



McAlester City Council

NOTICE OF MEETING

Special City Council Workshop Meeting Agenda

Tuesday, November 12, 2019 – 5:00 pm
McAlester City Hall – Council Chambers
28 E. Washington

John Browne	Mayor
Weldon Smith	Ward One
Cully Stevens, Vice Mayor	Ward Two
Travis Read	Ward Three
James Brown	Ward Four
Maureen Harrison	Ward Five
Zach Prichard	Ward Six
Peter J. Stasiak	City Manager
William J. Ervin	City Attorney
Cora M. Middleton	City Clerk

This agenda has been posted at the McAlester City Hall, distributed to the appropriate news media, and posted on the City website: www.cityofmcalester.com within the required time frame.

The Mayor and City Council request that all cell phones and pagers be turned off or set to vibrate. Members of the audience are requested to step outside the Council Chambers to respond to a page or to conduct a phone conversation.

The McAlester City Hall is wheelchair accessible. Sign interpretation or other special assistance for disabled attendees must be requested 48 hours in advance by contacting the City Clerk's Office at 918.423.9300, Extension 4956.

CALL TO ORDER

Announce the presence of a Quorum.

ROLL CALL

SCHEDULED BUSINESS

1. Discussion on Special Permitting Requirements for New Healthcare Facilities within the City of McAlester with a possible amendment to the existing ordinance.

ADJOURNMENT

CERTIFICATION

I certify that this Notice of Meeting was posted on this _____ day of _____ 2019 at _____ a.m./p.m. as required by law in accordance with Section 303 of the Oklahoma Statutes and that the appropriate news media was contacted. As a courtesy, this agenda is also posted on the City of McAlester website: www.cityofmcalester.com.

Cora M. Middleton, City Clerk



McAlester City Council

AGENDA REPORT

Meeting Date: November 12, 2019

Item Number: 1

Department: _____

Prepared By: _____

Account Code: _____

Date Prepared: November 5, 2019

Budgeted Amount: _____

Exhibits: 1

Subject

Discussion on Special Permitting Requirements for New Healthcare Facilities within the City of McAlester with a possible amendment to the existing ordinance.

Recommendation

Discussion.

Discussion

Approved By

Initial

Date

Department Head

City Manager

P. Stasiak

Special Permit Requirement for New Healthcare Businesses In McAlester

City Council Study Session



CROWE&DUNLEVY
ATTORNEYS AND COUNSELORS AT LAW

Karen S. Rieger

November 12, 2019

Current City of McAlester Requirements

- Since 1997, McAlester has required a special permit for new hospitals and ambulatory surgery centers located within the city limits
- MRHC is proposing changes expanding the permit requirement to additional healthcare businesses and making certain other changes

Reasons for Special Permit Requirement

- Verify that a new provider will not cause an undue financial or staffing hardship on existing providers, which may result in a decrease or loss of particular services
- Verify that the new provider can be adequately served by the City's utility system and infrastructure
- Verify that the new provider will likely not increase the cost of healthcare services to local residents
- Verify that the new provider will contribute to the orderly development of healthcare services in the community

Examples of Potential Adverse Effects

- New free-standing imaging center causes a reduction in MRHC imaging revenues needed to provide emergency services to indigent patients
- New ambulatory surgery center causes a reduction in MRHC surgery revenues needed to subsidize the cost of OB services
- New free-standing ER steers patients to acute care hospitals outside of the city, causing inconvenience to patients and loss of revenue to MRHC necessary to continue all service lines

Prevalence of Local Permit Requirements

- Other cities in Oklahoma with a special healthcare permit requirement include:
 - Duncan
 - Norman
 - Stillwater
 - Guymon
- Common in other states as well
- Similar to a Certificate of Need requirement at state level for:
 - nursing facilities
 - psychiatric beds

Legal Analysis

- Oklahoma cities have specific authority to regulate hospitals (11 Okla. Stat. § 22-120)
- Oklahoma cities also have specific authority to promote health through zoning regulations (11 Okla. Stat. § 43-101)
- Oklahoma counties have specific authority to operate and regulate hospitals (19 Okla. Stat. §§ 781-796)
- Oklahoma counties also have specific authority to promote health through zoning ordinances (19 Okla. Stat. § 865.51)

Legal Analysis

- This legal authority provides “state action” immunity to Oklahoma cities under federal and state antitrust laws
 - Regulation replaces competition
 - Cities and counties are immune from damages under federal antitrust laws
 - An injunction can be issued if City process does not meet state action requirements

Public Input Into Permit Process

- Applicant completes application form developed by City
- Public notice published within 10 days
- Public can submit written materials within 10 days of public notice
- Public hearing scheduled within 120 days after public notice
 - Notice published 20 days prior to hearing

Proposed Changes to City Ordinance

- In addition to hospitals and ASCs, the permit requirement would apply to imaging centers, certain laboratory services and emergency services
- Filing fee would be increased from \$1,000.00 to \$5,000.00
- Provides for an ad hoc committee appointed by the Mayor to include:
 - three laypersons who are residents of the City
 - three healthcare professionals (to include one representative from any existing licensed hospital in the City)
 - one person elected by the six members specified above

Requirements for New Healthcare Facility Permit

- Ad hoc committee would consider all relevant information and make a recommendation to the Mayor and City Council regarding an application
- Applicants would be required to specify (i) their intention regarding participation of the new Healthcare Facility in Medicare, Medicaid and other government healthcare payment programs; and (ii) any indigent and/or charity care policies for the new Healthcare Facility

Requirements for New Healthcare Facility Permit

- Ad hoc committee would review all information submitted in connection with any application. The ad hoc committee would make recommendation to the Mayor and City Council regarding any need for a feasibility study.
- If a feasibility study is recommended by the ad hoc committee, it also would make a recommendation regarding a recognized health care industry consulting firm to conduct the feasibility study.
- If the City Council approves a feasibility study, the Applicant would be required to pay the cost of the feasibility study, in advance, up to a maximum of \$100,000.

Requirements for New Healthcare Facility Permit

- City Council would approve a permit for a new Healthcare Facility if it finds:
 - Proposed Healthcare Facility will contribute to the orderly development of healthcare services in the city
 - Proposed Healthcare Facility will not cause an undue financial or staffing hardship on existing healthcare providers which is potentially capable of causing the reduction or elimination of services to the detriment of citizens of the city
 - City's utility systems and infrastructure can adequately serve the proposed Healthcare Facility
 - Proposed Healthcare Facility will not cause a significant increase in the cost of healthcare that would adversely impact the citizens of the city
- A permit could be revoked if it is determined that an application contained material misrepresentations and/or omissions

Questions???

PRESENTED BY

Karen S. Rieger

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DRAFT**ORDINANCE NO. _____**

CONSIDER AND ACT UPON AN ORDINANCE OF THE CITY OF MCALESTER, OKLAHOMA; AMENDING MCALESTER CITY CODE CHAPTER 22, MEDICAL FACILITIES, ARTICLE VII, SECTION 22-248, HOSPITALS; PERMIT AND APPLICATION REQUIREMENTS; REPEALING SECTION 22-249, AMBULATORY SURGICAL CARE FACILITIES; AMENDING CHAPTER 48, FEES, CHARGES, AND SERVICE RATES, ARTICLE VII, SECTION 22-248 AND SECTION 22-249; REPEALING ALL CONFLICTING ORDINANCES.

* * * * *

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

SECTION 1: Chapter 22, Article VII, Section 22-248 of the McAlester Code of Ordinances is hereby amended as follows:

ARTICLE VII. MEDICAL FACILITIES

Sec. 22-248. Healthcare Facilities; permit and application requirements.

- (a) No new facility providing service vital to the health and well-being of the citizens of the City of McAlester, to include acute care hospital services, ambulatory surgical services, diagnostic imaging services, diagnostic laboratory (other than CLIA-waived laboratories) services and emergency services, shall be developed, either through construction or conversion of existing space, in the city unless a permit therefor has been issued. Such facilities are referenced in this Ordinance as Healthcare Facilities.
- (b) Before developing a facility for use as a new Healthcare Facility, the person or entity proposing to operate the Healthcare Facility shall apply for a permit in addition to any other required approvals. The application for permit shall be in such form as the city shall prescribe and shall include a demonstration of the Healthcare Facility's probable impact on existing Healthcare Facilities in the city, including permitted Healthcare Facilities not yet completed. In particular, the application shall require the applicant to disclose (i) whether the new Healthcare Facility would participate in Medicare, Medicaid and/or other government healthcare payment programs and (ii) proposed indigent/charity care policies of the New Facility.
- (c) The application for permit shall be accompanied by a filing fee as provided in chapter 48. In the event the city council determines a feasibility study is necessary in connection with an application, an applicant shall be required to pay the cost of such feasibility study, up to a maximum amount of \$100,000.00. Said applicant shall submit the

additional amount requested within ten days, or the application shall be stayed until such time as such amount is submitted.

- (d) Within two working days after receipt of the filing fee, the applicant shall be provided with a notice of receipt and the city shall accept the application for permit. Within 10 days after receiving a completed application for a permit, the city treasurer shall cause a paid public notice to be published in a newspaper of general circulation in the area where the Healthcare Facility is to be located and in a newspaper of general circulation in the area. The notice shall be for the purpose of notifying the public that the application has been made and shall include the name and proposed location of the Healthcare Facility, a brief description of the proposal, information on where the original application can be viewed, and an explanation of how parties may file materials to be considered along with the application.
- (e) Any person may submit written evidence and argument regarding the proposed Healthcare Facility to the city to be reviewed as part of the application process. Written materials shall be submitted to the city within 10 days after publication of the notice. The city shall immediately provide these materials to the applicant by certified mail or in person with the applicant signing a receipt. The applicant shall have 15 days after receipt of the materials to respond in writing to materials timely filed by other persons.
- (f) The city shall schedule the application for permit for consideration at a public hearing by the city council within 120 days after publication of the paid notice. Notice of this meeting shall be published in a newspaper of general circulation in the McAlester area at least 20 days prior to such public hearing.
- (g) The mayor shall appoint an ad hoc committee to consider and provide recommendations to the city regarding a requested permit for a Healthcare Facility. Such ad hoc committee shall include (i) three (3) laypersons who are residents of the city; (ii) three (3) healthcare professionals who work primarily within the city, which shall include one (1) representative from each licensed hospital within the city; and (iii) one (1) member selected by majority vote of the ad hoc committee members referenced in (i) and (ii) above.
- (h) In making a decision on the application, the city council shall consider recommendations from the city staff, the ad hoc committee and other information presented in writing or at the public hearing. If, in consultation with the ad hoc committee, the mayor and the city council determine that a feasibility study is necessary, the city shall, with input from the ad hoc committee, select a recognized health care industry consulting firm to conduct a feasibility study on the application.

- (i) After review of all the materials presented, the feasibility study, if obtained, and the recommendations of the ad hoc committee, the mayor and city council shall make findings of fact on the following items:
- (1) Whether the proposed Healthcare Facility will contribute to the orderly development of the healthcare services in the city;
 - (2) Whether the proposed Healthcare Facility will cause an undue financial or staffing hardship on any existing healthcare providers in the city, including any permitted Healthcare Facility not yet completed, which hardship shall be deemed potentially capable of causing the existing healthcare providers to alter their services to such a degree that it will adversely impact the citizens of the city.
 - (3) Whether the proposed Healthcare Facility can be adequately served by the city's existing utility systems and/or infrastructure; and
 - (4) Whether the proposed Healthcare Facility will cause a significant increase in the cost of healthcare that would adversely impact the citizens of the city.
- (j) A permit to establish a new Healthcare Facility shall not be issued until the city council has approved the application. In the event the mayor and city councilors approve the application for permit submitted by the prospective developers, it shall be understood that all existing requirements contained in this chapter, dealing with appropriate zoning and building standards, shall be complied with by the permit recipient. A permit shall be effective for 18 months from the date of issue of the permit, during which time an applicant shall start construction or conversion work on the Healthcare Facility. At the time the building permit is issued, the applicant shall submit a construction schedule to the city. If construction or conversion work is not started within the time required by this section, the permit shall be null and void.
- (k) A permit may be revoked by the city if it determines that an application for the new Healthcare Facility contained any material misrepresentations or omissions.

SECTION 2: Chapter 22, Article VII, Section 22-249. Ambulatory surgical care facilities; permit and application requirements of the McAlester Code of Ordinances is hereby repealed.

SECTION 3: Chapter 48, Article VII, Section 22-249 and Section 22-248 of the McAlester Code of Ordinances is hereby amended as follows:

ARTICLE VII. MEDICAL FACILITIES

Sec. 22-248, 22-249. Fees, Charges and Service Rates

22-248	Healthcare Facilities	
	Permit application filing fee	\$5,000.00

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ARTICLE VII. MEDICAL FACILITIESSEC. 22-248. HOSPITALS ORDINANCE NO. _____

CONSIDER AND ACT UPON AN ORDINANCE OF THE CITY OF
MCALESTER, OKLAHOMA: AMENDING MCALESTER CITY CODE
CHAPTER 22, MEDICAL FACILITIES, ARTICLE VII, SECTION 22-248,
HOSPITALS; PERMIT AND APPLICATION REQUIREMENTS;
REPEALING SECTION 22-249, AMBULATORY SURGICAL CARE
FACILITIES; AMENDING CHAPTER 48, FEES, CHARGES, AND
SERVICE RATES, ARTICLE VII, SECTION 22-248 AND SECTION 22-
249; REPEALING ALL CONFLICTING ORDINANCES.

* * * * *

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

SECTION 1: Chapter 22, Article VII, Section 22-248 of the McAlester Code of
Ordinances is hereby amended as follows:

ARTICLE VII. MEDICAL FACILITIESSec. 22-248. Healthcare Facilities; permit and application requirements,

- (a) No new hospital~~No new facility providing service vital to the health and well-being of the citizens of the City of McAlester, to include acute care hospital services, ambulatory surgical services, diagnostic imaging services, diagnostic laboratory (other than CLIA-waived laboratories) services and emergency services,~~ shall be developed, either through construction or conversion of existing space, in the city unless a permit therefor has been issued ~~by the city treasurer.~~ Such facilities are referenced in this Ordinance as Healthcare Facilities.
- (b) Before developing a facility for use as a newly licensed hospital~~new Healthcare Facility,~~ the person or entity proposing to operate the ~~hospital~~Healthcare Facility shall apply ~~to the city treasurer for a permit for the facility in addition to any other required approvals.~~ The application for permit shall be in such form as the city treasurer shall prescribe and shall include a demonstration of the ~~hospital's~~Healthcare Facility's probable impact on existing ~~hospital and surgical services~~Healthcare Facilities in the city, including permitted ~~facilities~~Healthcare Facilities not yet completed. In particular, the application shall require the applicant to disclose (i) whether the new Healthcare Facility would participate in Medicare, Medicaid and/or other government healthcare payment programs and (ii) proposed indigent/charity care policies of the New Facility.

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- (c) The application for permit shall be accompanied by a filing fee as provided in chapter 48. ~~In the event the city council determines a feasibility study is intended that the fee charged by this section necessary in connection with an application, an applicant shall be used required to cover the costs of the application evaluation. Any excess pay the cost of fees collected over costs incurred; such feasibility study, up to a maximum amount of \$100,000.00. Said applicant shall submit the additional amount requested within ten days, or the application shall be refunded to the applicant stayed until such time as such amount is submitted.~~
- (d) ~~Within 30~~ Within two working days after receipt of the filing fee, the applicant shall be provided with a notice of receipt and the city shall accept the application for permit. Within 10 days after receiving a completed application for a permit, the city treasurer shall cause a paid public notice to be published in a newspaper of general circulation in the area where the hospital Healthcare Facility is to be located and in a newspaper of general circulation in the area where the application is available for inspection. The notice shall be for the purpose of notifying the public that the application has been made and shall include the name and proposed location of the facility Healthcare Facility, a brief description of the proposal, information on where the original application can be viewed, and an explanation of how parties may file materials to be considered along with the application.
- (e) Any person may submit written evidence and argument regarding the proposed hospital Healthcare Facility to the city treasurer to be reviewed by city staff as part of the application process. Written materials shall be submitted to the city treasurer within 30 ~~10~~ days after publication of the paid notice. The city shall immediately provide these materials to the applicant by certified mail or in person with the applicant signing a receipt. The applicant shall have 45 15 days after publication receipt of the paid notice materials to respond in writing to materials timely filed by other persons.
- (f) ~~No~~ The city shall schedule the application for permit to establish for consideration at a hospital shall be issued public hearing by the city treasurer unless after reviewing the application and timely filed written council within 120 days after publication of the paid notice. Notice of this meeting shall be published in a newspaper of general circulation in the McAlester area at least 20 days prior to such public hearing.
- (g) The mayor shall appoint an ad hoc committee to consider and provide recommendations to the city regarding a requested permit for a Healthcare Facility. Such ad hoc committee shall include (i) three (3) laypersons who are residents of the city; (ii) three (3) healthcare professionals who work primarily within the city, which shall include one (1) representative from each licensed hospital within the city; and (iii) one (1) member selected by

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majority vote of the ad hoc committee members referenced in (i) and (ii) above.

- (h) In making a decision on the application, the city council shall consider recommendations from the city staff, the ad hoc committee and other information presented in writing or at the public hearing. If, in consultation with the ad hoc committee, the mayor and the city council determine that a feasibility study is necessary, the city shall, with input from the ad hoc committee, select a recognized health care industry consulting firm to conduct a feasibility study on the application.
- (i) After review of all the materials and responses the city council makes presented the feasibility study, if obtained, and the recommendations of the ad hoc committee, the mayor and city council shall make findings of fact on the following findings items:
- (1) The Whether the proposed hospital healthcare Facility will contribute to the orderly development of hospital and surgical healthcare services in the city;
 - (2) The Whether the proposed hospital healthcare Facility will not cause an undue financial hardship on existing healthcare providers in the city, including any permitted facilities healthcare Facility not yet completed; and, which hardship shall be deemed potentially capable of causing the existing healthcare providers to alter their services to such a degree that it will adversely impact the citizens of the city.
 - (3) The Whether the proposed hospital healthcare Facility can be adequately served by the city's existing utility systems and/or infrastructure; and
 - (4) The Whether the proposed Healthcare Facility will cause a significant increase in the cost of healthcare that would adversely impact the citizens of the city treasurer.
- (j) A permit to establish a new Healthcare Facility shall not be issued until the city council has approved the application. In the event the mayor and city councilors approve the application for permit for consideration submitted by the city council within 20 days of publication of the proposed ordinance, the existing requirements contained in this chapter, dealing with appropriate zoning and building standards, shall be complied with by the permit recipient. A permit shall be effective for 36 months from the date of issue of the permit, during which time an applicant shall start construction or conversion work on the hospital healthcare Facility. At the time the building permit is issued, the applicant shall submit a construction schedule to the city. If construction or conversion work is not started within the time required by this section, the permit shall be null and void.
- (k) The A permit may be revoked by the city staff may establish standards if it determines that an application for review the new Healthcare Facility contained any material misrepresentations or omissions.

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(h) SECTION 2: Chapter 22, Article VII, Section 22-249, Ambulatory surgical care facilities; permit and approval of detailed building plans and specifications that are in addition to the application requirements for a permit under this section of the McAlester Code of Ordinances is hereby repealed.

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(Code 1993, § 22-174; Ord. No. 2066, § 1, 5-27-1997)

SECTION 3: Chapter 48, Article VII, Section 22-249 and Section 22-248 of the McAlester Code of Ordinances is hereby amended as follows:

ARTICLE VII. MEDICAL FACILITIES

Sec. 22-248, 22-249, Fees, Charges and Service Rates

<u>22-248</u>	Healthcare Facilities	
	Permit application filing fee	\$5,000.00

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ORDINANCE NO. _____

CONSIDER AND ACT UPON AN ORDINANCE OF THE CITY OF MCALESTER, OKLAHOMA; AMENDING MCALESTER CITY CODE CHAPTER 22, MEDICAL FACILITIES, ARTICLE VII, SECTION 22-248, HOSPITALS; PERMIT AND APPLICATION REQUIREMENTS, SECTION 22-249, AMBULATORY SURGICAL CARE FACILITIES; PERMIT AND APPLICATION REQUIREMENTS, PACKAGE STORES; CHAPTER 48, FEES, CHARGES, AND SERVICE RATES, ARTICLE VII, SECTION 22-248 AND SECTION 22-249; REPEALING ALL CONFLICTING ORDINANCES.

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

SECTION 1: Chapter 22, Article VII, Section 22-248 and Section 22-249 of the McAlester Code of Ordinances is hereby amended as follows:

Sec. 22-248 Hospitals; ~~permit and application requirements~~ Medical Development Board

- a) ~~No new hospital shall be developed, either through construction or conversion of existing space, in the city unless a permit therefor has been issued by the city treasurer. In order to direct the future medical and health services development of the city and to encourage fair health and treatment services standards in accordance with modern city planning principles, and to ensure the orderly, efficient and economic arrangement and development of future health and medical facility projects, there is hereby created a Medical Development Board for the city of McAlester.~~
- b) ~~Before developing a facility for use as a newly licensed hospital, the person proposing to operate the hospital shall apply to the city treasurer for a permit for the facility in addition to any other required approvals. The application for permit shall be in such form as the city treasurer shall prescribe and shall include a demonstration of the hospital's probable impact on existing hospital and surgical services in the city, including permitted facilities not yet completed. The Medical Development Board shall consist of seven (7) members, four (4) of whom shall be nominated by the mayor and confirmed by the city council for a term of three years. Provided in 2019, two members nominated and confirmed shall serve for a period of two years, and then three years in perpetuity; in 2020, two members nominated and confirmed shall serve for a period of three years; and upon the expiration of their terms, respectively, successor members shall be nominated by the mayor and confirmed by the city council for terms of three years each. Appointments to fill vacancies shall be made by the mayor and confirmed by the council for the unexpired term only.~~

- c) ~~The application for permit shall be accompanied by a filing fee as provided in chapter 48. It is intended that the fee charged by this section shall be used to cover the costs of the application evaluation. Any excess of fees collected over costs incurred, shall be refunded to the applicant. In addition to the appointed members, the Assistant City Manager, the Economic Development Director, and the Planning Commission Chairperson, or the appointed City Council designee, shall be members of the Medical Development Board.~~
- d) ~~Within 30 days after receiving a completed application for a permit, the city treasurer shall cause a paid public notice to be published in a newspaper of general circulation in the area where the hospital is to be located and in a newspaper of general circulation in the area where the application is available for inspection. The notice shall include the name and proposed location of the facility, a brief description of the proposal, information on where the original application can be viewed, and an explanation of how parties may file materials to be considered along with the application. During the term of membership, any member who is absent for more than 50 percent of the meetings within a one-year period or three consecutive meetings, without good cause determined by the Medical Development Board, shall automatically cease to be a member and a replacement shall be appointed by the mayor upon confirmation by the city council.~~
- e) ~~Any person may submit written evidence and argument regarding the proposed hospital to the city treasurer to be reviewed by city staff. Written materials shall be submitted to the city treasurer within 30 days after publication of the paid notice. The applicant shall have 45 days after publication of the paid notice to respond in writing to materials timely filed by other persons. The appointed members of the Medical Development Board shall be qualified electors of the city, and shall be qualified by knowledge or experience to act upon matters pertaining to the physical, social and economic development of the city. At least one appointed member must have medical experience, and cannot hold interest in any related facility, existing or potential.~~
- f) ~~No permit to establish a hospital shall be issued by the city treasurer unless, after reviewing the application and timely filed written materials and responses, the city council makes the following findings:~~
- ~~1. The proposed hospital will contribute to the orderly development of hospital and surgical services in the city;~~
 - ~~2. The proposed hospital will not cause an undue financial or staffing hardship on any existing provider of essential hospital or surgical services in the city, including permitted facilities not yet completed; and~~
 - ~~3. The proposed hospital can be adequately served by the city's existing utility systems and/or infrastructure.~~
- Any appointed member of the Medical Development Board may be removed by the mayor and city council at any time for due cause shown. All members shall serve without compensation.

- g) ~~The city treasurer shall schedule the application for permit for consideration by the city council within 120 days after publication of the paid notice. A permit shall be effective for 36 months from the date of issue, during which time an applicant shall start construction or conversion work on the hospital. If construction or conversion work is not started within the time required by this section, the permit shall be null and void. The Medical Development Board shall elect from among its appointed members its own chairperson and vice-chairperson. The Board may elect any qualified electors to be appointed secretary and treasurer. The Board may from time to time adopt such rules and regulations, not inconsistent with the laws of the state or with the Charter or ordinances of the city, for its own organization and procedure as it may deem proper.~~
- h) ~~The city staff may establish standards for review and approval of detailed building plans and specifications that are in addition to the requirements for a permit under this section. The city staff may establish standards for review and approval of detailed building plans and specifications that are in addition to the requirements for a permit under this section. The duties of the Medical Development Board shall be to consider, review, and recommend to the city staff regarding potential medical and health development projects. The Medical Development Board shall be provided with all materials included in the application process described herein. Notice of this meeting to consider the permit application and related documents shall be published in a newspaper of general circulation in the city providing at least 20 days' notice of the Medical Development Board meeting. The application and written materials that have been submitted shall be examined by the Medical Development Board who shall review the information and make findings on the following items:~~
- ~~1. The proposed facility will contribute to the orderly development of the medical and surgical services in the city;~~
 - ~~2. The proposed facility must offer identical or like services as any other medical and surgical services provider in the city, including but not limited to services for Medicare, Medicaid, and indigent patients; and~~
 - ~~3. The proposed facility can be adequately served by the city's existing utility systems and/or infrastructure; and~~
 - ~~4. That the proposed facility will not cause a significant increase in the cost of medical care that would adversely impact the citizens of the city; and~~
 - ~~5. The Board may elect to postpone its decision regarding the Certificate of Necessity and request a feasibility study. The feasibility study shall be conducted by a recognized health care industry consulting firm chosen by the Board, to research and demonstrate the existence or non-existence of any further healthcare needs of the city that are not currently available. The feasibility study shall be managed by the city's Community Development Director. The feasibility study shall be at cost to the Applicant, and a deposit prior to commencing the study shall be due from the Applicant in the amount of \$25,000 and shall be submitted to the city's Chief Financial Officer. The Applicant is also responsible for payment of any further costs incurred for the study in excess of the original deposit, and these costs are to be paid by the Applicant as soon as the same comes due and are to be submitted to the city's Chief Financial Officer. The city shall not be responsible for any costs incurred~~

by the feasibility study. Any deposited funds remaining after the feasibility study has been completed and paid in full shall be refunded in full to the Applicant from the city's Chief Financial Officer.

Upon completion of the feasibility study and all other reviews of the above items, the results of which shall be gathered and presented by the Community Development Director, the Board shall deliberate to its conclusion. Whereupon, the Board will either issue its Certificate of Necessity to the Applicant, or deny the same. The results of the feasibility study shall be made available to the Applicant and to the public within Thirty (30) days of the delivery to the Board.

At this point, if the opinion of the Board is adverse to the Applicant or any entity of standing, the same party may appeal such decision to the City Council of the City of McAlester within Thirty (30) days of the rendering of the Board's opinion by filing such appeal with the office of the City Clerk and paying an appeal fee of Fifty dollars (\$50.00). The administrative appeal will be heard by the City Council in bank and its decision will be rendered in writing within Sixty (60) days of the administrative appeal being presented. The administrative appeal decision shall be final.

Should the Board issue its Certificate of Necessity or if its issuance is upheld on appeal, the Applicant may provide such Certificate of Necessity to the city's Chief Financial Officer who shall issue a permit to the Applicant. Said permit shall be effective for a period of Twenty-Four (24) month, during which time an Applicant shall start construction or conversion work on the facility. If construction or conversion work is not started within the time required by this section, the permit shall be null and void.

Sec. 22-249. ~~Ambulatory surgical care facilities~~ Health and Medical Facilities; permit and application requirements.

- a) No new ~~ambulatory surgical care facility~~ providing service vital to the health and well-being of the citizens of the City of McAlester, to include acute care hospital services, ambulatory surgical care services, diagnostic imaging services, diagnostic laboratory services, emergency services, obstetrical services, long term care and skilled nursing services, and any other service which would be significantly detrimental to the health and well-being of the city's citizens should it cease to exist, shall be developed, either through construction or conversion of existing space, in the city unless a permit therefore has been issued by ~~the city treasurer~~ the city's Chief Financial Officer.
- b) Before developing a facility for use as a newly-licensed ~~ambulatory surgical care facility~~ vital service facility, the person, firm, or corporation proposing to operate the ~~ambulatory surgical care facility~~ shall apply to the city's ~~treasurer~~ Chief Financial Officer for a permit for the facility in addition to any other required approvals. The application for permit shall be in such form as the city's ~~treasurer~~ Chief Financial Officer shall prescribe and shall include a demonstration of the ~~ambulatory surgical care facility's~~ facility's probable impact on existing ~~services~~ facilities and surgical services in the city, including permitted facilities not yet completed.
- c) The application for permit shall be accompanied by a filing fee as provided in Chapter 48. It is intended that the fee charged by this section shall be \$100, and shall be used to

cover the costs of the ~~application evaluation~~ publication notices and application review.
~~Any excess of fees collected over costs incurred shall be refunded to the applicant.~~

- d) Within two business days after receipt of the application fee, the Applicant shall be provided with a notice of receipt and the city's Chief Financial Officer shall forward the application and filing fee to the city's Community Development Director. Within 30 10 business days after receiving a completed application for a permit, the filing fee having been paid in full, the city's treasurer Community Development Director shall cause a paid public notice to be published in a newspaper of general circulation in the area where the hospital facility is to be located and in a newspaper of general circulation in the area where the application is available for inspection. The notice shall be for the purpose of notifying the public that the application has been made and shall include the name and proposed location of the facility, a brief description of the proposal, information on where the original application can be viewed, and an explanation of how parties may file materials to be considered along with the application.
- e) Any person may submit written evidence and with an argument or agreement regarding the proposed hospital facility to the city's treasurer Community Development Director to be reviewed by city staff the Medical Development Board. Written materials shall be submitted to the city's treasurer Community Development Director within 30 days after publication of the paid notice. The city's Community Development Director shall immediately provide these materials to the Applicant by certified mail or in person with the Applicant signing a receipt. The Applicant shall have 45 30 days after publication receipt of the paid notice materials to respond in writing to materials timely filed by other persons. All documents submitted by any person as stated above and any documents in reply from the Applicant shall be submitted to the city's Community Development Director, who shall then supply the same to the Medical Development Board for consideration in their recommendation.
- f) No permit to establish an ambulatory surgical care facility shall be issued by the city treasurer unless, after reviewing the application and timely filed written materials and response, the city council makes the following findings The Medical Development Board shall be provided with all materials included in the application process described herein. Notice of this meeting to consider the permit application shall be published in a newspaper of general circulation in the city providing at least 20 days' notice of the Medical Development Board meeting. The application and written materials that have been submitted shall be examined by the Medical Development Board who shall review the information and make findings on the following items:
1. The proposed ambulatory surgical care facility will contribute to the orderly development of surgical services the medical and surgical services in the city;
 2. The proposed ambulatory surgical care facility will not cause an undue financial or staffing hardship on any existing provider of essential surgical services in the city, including permitted facilities not yet completed The proposed facility must offer identical or like services as any other medical

- and surgical services provider in the city, including but not limited to services for Medicare, Medicaid, and indigent patients; and
3. The proposed ambulatory surgical care facility can be adequately served by the city's existing utility systems and/or infrastructure; and
 4. That the proposed facility will not cause a significant increase in the cost of medical care that would adversely impact the citizens of the city; and
 5. The Board may elect to postpone its decision regarding the Certificate of Necessity and request a feasibility study. The feasibility study shall be conducted by a recognized health care industry consulting firm chosen by the Board, to research and demonstrate the existence or non-existence of any further healthcare needs of the city that are not currently available. The feasibility study shall be managed by the city's Community Development Director. The feasibility study shall be at cost to the Applicant, and a deposit prior to commencing the study shall be due from the Applicant in the amount of \$25,000 and shall be submitted to the city's Chief Financial Officer. The Applicant is also responsible for payment of any further costs incurred for the study in excess of the original deposit, and these costs are to be paid by the Applicant as soon as the same comes due and are to be submitted to the city's Chief Financial Officer. The city shall not be responsible for any costs incurred by the feasibility study. Any deposited funds remaining after the feasibility study has been completed and paid in full shall be refunded in full to the Applicant from the city's Chief Financial Officer.

Upon completion of the feasibility study and all other reviews of the above items, the results of which shall be gathered and presented by the city's Community Development Director, the Board shall deliberate to its conclusion. Whereupon, the Board will either issue its Certificate of Necessity to the Applicant, or deny the same. The results of the feasibility study shall be made available to the Applicant and to the public within Thirty (30) days of the delivery to the Board.

At this point, if the opinion of the Board is adverse to the Applicant or any entity of standing, the same party may appeal such decision to the City Council of the City of McAlester within thirty (30) days of the rendering of the Board's opinion by filing such appeal with the office of the City Clerk and paying an appeal fee of fifty dollars (\$50.00). The administrative appeal will be heard by the City Council in bank and its decision will be rendered in writing within sixty (60) days of the administrative appeal being presented. The administrative appeal decision shall be final.

Should the Board issue its Certificate of Necessity or if its issuance is upheld on appeal, the Applicant may provide such Certificate of Necessity to the city's Chief Financial Officer who shall issue a permit to the Applicant. Said permit shall be effective for a period of 24 month, during which time an Applicant shall start construction or conversion work on the facility. If construction or conversion work is not started within the time required by this section, the permit shall be null and void.

- ~~g) The city treasurer shall schedule the application for permit for consideration by the city council within 120 days after publication of the paid notice. A permit shall be effective for 36 months from the date of issue, during which time an applicant shall start~~

~~construction or conversion work on the ambulatory surgical care facility. If construction or conversion work is not started within the time required by this section, the permit shall be null and void.~~

- ~~h) The city staff may establish standards for review and approval of detailed building plans and specifications that are in addition to the requirements for a permit under this section.~~

SECTION 2. That Chapter 48, Fees, Charges and Service Rates, of the McAlester City Code hereby amends Chapter 22. Businesses, Article VII. Medical Facilities, Section 22-248 and Section 22-249, to read as follows:

<i>Code Section</i>	<i>Description</i>	<i>Amount</i>
Chapter 22. Businesses		
<i>Article VII. Medical Facilities</i>		
<i>Hospitals</i>		
	Permit Application Filing Fee	1% of the capital cost of the proposed hospital
22-248	Minimum	\$1,000.00
	Maximum	\$75,000.00
	<u>Ambulatory Surgical Care Facilities Health and Medical Facilities; permit and application requirements</u>	
22-249	Permit Application Filing Fee	1% of the capital cost of the proposed hospital \$100.00
	Minimum Appeal Fee	\$1,000.00 \$50.00
	Maximum	\$75,000.00

SECTION 3. That all other ordinances or parts of ordinances in conflict herewith are hereby repealed to the extent of any such conflict or inconsistency and all other ordinances not in conflict herewith shall remain in full force and effect.

SECTION 4. The provisions of this Ordinance are severable, and if any part or provision hereof shall be adjudged invalid by any court of competent jurisdiction, such adjudication shall not affect or impair any of the remaining parts or provisions hereof.

PASSED AND APPROVED BY THE COUNCIL OF THE CITY OF McALESTER, OKLAHOMA on THIS _____ DAY OF _____, 2019.

City

DRAFT

CITY OF McALESTER, OKLAHOMA
A Municipal Corporation

ATTEST:

By: _____
John Browne, Mayor

Cora Middleton, City Clerk

Approved as to form and legality this _____ day of _____ 2019.

By: _____
William J, Ervin, City Attorney