

The owners of a local dispensary have filed a lawsuit asking that a judge declare the city of Tulsa's land-use regulations on medical marijuana facilities to be against state law and thus invalid. The lawsuit, filed Thursday in Tulsa County District Court by Danna Malone and Shandry Winsby with Ye Olde Apothecary Shoppe, claims that the regulations constitute "an unauthorized exercise of municipal regulatory authority." The city has not approved any medical marijuana regulations, but the Tulsa Metropolitan Area Planning Commission on Wednesday unanimously voted to send the city's proposed medical marijuana zoning code amendments to the City Council. The council, which must approve any proposed regulations, will not take up the issue until later this month. Rachel Farrar, an attorney representing the apothecary, said her client does not have to wait for the city to pass its ordinance before asking a judge for a declaratory judgment. "All we are asking is for a court to decide whether or not these rules would violate SQ 788, which they (the court) can do," she said. "If we get the decision that these "if passed as they are" would violate the law, it's immediately stopped in its tracks and we don't have to do anything more, and that would be ideal. Otherwise, then if they did go ahead and pass them, then we would be set and ready to go for taking stronger action." The city of Tulsa declined to comment Friday, saying it does not discuss ongoing litigation. Oklahoma voters overwhelmingly approved State Question 788 in June. It sets up the state framework for legal medical marijuana cultivation, sale and consumption. Malone told the Tulsa World on Friday that the apothecary just opened and that the company received its dispensary license from the Oklahoma Medical Marijuana Authority this week. "Our concern is the city is victimizing us that are going into the medical marijuana industry as a business, and they are also causing harm to those who are (patient) card carriers by imposing regulations on us," Malone said. The proposed regulations presented to the Planning Commission on Wednesday were different from the city's earlier proposed regulations in one significant way: removed was a

1,000-foot spacing requirement between medical marijuana growing or processing facilities and residentially zoned a or property used for a residential purpose. The city is still proposing a 1,000-foot spacing requirement between medical marijuana dispensaries. Malone is especially unhappy about that. "It's in 788," she said. "This is something the city of Tulsa has put in, and it's wrong. There is not a spacing requirement (against putting) a CVS and Walgreens on the same corner. Let us battle it out. Those that are going to offer good customer service and quality product to take care of the customer " let us figure out who is going to be in business." Attorney Gregory Lavender, who is also representing Ye Olde Apothecary Shoppe, said the city has put his client and other dispensaries in the precarious position of starting businesses without knowing with what rules they must comply. "It leaves people in my client's position to decide: "Well, I am unknown right now. I have product ready to come to me by December and to be sold, and I don't know if I am going to be able to do that," Lavender said. "We need to know more information before she wastes her money with product she can't actually sell. That's a serious concern." Under the proposed zoning code amendments headed to the City Council, medical marijuana facilities are defined as their own use, with their own regulations, and are not subject to the same regulations as pharmacies. The proposed regulations would require cultivation centers, processing facilities and dispensaries to be in enclosed structures and have ventilation and electronic security systems. The facilities would also be prohibited from having drive-thru windows or lanes. Such regulations, and others, the lawsuit claims, "grossly exceed the (city's) authority to regulate medical marijuana under State Question 788." The regulations also conflict with language in SQ 788 that prohibits municipalities from creating ordinances that would "unduly change or restrict zoning laws to prevent the opening of a retail marijuana establishment," the plaintiffs contend.

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