  
- (f) All establishments licensed pursuant to these regulations shall comply with all

other applicable City, County, State, and Federal laws, rules, and regulations.

**Section 5-41. Violations.** The violation of any provision of this Article shall be punishable by a fine not to exceed one thousand dollars (\$1,000.00) plus court costs, an imprisonment not to exceed ninety (90) days, or both such fine and imprisonment.

**Sections 5-42 through 5-55, inclusive. Reserved.**

§ 2. Code Repealed. That Chapter 5, Article IV, Low-Point Beer, Sections 5-56 through 5-70 of the Code of the City of Bartlesville shall be repealed in its entirety and reserved for future use.

**ARTICLE IV. Reserved.**

**Sections 5-56 through 5-70, inclusive. Reserved.**

§ 3. Code Amendment. That Chapter 12, Offenses, Article V, Controlled Substances, Sections 12-76, Public Intoxication Prohibited, and 12-77, Certain (alcoholic beverage) Sales, etc., Prohibited, be repealed and reserved for future use.

**Sections 12-76 through 12-77, inclusive. Reserved.**

§ 4. Code Amendment. That Chapter 12, Offenses, Article IX, Nonintoxicating Beverages, Sections 12-146 through 12-160, inclusive, of the Code of the City of Bartlesville shall be retitled and amended to read as follows:

## **ARTICLE IX. ALCOHOLIC BEVERAGES**

**Sec. 12-146. Adoption of Title 37A.** The City of Bartlesville hereby adopts by reference all misdemeanor offenses now contained or hereafter contained in Title 37A of the Oklahoma Statutes, known and cited as the Oklahoma Alcoholic Beverage Control Act.

**Sec. 12-147. Definitions.** For the purposes of this Article, all terms and phrases used herein shall be defined in the Oklahoma Alcoholic Beverage Control Act, Title 37A, Oklahoma Statutes, effective October 1, 2018. In addition, the following definitions shall apply:

- (a) “Open container” shall mean any bottle, can or other receptacle containing any alcoholic beverage which has been opened, which has a seal broken, or the contents of which have been partially removed.
- (b) “Public property” shall mean and include, but is not limited to, any sidewalk, street, alley, park, parkway, or other property which is owned by the City of Bartlesville, and to which the public has access.

**Sec. 12-148. Drinking, possession, and transportation on public property.**

- (a) It is unlawful for any person to drink or consume any alcoholic beverage upon any public right-of-way (including the street, sidewalk, and public property up to the private property line), lane, alley, public park, and any other public property unless the consumption of alcoholic beverages is expressly permitted for that location pursuant to a permit or ordinance and the consumption is in conformance with the terms of that permit or ordinance, or except as may be otherwise authorized by the City.
- (b) It is unlawful for any person to possess or transport any can, bottle, or other container of any alcoholic beverage which has been opened, or a seal broken, or the contents of which has been partially removed, upon any public right-of-way (including the street, sidewalk, and public property up to the private property line), lane, alley, public park, and any other public property unless the consumption of alcoholic beverages is expressly permitted for that location pursuant to a permit or ordinance and the consumption is in conformance with the terms of that permit or ordinance, or except as may be otherwise authorized by the City.
- (c) This section is intended to have no application to situations which would invoke application of State laws, including but not limited to, regulating the drinking, possession, storage, or transportation of alcoholic beverages on any public property or in any place which is open to the public.

**Sec. 12-149. Drinking and possession on private property.**

- (a) It is unlawful for any person to drink, consume, or possess an open container of any alcoholic beverage while upon any private parking lot open to the public unless expressly permitted by the owner or operator of the private parking lot in conformance with a permit or ordinance or as otherwise authorized by the City.
- (b) It is unlawful for any person to permit any individual under twenty-one (21) years of age who is an invitee to the person's residence, any building, structure or room owned, occupied, leased or otherwise procured by the person or on any land owned, occupied, leased or otherwise procured by the person, to possess or consume any alcoholic beverage in such place.
- (c) This section is intended to have no application to situations which would invoke application of State laws, including but not limited to, regulating the drinking, possession, storage, or transportation of alcoholic beverages on private property or on any private property which is open to the public.

**Sec. 12-150. Public intoxication prohibited.** Any person who shall be under the influence of alcohol at a level that presents a danger to others or creates a disturbance of the peace in or upon any public or private road, in any vehicle, any public place or building, at any public gathering, place accessible to the public or open to being viewed by others, shall be guilty of an offense.

**Sec. 12-151. Violations.** The violation of any provision of this Article shall be punishable by a fine not to exceed one thousand dollars (\$1,000.00) plus court costs, an imprisonment not to exceed ninety (90) days, or both such fine and imprisonment.

**Sec. 12-152 through 12-160, inclusive. Reserved.**

§ 5. Code Amendment. That Chapter 13, Parks and Recreation, Article I, In General, Section 13-6, Prohibited Acts, be amended by removing the words “or non-intoxicating” where it is used in paragraph (4) Alcoholic Beverages, causing this paragraph to read as follows:

(4) Alcoholic Beverages.

- a. To bring or carry in, or in any manner whatsoever possess any intoxicating beverages as defined by the statutes of the State of Oklahoma.
- b. To sell or dispense any intoxicating beverages as defined by the statutes of the State of Oklahoma, except pertaining to special events approved in advance or permissions granted by the city manager.

§ 6. Code Amendment. That Chapter 18, Taxation and Finance, Article II, Sales Tax, Sections 18-21, Exemptions, be amended by removing the following paragraph (1) and renumbering the remaining paragraphs from (1) to (22).

**To be removed:**

(1) Sale of nonintoxicating beverages taxed as provided by State law;

§ 7. Interim Period. It is acknowledged that qualified retail spirits, wine and spirits wholesaler, beer distributor, retail beer, and retail wine state licensees are permitted to perform interim activities that will be permissible under these licenses as fully effective on October 1, 2018, **except** for the actual sale of wine and beer to the public. These interim activities include, but are not limited to, the purchasing, stocking, and storing of wine and/or beer on the licensed premises. In order to qualify for these interim activities, the licensee must satisfy all the requirements set forth by the Oklahoma Constitution and Oklahoma State law.

§ 8. Severability. If any section, subsection, sentence, clause, phrase, or portion of this ordinance is, for any reason, held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent provision, and such holding shall not affect the validity of the remaining portions of this ordinance, except that the effective date provision shall not be severable from the operative provisions of the ordinance.

**PASSED** by the City Council and **APPROVED** by the Mayor of the City of Bartlesville, Oklahoma this 4th day of September, 2018

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Dale Copeland, Mayor

**ATTEST:**

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City Clerk

**EXHIBIT A**  
**COMPARISON OF EXISTING REGULATIONS**  
**WITH PROPOSED REGULATIONS**

**CHAPTER 5 – BUSINESS TAXES, LICENSES, AND REGULATIONS**  
**ARTICLE III. ALCOHOLIC BEVERAGES**

~~Sec. 5-36. Definitions.~~

Sec. 5-36. Adoption of Title 37A. The City of Bartlesville hereby adopts by reference all regulations now contained or hereafter contained in Title 37A of the Oklahoma Statutes, known and cited as the Oklahoma Alcoholic Beverage Control Act.

~~Sec. 5-37. Tax levied.~~

Sec. 5-37. Definitions.

- (a) All beverages which contain alcohol, unless otherwise defined by law, shall be considered alcoholic beverages and therefore governed by this Article and all other applicable laws.
- (b) All terms and phrases used herein shall be defined in the Oklahoma Alcoholic Beverage Control Act, ~~37 O.S. § 506.~~ Title 37A, Oklahoma Statutes, effective October 1, 2018.

Sec. 5-38. Occupational License and Tax.

No person shall operate or maintain any business in this City involving the manufacture, distribution or sale of alcoholic beverages unless the appropriate license, if any, as provided in this Article is first obtained and the appropriate occupational tax as hereinafter levied has been collected.

~~a) There is hereby levied upon each person holding a lawful license issued by the Oklahoma Alcoholic Beverage Laws Enforcement Commission (ABLE Commission) for a principal place of business located in this city an annual occupation tax in the following amount:~~

- (a) An occupational tax, as hereinafter set forth, shall be levied and collected by the Clerk, or the Clerk's representatives, prior to the issuance of any of the following occupation licenses or permits.

<u>License Type</u>	<u>Fee</u>
<u>Supplier</u>	
<del>Brewers</del> <u>Brewer</u>	\$1,250 <u>per year</u>
<del>Distiller</del> <u>Small Brewer</u>	<del>\$3,125</del> <u>per year</u>
<u>Small Brewer Self-Distribution</u>	<u>\$750 per year</u>
<u>Brew Pub Self-Distribution</u>	<u>\$750 per year</u>
Winemaker	\$625 <u>per year</u>
<u>Small Farm Winery</u>	<u>\$75 per year</u>

<del>Oklahoma</del> Winemaker <u>Self-Distribution</u>	<u>\$75-750 per year</u>
<u>Distiller or Rectifier</u>	<u>\$3,125 per year</u>
<u>Wine and Spirits Wholesaler</u>	<u>\$3,500-000 per year</u>
<u>Class B Wholesaler-Beer Distributor</u>	<u>\$625-750 per year</u>
<b><u>Off Premise Consumption</u></b>	
<del>Package Store</del> <u>Retail Spirits (includes retail wine and beer)</u>	<u>\$900 per year</u>
<del>Mixed Beverage</del> <u>Retail Wine (wine only)</u>	<u>\$1,000 Initial per year</u>
<u>Retail Beer (beer only)</u>	<u>\$500 per year</u>
<b><u>On Premise Consumption</u></b>	
<u>Mixed Beverages</u>	<u>\$1,000 first year</u> <u>\$900 renewal</u>
<u>Beer and Wine</u>	<u>\$500 first year</u> <u>\$450 renewal</u>
<u>Brew Pub</u>	<u>\$1,000 per year</u>
<u>Brew Pub if licensee also holds a mixed beverage or wine and beer permit</u>	<u>\$50 per year</u>
<u>Mixed beverage/caterer combination</u>	<u>\$1,250 first year</u> <u>\$1,150 renewal</u>
<u>Caterer</u>	<u>\$1,000 Initial-first year</u> <u>\$900 renewal</u>
<u>Hotel or Airline/Railroad Beverage</u>	<u>\$1,000 first year</u> <u>\$900 renewal</u>
<b><u>Events</u></b>	
<del>Annual</del> <u>Special Event (per day)</u>	<u>\$50-55 per year</u>
<del>Agent</del> <u>Quarterly Special Event</u>	<u>\$55 per quarter</u>
<u>Annual Public Event</u>	<u>\$1,000 per year</u>
<u>One-Time Public Event</u>	<u>\$255 per event</u>
<u>Charitable Auction</u>	<u>\$1 per auction</u>
<u>Charitable Alcoholic Beverage Event</u>	<u>\$55 per event</u>

- (b) The occupational license fee for a mixed beverage license for those service organizations or fraternal beneficiary societies which are exempt under Section 501(c)(19), (8), or (10) of the Internal Revenue Code ~~for mixed beverage licenses~~ shall be five hundred dollars (\$500.00) per year.
- ~~(c) The above occupation tax for brewer's licenses and for Class B Wholesaler's licenses shall be reduced by seventy five (75) percent if the applicant therefor is also the holder of a license to manufacture or wholesale any nonintoxicating malt beverages as provided for in 37 O.S.~~
- (c) All occupational licenses shall expire annually at midnight on June 30<sup>th</sup>. No renewal of a license

shall be issued until payment has been made in full of all delinquent business licenses taxes. It shall be the responsibility of each business licensee to obtain and pay for a renewal license regardless of whether or not such licensee has received a renewal notice from the City. The annual fee for a new license granted after the commencement of the license year shall be prorated on a monthly basis. No proration shall be granted for existing license holders who are renewing late.

(d) The issuance of all occupational licenses required herein are also subject to compliance with all other applicable City, County, State, and Federal laws, rules, and regulations.

~~**Sec. 5-38. Expiration date.**~~

~~All licenses, except as otherwise provided, shall be valid for one year from the date of issuance unless revoked or surrendered. Provided, that a special event license shall be valid for a period not to exceed ten (10) consecutive days from the first day the license is valid, said date to be specified on the license.~~

~~**Sec. 5-39. Licenses required.** No person shall operate a principal place of business in this city unless the appropriate license, if any, as provided in this article is first obtained.~~

~~**Sec. 5-40. Sec. 5-39. Certificate of Compliance.**~~

The City Manager ~~or his designee~~ shall be authorized to issue a statement of compliance to the Alcohol Beverage Laws Enforcement Commission indicating compliance by a license applicant with all zoning, building, fire, health, and safety codes of the City. Prior to such certification, all appropriate inspections shall be made to ensure that all codes are complied with.

**Sec 5-40. Operating Rules and Regulations.** All occupational license holders shall comply with the following regulations as applicable.

(a) Brewers and Brewpubs.

1) Hours of Operation. No brewery or brewpub nor any agent, servant or employee of such establishment shall sell, dispense, serve or allow to be consumed any beer on the premises between the hours of 2:00 a.m. and 8:00 a.m.

(b) Wine, Beer, and Mixed Beverage Sales for On Premise Consumption

1) Hours of Operation. No establishment licensed for the on premise consumption of wine, beer, and/or mixed beverage sales, nor any agent, servant or employee of such establishment shall sell, dispense, serve or allow to be consumed any mixed beverages, beer or wine on the premises between the hours of 2:00 a.m. and 8:00 a.m.

2) Location. It shall be unlawful for any mixed beverage establishment or beer and wine establishment which has as its main purpose the selling or serving of alcoholic beverages for consumption on the premises to be located within three hundred (300) feet of any public or private school or church property primarily and regularly used for worship services and religious activities, unless otherwise exempted as per Oklahoma State Statute.

(c) Retail Spirits or Package Stores Selling Spirits, Wine and/or Beer for Off Premise Consumption

- 1) Hours of Operation. No establishment licensed as a retail spirits or package store, nor any agent, servant or employee of such establishment shall sell, or allow to be sold any alcoholic beverages at any hour other than between the hours of 8:00 a.m. through midnight, Monday through Saturday, and shall not be permitted to be open on Thanksgiving Day or Christmas Day.
- 2) Location. It shall be unlawful for any retail spirits or package store to be located within three hundred (300) feet of any public or private school or church property primarily and regularly used for worship services and religious activities, unless otherwise exempted as per Oklahoma State Statute.

(d) Retail Stores Selling Wine or Beer for Off Premise Consumption

- 1) Hours of Operation. No establishment licensed as a retail wine or retail beer establishment, nor any agent, servant or employee of such establishment shall sell, or allow to be sold wine or beer for retail sale at any hour other than between the hours of 6:00 a.m. and 2:00 a.m. the following day, Monday through Sunday.

(e) Prohibited performances, displays or acts. No owner, operator, partner, manager, or person having supervisory control of any establishment licensed to sell or serve alcoholic beverages pursuant to these regulations shall permit any of the following on or about any commercial premises where such beverages are dispensed or consumed:

- 1) Any display, act, action, activity, or performance involving nudity or specified sexual activities as defined by the Bartlesville Zoning Regulations.

(f) All establishments licensed pursuant to these regulations shall comply with all other applicable City, County, State, and Federal laws, rules, and regulations.

~~**Sec. 5-41. Annual report.**~~

~~The city clerk shall prepare and transmit to the Oklahoma Alcoholic Beverage Laws Enforcement Commission an annual report showing the number and class of licenses upon which occupation taxes were levied and the amount of money collected from such taxes.~~

**Section 5-41. Violations.** The violation of any provision of this Article shall be punishable by a fine not to exceed one thousand dollars (\$1,000.00) plus court costs, an imprisonment not to exceed ninety (90) days, or both such fine and imprisonment.

~~**Sec. 5-42. Violations.** All convictions of violations of this article shall be reported to the ABLE Commission of the State of Oklahoma.~~

~~**Secs. 5-43 — 5-55. Reserved.**~~

**Sections 5-42 through 5-55, inclusive. Reserved.**

## ARTICLE IV. -- LOW-POINT BEER

### Sec. 5-56. Definitions.

The words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Low point beer means and includes beverages containing more than one half of one (1/2) percent alcohol by volume, and not more than three and two tenths (3.2) percent alcohol by weight, including but not limited to beer or cereal malt beverages obtained by alcoholic fermentation of an infusion of barley or other grain, malt or similar products.

Retail dealer means any person or concessionaire who sells, distributes or dispenses low point beer within the city without regard as to any place where such beverages may be consumed or used.

### Sec. 5-57. Tax levied.

- (a) There is levied upon each retail dealer in low point beer for consumption on and off the premises an annual license fee of twenty dollars (\$20.00). There is levied upon each retail dealer in low point beer in original packages, and not for consumption on the premises, an annual license fee of ten dollars (\$10.00). If application for license is made subsequent to November 1 in any year, the amount to be charged shall be one-half (1/2) the yearly rate.
- (b) All such license fees shall be paid to the city clerk at the time of issuance, and in the manner prescribed, and shall be in addition to the occupation license fees prescribed by ordinances of the city.

## ARTICLE IV. Reserved.

Sections 5-56 through 5-70, inclusive. Reserved.

## **CHAPTER 12 – OFFENSES**

### **ARTICLE V - CONTROLLED SUBSTANCES**

#### Sec. 12-76. Public intoxication prohibited.

- (a) Any person who shall, in any public place or in any vehicle, drink or otherwise consume any intoxicating liquor containing more than three and two tenths (3.2) percent alcohol measured by weight, except as authorized by the Oklahoma Beverage Control Act, or any other intoxicating substance, or intoxicating compound of any kind, or inhale glue, paint, or other intoxicating substance, shall be guilty of an offense, except intoxicating liquor as authorized by the Oklahoma Beverage Control Act shall be permitted at special events approved in advance by the City Manager.
- (b) Any person who shall be drunk or intoxicated in or upon any public or private road, in any vehicle, any public place or building, at any public gathering, place accessible to the public or open to being viewed by others, from drinking or consuming such intoxicating liquor, intoxicating

~~substance, or intoxicating compound or from the inhalation of glue, paint, or other intoxicating substances, shall be guilty of an offense.~~

- ~~(c) Any person who shall be drunk or intoxicated for any cause and who disturbs the peace of any person, shall be guilty of an offense.~~
- ~~(d) It shall not be a violation of subsection (b) of this section for any person to be intoxicated on the premises of a private residence with the prior consent of the owner or any bona fide resident.~~
- ~~(e) Any person found guilty of violating any offense included in this section shall be punished by a fine of not more than two hundred dollars (\$200.00).~~

**~~Sec. 12-77. Certain sales, etc., prohibited.~~**

~~No licensee of the ABLE Commission shall:~~

- ~~(1) Receive, possess, or sell any alcoholic beverage except as authorized by the Oklahoma Alcoholic Beverage Control Act and by the license or permit which he holds;~~
- ~~(2) Employ any person under the age of twenty-one (21) in the selling or handling of alcoholic beverages. Provided, that a mixed beverage, caterer, special event or bottle club licensee may employ servers who are eighteen (18) years of age or older, except in designated bar or lounge areas;~~
- ~~(3) Give any alcoholic beverage as a prize, premium or consideration for any lottery, game of chance or skill or any type of competition;~~
- ~~(4) Advertise or offer "happy hours" or any other means or inducements plus court costs, an imprisonment not to stimulate the consumption of alcoholic beverages, including:
  - ~~a. Deliver more than two (2) drinks to one person at one time;~~
  - ~~b. Sell or offer to sell to any person or group of persons any drinks at a price less than the price regularly charged for **such** drinks during the same calendar week, except at private functions not open to the public;~~
  - ~~c. Sell or offer to sell to any person an unlimited number of drinks during any set period of time for a fixed price, except as private functions not open to the public;~~~~

Sections 12-76 through 12-77, inclusive. Reserved.

**~~ARTICLE IX. NONINTOXICATING BEVERAGES~~**

**~~Sec. 12-146. Possession in public.~~**

~~It is unlawful and an offense for any person under the age of twenty-one (21) years to be in possession of any nonintoxicating alcoholic beverage or beer while such person is upon any public street, road, or highway, or in any public building or place, except pertaining to special events approved in advance by the city manager.~~

**~~Sec. 12-147. Transporting of non-intoxicating beverages except in original unopened container prohibited, exception.~~**

~~It shall be unlawful for any person to knowingly transport in any moving vehicle upon a public highway, street or alley any nonintoxicating beverage containing more than one-half of one percent~~

~~(1/2 of 1%) alcohol by volume and not more than three and two-tenths percent (3.2%) alcohol by weight except in the original container which shall not have been opened and from which the original cap or seal shall not have been removed, unless the opened container be in the rear trunk or rear compartment, which shall include the spare tire compartment in a station wagon or panel truck, or any outside compartment which is not accessible to the driver or any other person in the vehicle while it is in motion.~~

**~~Sec. 12-148. Purchase.~~**

~~It is unlawful and an offense for any person under the age of twenty-one (21) years to purchase any non-intoxicating alcoholic beverages or beer.~~

**~~Sec. 12-149. -- Definition of nonintoxicating beverages.~~**

~~Nonintoxicating beverages means and includes beverages containing more than one-half of one percent (1/2 of 1%) alcohol by volume, and not more than three and two-tenths percent (3.2%) alcohol by weight.~~

## **ARTICLE IX. ALCOHOLIC BEVERAGES**

**Sec. 12-146. Adoption of Title 37A.** The City of Bartlesville hereby adopts by reference all misdemeanor offenses now contained or hereafter contained in Title 37A of the Oklahoma Statutes, known and cited as the Oklahoma Alcoholic Beverage Control Act.

**Sec. 12-147. Definitions.** For the purposes of this Article, all terms and phrases used herein shall be defined in the Oklahoma Alcoholic Beverage Control Act, Title 37A, Oklahoma Statutes, effective October 1, 2018. In addition, the following definitions shall apply:

- (a) "Open container" shall mean any bottle, can or other receptacle containing any alcoholic beverage which has been opened, which has a seal broken, or the contents of which have been partially removed.
- (b) "Public property" shall mean and include, but is not limited to, any sidewalk, street, alley, park, parkway, or other property which is owned by the City of Bartlesville, and to which the public has access.

**Sec. 12-148. Drinking, possession, and transportation on public property.**

- (a) It is unlawful for any person to drink or consume any alcoholic beverage upon any public right-of-way (including the street, sidewalk, and public property up to the private property line), lane, alley, public park, and any other public property unless the consumption of alcoholic beverages is expressly permitted for that location pursuant to a permit or ordinance and the consumption is in conformance with the terms of that permit or ordinance, or except as may be otherwise authorized by the City.
- (b) It is unlawful for any person to possess or transport any can, bottle, or other container of any alcoholic beverage which has been opened, or a seal broken, or the contents of which has been

partially removed, upon any public right-of-way (including the street, sidewalk, and public property up to the private property line), lane, alley, public park, and any other public property unless the consumption of alcoholic beverages is expressly permitted for that location pursuant to a permit or ordinance and the consumption is in conformance with the terms of that permit or ordinance, or except as may be otherwise authorized by the City.

(c) This section is intended to have no application to situations which would invoke application of State laws, including but not limited to, regulating the drinking, possession, storage, or transportation of alcoholic beverages on any public property or in any place which is open to the public.

**Sec. 12-149. Drinking and possession on private property.**

(a) It is unlawful for any person to drink, consume, or possess an open container of any alcoholic beverage while upon any private parking lot open to the public unless expressly permitted by the owner or operator of the private parking lot in conformance with a permit or ordinance or as otherwise authorized by the City.

(b) It is unlawful for any person to permit any individual under twenty-one (21) years of age who is an invitee to the person's residence, any building, structure or room owned, occupied, leased or otherwise procured by the person or on any land owned, occupied, leased or otherwise procured by the person, to possess or consume any alcoholic beverage in such place.

(c) This section is intended to have no application to situations which would invoke application of State laws, including but not limited to, regulating the drinking, possession, storage, or transportation of alcoholic beverages on private property or on any private property which is open to the public.

**Sec. 12-150. Public intoxication prohibited.** Any person who shall be under the influence of alcohol at a level that presents a danger to others or creates a disturbance of the peace in or upon any public or private road, in any vehicle, any public place or building, at any public gathering, place accessible to the public or open to being viewed by others, ~~from drinking or consuming such intoxicating liquor, intoxicating substance, or intoxicating compound or from the inhalation of glue, paint, or other intoxicating substances,~~ shall be guilty of an offense.

**Sec. 12-151. Violations.** ~~Any person found guilty of violating any offense included in this section shall be punished by a fine of not more than two hundred dollars (\$200.00).~~ The violation of any provision of this Article shall be punishable by a fine not to exceed one thousand dollars (\$1,000.00) plus court costs, an imprisonment not to exceed ninety (90) days, or both such fine and imprisonment.

**Sec. 12-152 through 12-160, inclusive. Reserved.**

## CHAPTER 13 – PARKS AND RECREATION

### ARTICLE I – IN GENERAL

#### Sec. 13-6. Prohibited acts.

The following activities are prohibited unless otherwise provided herein or authorized by the director of parks and recreation in conjunction with an authorized event. It shall be unlawful for any person:

- (4) *Alcoholic Beverages.*
  - a. To bring or carry in, or in any manner whatsoever possess any intoxicating ~~or non-intoxicating~~ beverages as defined by the statutes of the State of Oklahoma.
  - b. To sell or dispense any intoxicating ~~or non-intoxicating~~ beverages as defined by the statutes of the State of Oklahoma, except pertaining to special events approved in advance or permissions granted by the city manager.

## CHAPTER 18 - TAXATION AND FINANCE

### ARTICLE II – SALES TAX

#### Sec. 18-21. Exemptions.

There is specifically exempted from the tax levied by this division the gross receipts or gross proceeds exempted from the Sales Tax Law of Oklahoma, inclusive, but not exclusive of, and derived from, the:

- ~~(1) Sale of nonintoxicating beverages taxed as provided by state law;~~
- ~~(2)(1)(2)~~ Sale of cigarettes and such tobacco products as are taxed by state law;
- ~~(3)(2)(3)~~ Sale of raw products from the farm, orchard or garden, where such sale is made by the producer of such raw products directly to the consumer or user; gross receipts or gross proceeds derived from the sale of livestock, poultry, poultry products, and dairy products by the producers; exemptions granted by this subdivision shall not apply when such articles are sold, even though by the producer thereof; at or from an "established business place" not on a farm; neither shall this exemption apply unless said articles are produced or grown within the State of Oklahoma. The provisions of this subsection are intended to exempt the sale by livestock producers of livestock sold at special livestock sales. The provisions of this subsection are intended to exempt the sale of dairy products when sold by a dairyman or farmer who owns all of the cows from which the dairy products he sells are produced. The provisions of this subsection shall not be construed to exempt sales of dairy products by any other business. The provisions of this subsection shall not be construed to exempt sales by florists, nurserymen and chicken hatcheries;
- ~~(4)(3)(4)~~ Dues paid to fraternal, religious, civic, charitable or educational societies or organizations by regular members thereof, provided such societies or organizations operate under what is commonly termed the lodge plan or system, and provided such societies or organizations do not operate for a profit which inures to the benefit of any individual member or members thereof to the exclusion of other members;

## MEMO

**TO:** Mike Bailey, City Manager  
**FROM:** Lisa Beeman, Community Development Director  
**DATE:** August 30, 2018  
**RE:** State Firearms and Weapons Laws

### BACKGROUND

The City of Bartlesville recently received an inquiry from Don Spencer, President of the Oklahoma Second Amendment Association, concerning the right to legally carry a weapon, whether concealed or unconcealed, into the Kiddie Park in Johnstone Park. The Kiddie Park's website and signage posted at the park identifies rules for the Kiddie Park and includes among those that "no open or concealed weapons are allowed". The State of Oklahoma preempts all cities in Oklahoma from legislatively regulating in any way firearms, knives, components, ammunition, and supplies, including the lawful open carry of a handgun under the provisions of the Oklahoma Self-Defense Act. Under State Statutes, cities may regulate the discharge of firearms within the city limits and may issue a traffic citation for improperly transporting a firearm as set forth by Oklahoma Statute.

Specifically concerning the inquiry of the Oklahoma Second Amendment Association, Oklahoma Statute prohibits a person from carrying any concealed or unconcealed handgun (which includes a pistol, revolver, derringer, or semiautomatic firearm which has an overall barrel or barrels length of less than sixteen inches) into any structure, building, or office space which is owned or leased by a city, county, state or federal governmental authority for the purpose of conducting business with the public. However, the State Statute specifically excludes from prohibition any property designated by a city, county, or state governmental authority as a park, recreational area, wildlife refuge, wildlife management area or fairgrounds. Under this provision of the State law, Kiddie Park is considered a city designated park and therefore cannot prohibit the possession of any concealed or unconcealed handgun within the boundaries of the Kiddie Park property, although such person would be prohibited from entering the concession stand building at the Kiddie Park.

### IMPACT OF STATE LAW UPON CITY REGULATIONS

Because the State's pre-emption requires the City of Bartlesville to allow a person to carry any concealed or unconcealed handgun into and on the grounds of a City park or recreational area, an amendment needs to be made to Chapter 13 of the Municipal Code which regulates uses in such areas. Additionally, amendments are proposed in Chapter 12 Offenses, Article X, Weapons to update and

match the language set forth in Oklahoma Statutes and to better clarify regulations concerning the discharge of firearms within the City limits of Bartlesville.

The proposed amendments are specifically identified in Exhibit A and summarized as follows:

1. Chapter 12 – Offenses, Article VII, Offenses Against Property, Section 12-121. White Rose Cemetery:
  - a. Amended language concerning firearms to provide the State’s pre-emption;
  - b. Clarified the language of fireworks.
2. Chapter 12 – Offenses, Article X, Weapons:
  - a. Adoption of State Statutes, including definitions therein;
  - b. Inserted State language concerning the unlawful carry or transport of firearms and other weapons, including the right to carry a firearm in a city park or recreational facility, which would include Kiddie Park;
  - c. Clarified City’s regulations concerning the unlawful use or discharge of firearms as authorized by Oklahoma Statute; allows exceptions for air or pellet guns, bow and arrows, and hunting on 40 acres or more;
  - d. Removed section on permission to control squirrel population.
3. Chapter 13 – Parks and Recreation, Article I, In General, Section 13-6, Prohibited Acts, Item (3), Fireworks, Firearms, and Projectiles:
  - a. Amended language concerning firearms to provide the State’s pre-emption;
4. Chapter 13 – Parks and Recreation, Article II, Use Regulations for Specific Park and Recreational Facilities, Section 13-16, Lake Hudson Water Reservoir, Item (3), Use Conditions:
  - a. Amended language concerning firearms to provide the State’s pre-emption;

## **REQUESTED ACTION**

Attached for Council consideration and possible action is an ordinance which would amend the Municipal Code of the City of Bartlesville to comply with the State’s preemption on City regulation of firearms, knives, components, ammunition, and supplies, including the lawful open carry of a handgun under the provisions of the Oklahoma Self-Defense Act, Please include this for consideration and action by the City Council at its Tuesday, September 4, 2018 meeting.

**EXHIBIT A**  
**COMPARISON BETWEEN EXISTING AND PROPOSED REGULATIONS**

**CHAPTER 12 – OFFENSES**

**ARTICLE VII. OFFENSES AGAINST PROPERTY**

**Sec. 12-121. - White Rose cemetery.**

It is an offense for any person to commit any of the following acts in any area of White Rose cemetery:

- (a) To operate any motor vehicle in excess of five (5) miles per hour or to fail to conform to any posted speed limit;
- (b) To park any motor vehicle in any area other than the designated streets within the cemetery;
- (c) To destroy, break, deface, mar or remove any tree, shrub, plant, flower, building, fence, light fixture, tombstone or equipment of any type;
- (d) To dump or scatter trash, garbage or litter of any kind at any place except in designated containers;
- ~~(e) To use firearms, fireworks, BB guns, air rifles or sling shots;~~
- (e) To use, possess, or discharge firearms or weapons of any description including, but not limited to, air rifles, BB guns, spring guns, bows and arrows, crossbows, rockets, slingshots, paint guns, knives, or any form other forms of weapons capable of inflicting injury to persons, animals, or public property, whether or not such weapons are loaded, unless such park area or facility has been specifically designated and posted for such use or unless the use is in conjunction with an approved program; except this section shall not prohibit and is not intended to regulate in any way pistols, rifles or other firearms, their components, ammunition or supplies, in deference to the State of Oklahoma's preemption of this subject matter pursuant to Title 21, Oklahoma Statutes, Section 1290.24, and the State of Oklahoma's regulation and prohibitions applicable to the possession, carrying or bearing of firearms, whether concealed or unconcealed, in Title 21, Oklahoma Statutes, Chapter 53, Sections 1271 et seq., including the Oklahoma Self Defense Act, or as may otherwise be provided by Oklahoma Statute.
- (f) To ignite or set off any fireworks of any kind unless otherwise authorized by the City Fire Chief;
- ~~(g)~~ (g) To throw stones or other dangerous hard objects;
- ~~(h)~~ (h) To permit dogs, cats or other pets to run loose;
- ~~(i)~~ (i) To climb trees, fences, light posts, gazebo, mausoleum and other hazardous structures;
- ~~(j)~~ (j) White Rose cemetery, unless otherwise provided for by cemetery regulations, shall be closed to the public from 9:00 p.m. to 6:00 a.m. each day, and it is unlawful for any person to trespass or loiter on any cemetery property, when the same is closed to the public.

## ARTICLE X. - WEAPONS

**Sec. 12-161. Adoption of State Statutes.** The City of Bartlesville hereby adopts by reference all regulations now contained or hereafter contained in Title 21, Chapter 53, including the Oklahoma Firearms Act of 1971 and the Oklahoma Self-Defense Act. All definitions as contained in Title 21, Chapter 53 shall be applicable to the regulations contained in this Article.

**The following section was relocated to Section 12-163 (A).**

**Section 12-161. Unlawful.** It is unlawful for any person to throw or shoot any stone, shot, snowball, or other object into or across any street or alley, or in any place where he is likely to hit another person wrongfully or to injure property, or to throw or shoot any stone, shot, snowball or other object at any person, vehicle, structure, electric light, or other property of another (whether public or private), except in case where such is done in defense of oneself, of another person, or of property.

**The following section was reworded to match Oklahoma Statutes and relocated to Section 12-162 (D).**

**Sec. 12-162. - Carrying weapons, exceptions.** It shall be unlawful for any person to carry upon or about his person, or in his portfolio or purse, any pistol, revolver, dagger, bowie knife, dirk knife, switchblade knife, spring type knife, sword cane, knife having a blade which opens automatically by hand pressure applied to a button, spring, or other device in the handle of the knife, blackjack, loaded cane, ~~billy~~, hand chain, metal knuckles, or any other offensive weapon, except as otherwise provided by Oklahoma law. Provided further, that this section shall not prohibit the proper possession of guns and knives for hunting, fishing or recreational purposes, nor shall this section be construed to prohibit any possession of weapons in a manner otherwise permitted by statute.

**Sec. 12-162. Unlawful Carry or Transport.**

- A. It shall be unlawful for any person to carry or have in his possession or under his immediate control a sawed-off shotgun or a sawed-off rifle, whether concealed or not.
- B. It shall be unlawful for any person to carry a concealed or unconcealed pistol or handgun except as authorized by the provisions of the Oklahoma Self-Defense Act or as may otherwise be authorized by law.
- C. It shall be unlawful for any person to carry or wear any deadly weapon or dangerous instrument whatsoever with the intent or for the avowed purpose of unlawfully injuring another person.
- D. It shall be unlawful for any person to carry upon or about his or her person, or in a purse or other container belonging to the person, any pistol, revolver, shotgun or rifle, whether loaded or unloaded, or any blackjack, loaded cane, hand chain, metal knuckles, or any other offensive weapon, whether such weapon be concealed or unconcealed, except this shall not prohibit the proper use of guns and knives for hunting, fishing, educational, or

recreational purposes, or the carrying or use of weapons in a manner otherwise permitted by Oklahoma State statute or authorized by the Oklahoma Self-Defense Act.

- E. It shall be unlawful for any person in possession of a valid handgun license issued pursuant to the provisions of the Oklahoma Self-Defense Act to carry any concealed or unconcealed handgun into any of the following places within the City of Bartlesville:
1. Any structure, building, or office space which is owned or leased by any city, town, county, state or federal government authority for the purpose of conducting business with the public;
  2. Any meeting of any City, County, State or Federal officials, school board members, legislative members, or any other elected or appointed officials;
  3. Any courthouse, courtroom, prison, jail, detention facility or any facility used to process, hold, or house arrested persons, prisoners or persons alleged delinquent or adjudicated delinquent, except as provided in Oklahoma Statutes;
  4. Any public or private elementary or secondary school, except as provided in Oklahoma Statutes;
  5. Any college, university, or technology center school building or upon property thereof, except as provided in Oklahoma Statutes;
  6. Any publicly owned or operated sports arena or venue during a professional sporting event, unless allowed by the event holder;
  7. Any place where gambling or pari-mutuel wagering is authorized by law, unless allowed by the property owner; and
  8. Any other place specifically prohibited by law.

However, this does not include and specifically excludes the following property:

1. Any property set aside for the use or parking of any vehicle, whether attended or unattended, by the City of Bartlesville, Washington County, State of Oklahoma, or federal government;
2. Any property set aside for the use or parking of any vehicle, whether attended or unattended, which is open to the public, or by any entity engaged in gambling or pari-mutuel wagering as authorized by law;
3. Any property adjacent to a structure, building or office space in which concealed or unconcealed weapons are prohibited by the provisions of this section;
4. Any property designated by the City of Bartlesville, Washington County, or State of Oklahoma as a park, recreational area, wildlife refuge, wildlife management area or fairgrounds; provided, nothing in this paragraph shall be construed to authorize any entry by a person in possession of a concealed or unconcealed handgun into any structure, building or office space which is specifically prohibited by this section;
5. Any property set aside by a public or private elementary or secondary school for the use or parking of any vehicle, whether attended or unattended; provided, however, said handgun shall be stored and hidden from view in a locked motor vehicle when the motor vehicle is left unattended on school property; and

6. Any property set aside on any college, university or technology center school property for the use or parking of any vehicle, whether attended or unattended, provided the handgun is carried or stored as required by law and the handgun is not removed from the vehicle while located on such property without the prior consent of the college or university president or technology center school administrator.

F. Except as otherwise provided by the provisions of the Oklahoma Self-Defense Act or another provision of law, it shall be unlawful to transport a loaded pistol, rifle or shotgun in a land borne motor vehicle over a public highway or roadway. However, a rifle or shotgun may be transported clip or magazine loaded and not chamber loaded when transported in an exterior locked compartment of the vehicle or trunk of the vehicle, or in the interior compartment of the vehicle, notwithstanding the provisions of Section 1289.7 of the Oklahoma Firearms Act of 1971 when the person is in possession of a valid handgun license pursuant to the Oklahoma Self-Defense Act.

**~~Sec. 12-163. - Permission to control squirrel population.~~**

~~The owner of any property that is not residentially developed may be granted permission by the city manager or his designee to use appropriate weapons to control the squirrel population if the following conditions are satisfied:~~

- ~~(1) The applicant submits a written request in advance to the city manager.~~
- ~~(2) The city manager determines that control of the squirrel population on the applicant's land is necessary to protect the applicant's land and improvements thereon.~~
- ~~(3) The type of weapon requested is limited in range and power so as to adequately protect the public.~~
- ~~(4) The dates on which such actions may be taken are limited to the minimum necessary to properly protect the property involved. Upon review of the application the city manager may issue a permit authorizing the requested activity which permit shall contain all necessary restrictions to protect the safety of the general public. In the event the city manager declines to issue such a permit, the applicant may appeal within ten (10) days the city manager's decision to the city council by giving written notice thereof.~~

**This section was reworded to allow a greater bow draw weight and relocated to Section 12-163(B).**

**Sec. 12-164. - Bows and arrows.**

- (a) No person shall shoot with, or use out-of-doors, a bow and arrow, the bow of which has a pull of ten (10) pounds or over.
- (b) No person shall use any arrow with a steel pointed tip or a hunting point affixed to the tip.
- (c) The city manager or his designee may grant an exemption to subsections (a) and (b) hereof for the operation of an archery range or other supervised event if it is duly determined that such exemption will not be detrimental to the health, safety and welfare of the public.

**This section was reworded to include the penalty as prescribed by Oklahoma Statute and relocated to Section 12-163(C).**

**Sec. 12-165. - Firearms—Reckless conduct.**

It shall be unlawful for any person to engage in reckless conduct while having in his possession any shotgun, rifle or pistol, such actions consisting of creating a situation of

unreasonable risk and probability of death or great bodily harm to another and demonstrating a conscious disregard for the safety of another person.

**This section was reworded to match Oklahoma Statute and relocated to Section 12-162(F).**

**Sec. 12-166. - Transporting a loaded firearm.**

Except as otherwise provided by the provisions of the Oklahoma Self-Defense Act, section 125, or other provision of law by the State of Oklahoma, it shall be unlawful to transport a loaded pistol, rifle, or shotgun in a landborne motor vehicle over a public highway or roadway. However, a rifle or shotgun may be transported when clip or magazine loaded and not chamber loaded when transported in an exterior locked compartment of the vehicle or trunk of the vehicle.

**This section was reworded to reflect the State's pre-emption and relocated to Section 12-162(E).**

**Sec. 12-167. - Prohibition of firearms on city property.**

No person shall possess a firearm on any city property or in any city owned structure with the following exceptions:

- (1) Duly authorized law enforcement personnel.
- (2) Individuals possessing a valid city issued duck hunting permit while hunting at Hudson Lake may possess an appropriate shotgun for hunting water fowl.

For purposes of this section only, city streets, alleys, Pathfinder Parkway, and parking lots serving city buildings are not considered city property.

**Sec. 12-163. Unlawful Use or Discharge.**

- A. It shall be unlawful for any person to throw or shoot any stone, shot, snowball, or other object into or across any street or alley, or in any place where he is likely to hit another person wrongfully or to injure property, or to throw or shoot any stone, shot, snowball, or other object at any person, vehicle, structure, electric light, or other property of another, whether public or private, except in case where such is done in defense of oneself, of another person, or of property.
- B. It shall be unlawful for any person to discharge a firearm within the city limits of Bartlesville, except as follows:
  1. When lawfully doing so in defense of oneself, of another person, or of property, or when otherwise authorized by City, State or Federal law;
  2. When the firearm does not discharge a projectile which is capable of causing death or inflicting bodily harm and is used during outdoor funerals, historical reenactments and community events; or
  3. When lawfully doing so in the performance of any legal duty by any law enforcement officer, military personnel, or other legally authorized person.

However, this is not intended to prohibit the following:

1. Any person discharging a weapon at a lawfully operated shooting range, firing range, skeet range, archery range, or gun club;
  2. A Nuisance Wildlife Control Operator licensed by the Oklahoma Department of Wildlife Conservation when providing assistance to the property owner in the management and control of regulated species of nuisance wildlife.
  3. Any person from shooting rubber-tipped arrows from a bow which has a draw weight of twenty-five (25) pounds or less on said person's lawfully occupied property, provided the arrow when fired or discharged at no time travels beyond the boundary of said person's property.
  4. Any person discharging a bow and arrow, crossbow, or shotgun providing no shells containing projectiles larger than No. 2 shots shall be used, while legally hunting on undeveloped land containing forty (40) contiguous acres or more with the written permission of the landowner, further provided the projectile fired or discharged at no time travels beyond the boundary of said property, or within 300 feet of any public street, sidewalk, trail, path, public land or easement, or publicly accessible place.
- C. It shall be unlawful for any person to engage in reckless conduct while having in his or her possession any shotgun, rifle, or pistol, such actions consisting of creating a situation of unreasonable risk and probability of death or great bodily harm to another, and demonstrating a conscious disregard for the safety of another person. Any person convicted of a violation of this regulation shall be punished by a fine of not less than fifty dollars (\$50) nor more than five hundred dollars (\$500), or imprisonment in the county jail for not less than ten (10) days nor more than six (6) months, or by both such fine and imprisonment.
- D. It shall be unlawful for any person to discharge any firearm while failing to exercise the care which a reasonable and prudent person would use under the same or similar circumstances to avoid injury to any person or property. Any person convicted of a violation of this regulation shall be punished by a fine of not more than five hundred dollars (\$500), or imprisonment in the county jail for no more than thirty (30) days, or by both such fine and imprisonment.
- E. It shall be unlawful for any person to willfully or intentionally discharge any firearm or other deadly weapon at or into any dwelling, or at or into any building used for public or business purposes. Any violation of this provision shall be a felony punishable by imprisonment as per Oklahoma State Statute.
- F. Except in an act of self-defense or in defense of any person, one's home or property, it shall be unlawful for any person to willfully or without lawful cause point a shotgun, rifle or pistol, or any deadly weapon, whether loaded or not, at any person or persons for the purpose of threatening or with the intention of discharging the firearm or with any malice or for any purpose of injuring, either through physical injury or mental or emotional intimidation or for purposes of whimsy, humor or prank, or in anger or otherwise, except as may be authorized by Oklahoma Statute.

**Secs. 12-164—12-175. - Reserved.**

## **Chapter 13. Parks and Recreation**

### **Article I. In General**

#### **Sec. 13-6. - Prohibited acts.**

The following activities are prohibited unless otherwise provided herein or authorized by the director of parks and recreation in conjunction with an authorized event. It shall be unlawful for any person:

(3) *Fireworks, Firearms, and Projectiles.*

- ~~a. To use, possess or discharge firearms of any description including, but not limited to, air rifles, BB guns, spring guns, bow and arrows, cross bow, rockets, slings, paint guns, or any other forms of weapons potentially harmful to wildlife or dangerous to human safety.~~
- a. To use, possess, or discharge firearms or weapons of any description including, but not limited to, air rifles, BB guns, spring guns, bows and arrows, crossbows, rockets, slingshots, paint guns, knives, or any form other forms of weapons capable of inflicting injury to persons, animals, or public property, whether or not such weapons are loaded, unless such park area or facility has been specifically designated and posted for such use or unless the use is in conjunction with an approved program; except this section shall not prohibit and is not intended to regulate in any way pistols, rifles or other firearms, their components, ammunition or supplies, in deference to the State of Oklahoma's preemption of this subject matter pursuant to Title 21, Oklahoma Statutes, Section 1290.24, and the State of Oklahoma's regulation and prohibitions applicable to the possession, carrying or bearing of firearms, whether concealed or unconcealed, in Title 21, Oklahoma Statutes, Chapter 53, Sections 1271 et seq., including the Oklahoma Self Defense Act, or as may otherwise be provided by Oklahoma Statute.
- b. To discharge or shoot firearms of any description as defined above into any park from beyond park boundaries, **except as may otherwise be provided by Oklahoma Statute.**
- c. To throw stones or other dangerous hard objects.
- d. To use any instrument that can be loaded with and fire blank cartridges except as authorized by the director of parks and recreation in conjunction with an authorized event.
- e. To discharge, or have in his possession, any fireworks, except as authorized by the director of parks and recreation in conjunction with an authorized event.

### **Article II. Use Regulations for Specific Park and Recreational Facilities**

#### **Sec. 13-16. Lake Hudson Water Reservoir.**

In addition to the regulations set forth in Article I above, the following regulations shall also apply at Lake Hudson Water Reservoir:

- (3) *Use Conditions.* Use of the premises shall be at the risk of the person entering thereon and shall be subject to the following regulations:

- a. No person, excepting duly authorized employees of the city, shall enter the premises before 6:00 a.m. or remain thereon after 11:00 p.m. During duck hunting season, hunters may enter one (1) hour before shooting time. Duck hunting shall end at 12:00 noon.
- b. No person shall bring or use firearms of any kind on the premises, except shotguns to be used in hunting ducks in duck hunting season, **and as further excepted in Article I, Section 13-6(3) of this Chapter.**
- c. No person shall swim, bathe or wade in the reservoir, or pollute the reservoir area in any manner, except as swimming or wading is incidental to an authorized activity.
- d. No person shall park an automobile on the dam or in any restricted parking area longer than necessary to load or unload a boat.

ORDINANCE NO. \_\_\_\_\_

AN ORDINANCE OF THE COUNCIL OF THE CITY OF BARTLESVILLE, OKLAHOMA AMENDING CHAPTERS 12 AND 13 OF THE CODE OF THE CITY OF BARTLESVILLE, OKLAHOMA, CONCERNING THE POSSESSION, CARRYING OR BEARING OF FIREARMS, WHETHER CONCEALED OR UNCONCEALED, IN DEFERENCE TO THE STATE OF OKLAHOMA'S PREEMPTION ON THIS MATTER; PROVIDING FOR THE DISCHARGE OF FIREARMS WITHIN THE CITY LIMITS OF BARTLESVILLE; PROVIDING REGULATIONS THE POSSESSION AND USE OF OTHER WEAPONS; AND PROVIDING FOR THE SEVERABILITY THEREOF

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**WHEREAS**, the Oklahoma Statutes preempt all municipalities within the State from legislatively regulating in any way firearms, knives, components, ammunition and supplies, including the lawful open carrying of a handgun under the provisions of the Oklahoma Self-Defense Act;

**WHEREAS**, this preemption applies to any property designated by the City as a park, recreational area, or fairground;

**WHEREAS**, this preemption causes any conflicting city regulation to be null and void;

**WHEREAS**, the City Council has determined it to be in the best interests of the citizens of Bartlesville, Oklahoma to amend Chapters 12 and 13 of the Bartlesville Municipal Code as needed to comply with Oklahoma Statutes.

**NOW, THEREFORE, BE IT ORDAINED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF BARTLESVILLE, OKLAHOMA:**

Section 1. That Chapter 12, Offenses, Article VII, Offenses Against Property, Section 12-21, White Rose Cemetery, shall be amended to read as follows:

**Sec. 12-121. – White Rose Cemetery**

It is an offense for any person to commit any of the following acts in any area of White Rose cemetery:

- (a) To operate any motor vehicle in excess of five (5) miles per hour or to fail to conform to any posted speed limit;
- (b) To park any motor vehicle in any area other than the designated streets within the cemetery;
- (c) To destroy, break, deface, mar or remove any tree, shrub, plant, flower, building, fence, light fixture, tombstone or equipment of any type;
- (d) To dump or scatter trash, garbage or litter of any kind at any place except in designated containers;
- (e) To use, possess, or discharge firearms or weapons of any description including, but not limited to, air rifles, BB guns, spring guns, bows and arrows, crossbows, rockets, slingshots, paint guns, knives, or any form other forms of weapons capable of inflicting injury to persons, animals, or public property, whether or not such weapons are loaded, unless such park area or facility has been specifically designated and posted for such use or unless the use is in conjunction with an approved program; except this section shall not prohibit and is not intended to regulate in any

way pistols, rifles or other firearms, their components, ammunition or supplies, in deference to the State of Oklahoma's preemption of this subject matter pursuant to Title 21, Oklahoma Statutes, Section 1290.24, and the State of Oklahoma's regulation and prohibitions applicable to the possession, carrying or bearing of firearms, whether concealed or unconcealed, in Title 21, Oklahoma Statutes, Chapter 53, Sections 1271 et seq., including the Oklahoma Self Defense Act, or as may otherwise be provided by Oklahoma Statute.

- (f) To ignite or set off any fireworks of any kind unless otherwise authorized by the City Fire Chief;
- (g) To throw stones or other dangerous hard objects;
- (h) To permit dogs, cats or other pets to run loose;
- (i) To climb trees, fences, light posts, gazebo, mausoleum and other hazardous structures;
- (j) White Rose cemetery, unless otherwise provided for by cemetery regulations, shall be closed to the public from 9:00 p.m. to 6:00 a.m. each day, and it is unlawful for any person to trespass or loiter on any cemetery property, when the same is closed to the public.

Section 2. That Chapter 12, Offenses, Article X, Weapons, shall be amended to read as follows:

**Sec. 12-161. Adoption of State Statutes.** The City of Bartlesville hereby adopts by reference all regulations now contained or hereafter contained in Title 21, Chapter 53, including the Oklahoma Firearms Act of 1971 and the Oklahoma Self-Defense Act. All definitions as contained in Title 21, Chapter 53 shall be applicable to the regulations contained in this Article.

**Sec. 12-162. Unlawful Carry or Transport.**

- A. It shall be unlawful for any person to carry or have in his possession or under his immediate control a sawed-off shotgun or a sawed-off rifle, whether concealed or not.
- B. It shall be unlawful for any person to carry a concealed or unconcealed pistol or handgun except as authorized by the provisions of the Oklahoma Self-Defense Act or as may otherwise be authorized by law.
- C. It shall be unlawful for any person to carry or wear any deadly weapon or dangerous instrument whatsoever with the intent or for the avowed purpose of unlawfully injuring another person.
- D. It shall be unlawful for any person to carry upon or about his or her person, or in a purse or other container belonging to the person, any pistol, revolver, shotgun or rifle, whether loaded or unloaded, or any blackjack, loaded cane, hand chain, metal knuckles, or any other offensive weapon, whether such weapon be concealed or unconcealed, except this shall not prohibit the proper use of guns and knives for hunting, fishing, educational, or recreational purposes, or the carrying or use of weapons in a manner otherwise permitted by Oklahoma State statute or authorized by the Oklahoma Self-Defense Act.

E. It shall be unlawful for any person in possession of a valid handgun license issued pursuant to the provisions of the Oklahoma Self-Defense Act to carry any concealed or unconcealed handgun into any of the following places within the City of Bartlesville:

1. Any structure, building, or office space which is owned or leased by any city, town, county, state or federal government authority for the purpose of conducting business with the public;
2. Any meeting of any City, County, State or Federal officials, school board members, legislative members, or any other elected or appointed officials;
3. Any courthouse, courtroom, prison, jail, detention facility or any facility used to process, hold, or house arrested persons, prisoners or persons alleged delinquent or adjudicated delinquent, except as provided in Oklahoma Statutes;
4. Any public or private elementary or secondary school, except as provided in Oklahoma Statutes;
5. Any college, university, or technology center school building or upon property thereof, except as provided in Oklahoma Statutes;
6. Any publicly owned or operated sports arena or venue during a professional sporting event, unless allowed by the event holder;
7. Any place where gambling or pari-mutuel wagering is authorized by law, unless allowed by the property owner;
8. Any other place specifically prohibited by law.

However, this does not include and specifically excludes the following property:

1. Any property set aside for the use or parking of any vehicle, whether attended or unattended, by the City of Bartlesville, Washington County, State of Oklahoma, or federal government;
2. Any property set aside for the use or parking of any vehicle, whether attended or unattended, which is open to the public, or by any entity engaged in gambling or pari-mutuel wagering as authorized by law;
3. Any property adjacent to a structure, building or office space in which concealed or unconcealed weapons are prohibited by the provisions of this section;
4. Any property designated by the City of Bartlesville, Washington County, or State of Oklahoma as a park, recreational area, wildlife refuge, wildlife management area or fairgrounds; provided, nothing in this paragraph shall be construed to authorize any entry by a person in possession of a concealed or unconcealed handgun into any structure, building or office space which is specifically prohibited by this section;
5. Any property set aside by a public or private elementary or secondary school for the use or parking of any vehicle, whether attended or unattended; provided, however, said handgun shall be stored and hidden from view in a locked motor vehicle when the motor vehicle is left unattended on school property; and
6. Any property set aside on any college, university or technology center school property for the use or parking of any vehicle, whether attended or unattended, provided the

handgun is carried or stored as required by law and the handgun is not removed from the vehicle while located on such property without the prior consent of the college or university president or technology center school administrator.

- F. Except as otherwise provided by the provisions of the Oklahoma Self-Defense Act or another provision of law, it shall be unlawful to transport a loaded pistol, rifle or shotgun in a land borne motor vehicle over a public highway or roadway. However, a rifle or shotgun may be transported clip or magazine loaded and not chamber loaded when transported in an exterior locked compartment of the vehicle or trunk of the vehicle, or in the interior compartment of the vehicle, notwithstanding the provisions of Section 1289.7 of the Oklahoma Firearms Act of 1971 when the person is in possession of a valid handgun license pursuant to the Oklahoma Self-Defense Act.

### **Sec. 12-163. Unlawful Use or Discharge.**

- A. It shall be unlawful for any person to throw or shoot any stone, shot, snowball, or other object into or across any street or alley, or in any place where he is likely to hit another person wrongfully or to injure property, or to throw or shoot any stone, shot, snowball, or other object at any person, vehicle, structure, electric light, or other property of another, whether public or private, except in case where such is done in defense of oneself, of another person, or of property.
- B. It shall be unlawful for any person to discharge a firearm within the city limits of Bartlesville, except as follows:
1. When lawfully doing so in defense of oneself, of another person, or of property, or when otherwise authorized by City, State or Federal law; or
  2. When the firearm does not discharge a projectile which is capable of causing death or inflicting bodily harm and is used during outdoor funerals, historical reenactments and community events; or
  3. When lawfully doing so in the performance of any legal duty by any law enforcement officer, military personnel, or other legally authorized person.

However, this is not intended to prohibit the following:

1. Any person discharging a weapon at a lawfully operated shooting range, firing range, skeet range, archery range, or gun club;
2. A Nuisance Wildlife Control Operator licensed by the Oklahoma Department of Wildlife Conservation when providing assistance to the property owner in the management and control of regulated species of nuisance wildlife.
3. Any person from shooting rubber-tipped arrows from a bow which has a draw weight of twenty-five (25) pounds or less on said person's lawfully occupied property, provided the arrow when fired or discharged at no time travels beyond the boundary

of said person's property.

4. Any person discharging a bow and arrow, crossbow, or shotgun providing no shells containing projectiles larger than No. 2 shots shall be used, while legally hunting on undeveloped land containing forty (40) contiguous acres or more with the written permission of the landowner, further provided the projectile fired or discharged at no time travels beyond the boundary of said property, or within 300 feet of any public street, sidewalk, trail, path, public land or easement, or other publicly accessible place.
- C. It shall be unlawful for any person to engage in reckless conduct while having in his or her possession any shotgun, rifle, or pistol, such actions consisting of creating a situation of unreasonable risk and probability of death or great bodily harm to another, and demonstrating a conscious disregard for the safety of another person. Any person convicted of a violation of this regulation shall be punished by a fine of not less than fifty dollars (\$50) nor more than five hundred dollars (\$500), or imprisonment in the county jail for not less than ten (10) days nor more than six (6) months, or by both such fine and imprisonment.
  - D. It shall be unlawful for any person to discharge any firearm while failing to exercise the care which a reasonable and prudent person would use under the same or similar circumstances to avoid injury to any person or property. Any person convicted of a violation of this regulation shall be punished by a fine of not more than five hundred dollars (\$500), or imprisonment in the county jail for no more than thirty (30) days, or by both such fine and imprisonment.
  - E. It shall be unlawful for any person to willfully or intentionally discharge any firearm or other deadly weapon at or into any dwelling, or at or into any building used for public or business purposes. Any violation of this provision shall be a felony punishable by imprisonment as per Oklahoma State Statute.
  - F. Except in an act of self-defense or in defense of any person, one's home or property, it shall be unlawful for any person to willfully or without lawful cause point a shotgun, rifle or pistol, or any deadly weapon, whether loaded or not, at any person or persons for the purpose of threatening or with the intention of discharging the firearm or with any malice or for any purpose of injuring, either through physical injury or mental or emotional intimidation or for purposes of whimsy, humor or prank, or in anger or otherwise, except as may be authorized by Oklahoma Statute.

Section 3. That Chapter 13, Parks and Recreation, Article I, In General, Section 13-6, Item (3) shall be amended to read as follows:

(3) Fireworks, Firearms, and Projectiles:

- a. To use, possess, or discharge firearms or weapons of any description including, but not limited to, air rifles, BB guns, spring guns, bows and arrows, crossbows, rockets, slingshots, paint guns, knives, or any form other forms of weapons capable of inflicting injury to persons,

animals, or public property, whether or not such weapons are loaded, unless such park area or facility has been specifically designated and posted for such use or unless the use is in conjunction with an approved program; except this section shall not prohibit and is not intended to regulate in any way pistols, rifles or other firearms, their components, ammunition or supplies, in deference to the State of Oklahoma's preemption of this subject matter pursuant to Title 21, Oklahoma Statutes, Section 1290.24, and the State of Oklahoma's regulation and prohibitions applicable to the possession, carrying or bearing of firearms, whether concealed or unconcealed, in Title 21, Oklahoma Statutes, Chapter 53, Sections 1271 et seq., including the Oklahoma Self Defense Act, or as may otherwise be provided by Oklahoma Statute.

- b. To discharge or shoot firearms of any description as defined above into any park from beyond park boundaries, except as may otherwise be provided by Oklahoma Statute;
- c. To throw stones or other dangerous hard objects;
- d. To use any instrument that can be loaded with and fire blank cartridges except as authorized by the Director of Parks and Recreation in conjunction with an authorized event.
- e. To discharge, or have in his possession, any fireworks, except as authorized by the Director of Parks and Recreation in conjunction with an authorized event.

Section 4. That Chapter 13, Parks and Recreation, Article II, Use Regulations for Specific Park and Recreational Facilities, Section 13-16, Lake Hudson Water Reservoir, Subsection (3)b, Use Conditions, shall be amended to read as follows:

- b. No person shall bring or use firearms of any kind on the premises, except shotguns to be used in hunting ducks in duck hunting season, and as further excepted in Article I, Section 13-6(3) of this Chapter.

Section 5. Severability. If any section, subsection, sentence, clause, phrase, or portion of this ordinance is, for any reason, held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent provision, and such holding shall not affect the validity of the remaining portions of this ordinance, except that the effective date provision shall not be severable from the operative provisions of the ordinance.

**PASSED** by the City Council and **APPROVED** by the Mayor of the City of Bartlesville, Oklahoma this 4th day of September, 2018.

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Dale Copeland, Mayor

**ATTEST:**

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City Clerk

(SEAL)



## MEMO

**TO:** Mike Bailey, City Manager  
**FROM:** Lisa Beeman, Community Development Director  
**DATE:** August 27, 2018  
**RE:** Consider and take action on an ordinance to remove regulations concerning the use of Bill Doenges Memorial Stadium.

### BACKGROUND

The City of Bartlesville conveyed ownership of the Bill Doenges Memorial Stadium to the Bartlesville School District in 2016. Regulations concerning the use of the facility are still included in the Bartlesville Municipal Code and need to be removed.

### CONCLUSION

Attached is an ordinance which would remove from the Bartlesville Municipal Code references to the Bill Doenges Memorial Stadium. Please include the attached ordinance for consideration and possible action by the City Council at its Tuesday, September 4 regular meeting.

ORDINANCE NO. \_\_\_\_\_

**AN ORDINANCE AMENDING CHAPTER 13, PARKS AND RECREATION, ARTICLE II, USE REGULATIONS FOR SPECIFIC PARK AND RECREATIONAL FACILITIES, OF THE BARTLESVILLE MUNICIPAL CODE REMOVING ALL REFERENCES TO BILL DOENGES MEMORIAL STADIUM.**

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**WHEREAS**, in 2016, the City of Bartlesville conveyed ownership of the Bill Doenges Memorial Stadium to Independent School District No. 30 of Washington County, Oklahoma; and

**WHEREAS**, the City Council has determined it to be in the best interests of the citizens of Bartlesville, Oklahoma to amend Chapter 13, Parks and Recreation, Article II of the Bartlesville Municipal Code as remove all references to Bill Doenges Memorial Stadium.

**NOW, THEREFORE, BE IT ORDAINED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF BARTLESVILLE, OKLAHOMA:**

Section 1. That Chapter 13, Parks and Recreation, Article II, Use Regulations for Specific Park and Recreational Facilities, Section 13-19, Bill Doenges Memorial Stadium, shall be deleted and reserved for future use.

**PASSED** by the City Council and **APPROVED** by the Mayor of the City of Bartlesville, Oklahoma this 4th day of September 2018.

\_\_\_\_\_  
Dale Copeland, Mayor

**ATTEST:**

\_\_\_\_\_  
City Clerk

(SEAL)