

AUDIT TEAM
Matt Weller, CPA, City Auditor
Lori Rice, MBA, CIA, Assistant City Auditor

**CITYWIDE MEDICAL MARIJUANA
PERMITTING AND REVENUE MONITORING
AUDIT**

MAY 16, 2023

MAYOR AND CITY COUNCIL

<i>David Holt</i>	<i>Mayor</i>
<i>Bradley Carter</i>	<i>Audit Committee, Ward 1</i>
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<i>Mark K. Stonecipher</i>	<i>Ward 8</i>



May 16, 2023

The Mayor and City Council:

The Office of the City Auditor has completed an audit of controls over the medical marijuana permitting process and procedures for monitoring related permitting fee receipts and sales tax remittances from the Oklahoma Tax Commission for medical marijuana businesses.

Based on the results of our audit, we believe that Development Services Department controls over medical marijuana permitting and monitoring of related permitting fee receipts, and Finance Department controls over monitoring medical marijuana sales tax remittances, were adequate and effective during the 30 months ended December 31, 2021.

Summarized recommendations discussed in more detail in the attached report are as follows:

- Requests to IT for permitting system modifications preventing potential inaccurate records of related review and inspection completions and allowing for receipt of applications through the on-line portal should be completed. See Recommendations 1a and 2.
- Permitting system security settings should be aligned with staff job assignments. See Recommendation 1b.
- Oklahoma City businesses licensed by the Oklahoma Medical Marijuana Authority without submitting a valid Certificate of Compliance issued by the City should be identified and addressed. See Recommendations 3a and 3b.
- Certificate of Compliance applications should be modified to include the conditions that must be met to request a refund of related fees and requested refunds should be processed when those conditions have been met. See Recommendation 4.

The content and emphasis of items included in this report have been discussed with appropriate management representatives to assure a complete understanding of the observations arising from our audit. Management responses are attached to this report in their entirety.

Handwritten signature of Matt Weller in black ink.

Matt Weller
City Auditor

Handwritten signature of Lori Rice in black ink.

Lori Rice
Assistant City Auditor

CITYWIDE MEDICAL MARIJUANA PERMITTING AND REVENUE MONITORING AUDIT

AUDIT OBJECTIVE, BACKGROUND, SCOPE, AND METHODOLOGY

The objective of this audit was to evaluate controls ensuring the adequacy and effectiveness of the medical marijuana permitting process and procedures for monitoring related permitting fee receipts and sales tax remittances from the Oklahoma Tax Commission (OTC) for medical marijuana businesses, for the 30 months ended December 31, 2021.

Approval of Oklahoma State Question 788 in June of 2018 legalized the licensed cultivation, use, and possession of marijuana for medicinal purposes and established the Oklahoma Medical Marijuana Authority (OMMA) as the State licensing authority for medical marijuana (MMJ). Additional rules were subsequently issued by the State. Those rules included the requirement that MMJ businesses obtain a Certificate of Compliance (CoC) from their local municipality evidencing compliance with local building, fire, zoning, and wastewater codes and submit it to the OMMA to receive a MMJ business license.

The Development Center within the Development Services Department is responsible for issuing CoCs. CoC issuances require application by prospective businesses, collection of related fees¹, Development Services and the Utilities Department review of code requirements and plans, and passing various inspections performed by Development Services and the Fire Department. The number of CoC applications, CoCs ultimately issued, and related revenues collected by the Development Center for the audit period is shown in Exhibit A.

Exhibit A			
Certificate of Compliance Issuances			
Calendar Year ^a	Applications Received		Issued ^b
	#	\$	#
2019	318	221,085	275
2020	761	537,270	655
2021	778	519,075	549
	<u>1,857</u>	<u>\$ 1,277,430</u>	<u>1,479</u>

Source: Data from City's Accela permitting system.

^a The first CoC application was received on 8/30/2019.

^b CoCs issued as of 12/31/2021. Every application does not result in an issued Certificate of Compliance.

MMJ retailers (i.e., dispensaries) collect sales tax² on the sale of their products and remit the collected taxes to the OTC. The OTC remits the City's sales tax portion to the City Treasurer's Office in the Finance Department. The City Treasurer's Office reviews and reports on total sales tax receipts monthly. Total sales taxes remitted by identified MMJ retailers was approximately \$13.8 million for the audit period.

Procedures performed during this audit included interviews with staff in the Development Services, Finance, Utilities, and Information Technology (IT) Departments, and the Municipal Counselor's Office; reviews of related City Ordinances, State Statutes and Department policies; assessment of the CoC issuance process and procedures for monitoring related permitting fee

¹ CoC application fees, as set by Municipal Code §60-13; 80, are \$750 for Growers, Laboratories, Processors and Researchers, \$615 for Dispensaries, and \$100 for Transporters.

² Oklahoma City sales tax rate for products purchased within city limits is 4.125%.

receipts and sales tax remittances from the OTC for MMJ businesses; and analysis of City Certificate of Compliance, OTC sales tax, and OMMA business license data.

We did not audit the completeness of OTC sales tax revenue collections, or the completeness of sales tax remitted to the City by the OTC.

We conducted this performance audit in accordance with generally accepted government auditing standards (GAGAS). GAGAS requires that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our audit findings and conclusions based on our audit objectives. We believe the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

The following section of this report includes recommendations intended to provide constructive suggestions for improving Development Services controls ensuring requirements are met before medical marijuana CoCs are issued and related permitting fee receipts are adequately monitored. No necessary improvements were identified for Finance Department controls over sales tax remittance monitoring. Each recommendation included in this report is immediately followed by *management's response*, which is also attached to this report in its entirety.

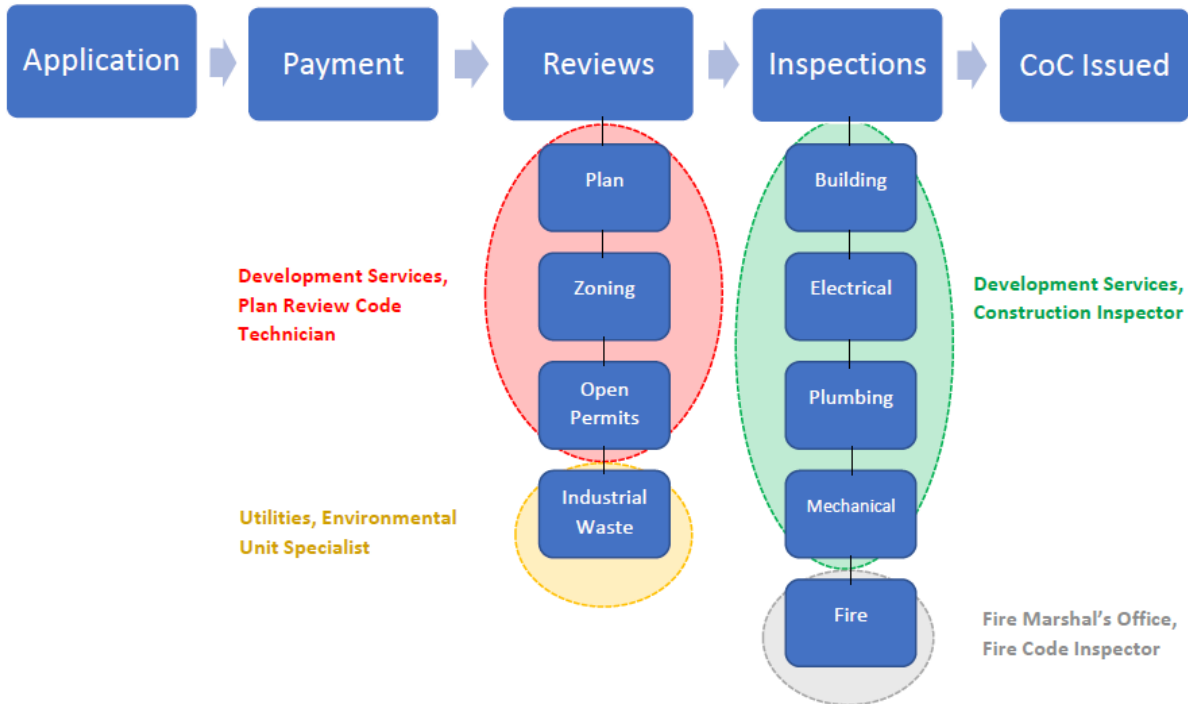
RESULTS OF WORK PERFORMED

The results of our audit indicate that Development Services Department controls over medical marijuana permitting and monitoring of related permitting fee receipts, and Finance Department controls over monitoring medical marijuana sales tax remittances, were adequate and effective during the audit period; however, Accela permitting system modifications requested to ensure related review and inspection record reliability and to enhance the convenience and efficiency of the CoC application process should be completed.

CoC Issuance Process

After CoC applications are received by the Development Center, a process takes place to ensure the respective business location is compliant with building, fire, zoning, and wastewater codes. The process initially involves reviews of building plans, zoning and other code requirements, and the status of other related open permits. Building, electrical, plumbing, mechanical, and fire code inspections follow the initial reviews. The reviews and inspections are completed by City staff with expertise in these respective fields based on their assigned job, as shown in Exhibit B, and are documented in the City's Accela permitting system.

Exhibit B: CoC Issuance Process



Source: Observation and discussion with management

Comment 1

Completion by appropriate staff could not be confirmed for 17% of the required reviews and inspections relating to 442 of 1,479 CoCs issued during the audit period. While Accela shows the reviews and inspections as completed, staff named in Accela as completing those tasks were not assigned to job functions responsible for those tasks (e.g., Permits & Licensing staff named as completing Plan Review or Code Inspection staff tasks).

Potential reasons reviews and inspections are shown as completed in Accela by staff that are not responsible for those tasks include:

- Accela programming that results in automatic update of the tasks with the name of staff finalizing different but related permits (e.g., building, electrical) at the same location, and
- Accela security settings that allow staff with any Certificate of Compliance process role to evidence completion of any task regardless of their job assignment.

Development Services' initial approach to conducting reviews and inspections for CoCs allowed for reliance on plan/code reviews and inspections previously conducted on different but related permits issued for the same location. However, toward the end of our audit period, Development Services began requiring specific reviews and inspections for CoCs and requested that IT modify the design of Accela to eliminate automatic update of the tasks with the names of staff finalizing different but related permits.

The risk of CoC issuances to MMJ businesses with undetected code compliance concerns is increased without reliable records of completed reviews and inspections in Accela.

Recommendation 1a

Development Services should work with IT to ensure that requested modifications to Accela, which would eliminate automatic update of CoC review and inspection records with names of staff finalizing different but related permits, are completed.

Development Services Department Response 1a

Agree with recommendation. Prior to issuance of the audit report, Development Services worked with IT to ensure that requested modifications to Accela, which would eliminate automatic update of CoC review and inspection records with names of staff finalizing different but related permits, were completed.

Recommendation 1b

Development Services should work with IT to revise Accela security settings to align with staff job assignments so that CoC reviews and inspections can only be evidenced in Accela by staff assigned to appropriate job functions.

Development Services Department Response 1b

Agree with recommendation. By December 31, 2023, Development Services will work with IT to revise Accela security settings to align with staff job assignments so that CoC reviews and inspections can only be evidenced in Accela by staff assigned to appropriate job functions.

Comment 2

Prospective MMJ businesses not needing related building or other permits are not able to apply for a CoC using the City's Accela Customer Access (ACA) on-line portal. Stand-alone CoC applications (i.e., no related building or other permit applications) accounted for 468 or 25% of CoC applications during the audit period. These applications were submitted via phone calls to or office visits with Development Services staff.

Development Services has submitted a service request to IT for modification of the ACA to allow its use for stand-alone CoC applications. However, those modifications have not yet been completed by IT.

Accepting these applications through the on-line ACA portal is more convenient for applicants and more efficient for Development Services staff while also reducing the risk of intentional exclusion of applications from Accela to prevent detection of permit fee theft.

Recommendation 2

Development Services should work with IT to ensure the completion of the service request to modify ACA portal access to allow its use for stand-alone CoC applications from prospective MMJ businesses.

Development Services Department Response 2

Agree with recommendation. By December 31, 2023, Development Services will work with IT to ensure the completion of the service request to modify ACA portal access to allow its use for stand-alone CoC applications from prospective MMJ businesses.

Comment 3

Development Services does not have a process to ensure all Oklahoma City MMJ businesses licensed by the OMMA have obtained a valid CoC from the City³. As of the end of the audit period, 93 of 936 OMMA-issued licenses to MMJ businesses operating within Oklahoma City limits had either not been issued a CoC by the City or had been issued a CoC by the City for a differing business type than was ultimately licensed by OMMA (e.g., licensed by OMMA as a dispensary after presenting a grower CoC).

Investigation with the OMMA of licenses issued without CoCs issued by the City found issuances based on other information provided by the businesses such as letters from attorneys and CoCs issued by incorrect municipalities (e.g., business in Oklahoma City with a Certificate from Moore). MMJ businesses licensed by the OMMA without the applicable CoC from the City increases the risk of unsafe business operations.

Recommendation 3a

In consultation with the Municipal Counselor's Office, Development Services should work with the OMMA to determine what options exist for verifying compliance with City codes when licensed businesses have not obtained a valid City CoC.

Development Services Department Response 3a

Agree with recommendation. By December 31, 2023, in consultation with the Municipal Counselor's Office, Development Services will work with the OMMA to determine what options exist for verifying compliance with City codes when licensed businesses have not obtained a valid City CoC.

³ 63 O.S. §426.1v1.E.1 requires all marijuana-licensed premises, MMJ businesses or any other premises where marijuana or its by-products are licensed to be cultivated, grown, processed, stored or manufactured to submit with their application to the OMMA, a certificate of compliance from the political subdivision where the facility of the applicant or use is to be located certifying compliance with zoning classifications, applicable municipal ordinances and all applicable safety, electrical, fire, plumbing, waste, construction and building specification codes.

Recommendation 3b

Development Services should periodically compare issued Certificates of Compliance to the OMMA's list of licensed MMJ businesses operating in Oklahoma City to identify licensed businesses that may not have obtained a valid City Certificate of Compliance. Verification of compliance with City codes for businesses identified should be pursued as included in Recommendation 3a.

Development Services Department Response 3b

Agree with recommendation. By December 31, 2023, Development Services will periodically compare issued Certificates of Compliance to the OMMA's list of licensed MMJ businesses operating in Oklahoma City to identify licensed businesses that may not have obtained a valid City Certificate of Compliance. Verification of compliance with City codes for businesses identified will be pursued as included in Recommendation 3a.

Comment 4

Fees collected with CoC applications have not been refundable though many of the applications ultimately never result in an issued CoC. 378, or 20%, of CoC applications accounting for nearly \$272,000 in related fees during the audit period did not result in CoC issuances. The extent of completed reviews and inspections relating to these applications varies widely.

Policies approved by the City Council for refunding various permit and inspection application fees when pursuit of the related activity is terminated by the applicant and City administrative costs are therefore reduced had not been updated to include CoCs. Additionally, the CoC application states that the related fees are non-refundable.

Amended refund policies including fees paid with CoC applications were approved by the City Council during the audit, however, the CoC application has not been modified. Differing treatment of refunds for CoC fees compared to other permit and inspection application fees is inequitable and increases the risk that such could be alleged by applicants.

Recommendation 4

Development Services should work with the Municipal Counselor's Office to update the CoC application to describe the conditions that must be met to request a refund and begin processing refunds to requesting applicants when the conditions are met.

Development Services Department Response 4

Agree with recommendation. By December 31, 2023, Development Services will work with the Municipal Counselor's Office to update the CoC application to describe the conditions that must be met to request a refund and begin processing refunds to requesting applicants when the conditions are met.

ATTACHMENT A
MANAGEMENT RESPONSES



MEMORANDUM

The City of
OKLAHOMA CITY



TO: Matt Weller, City Auditor

THROUGH: Craig Freeman, City Manager *CF*

FROM: *RW* Rick Wickenkamp, Development Services Director

DATE: May 9, 2023

SUBJECT: Audit 22-02 Citywide Medical Marijuana Permitting and Revenue Monitoring Audit

Following are management's responses to recommendations outlined in the recent Citywide Medical Marijuana Permitting and Revenue Monitoring Audit.

- 1a. Agree with recommendation. Prior to issuance of the audit report, Development Services worked with IT to ensure that requested modifications to Accela, which would eliminate automatic update of CoC review and inspection records with names of staff finalizing different but related permits, were completed.
- 1b. Agree with recommendation. By December 31, 2023, Development Services will work with IT to revise Accela security settings to align with staff job assignments so that CoC reviews and inspections can only be evidenced in Accela by staff assigned to appropriate job functions.
2. Agree with recommendation. By December 31, 2023, Development Services will work with IT to ensure the completion of the service request to modify ACA portal access to allow its use for stand-alone CoC applications from prospective MMJ businesses.
- 3a. Agree with recommendation. By December 31, 2023, in consultation with the Municipal Counselor's Office, Development Services will work with the OMMA to determine what options exist for verifying compliance with City codes when licensed businesses have not obtained a valid City CoC.
- 3b. Agree with recommendation. By December 31, 2023, Development Services will periodically compare issued Certificates of Compliance to the OMMA's list of licensed MMJ businesses operating in Oklahoma City to identify licensed businesses that may not have obtained a valid City Certificate of Compliance. Verification of compliance with City codes for businesses identified will be pursued as included in Recommendation 3a.

4. **Agree with recommendation. By December 31, 2023, Development Services will work with the Municipal Counselor's Office to update the CoC application to describe the conditions that must be met to request a refund and begin processing refunds to requesting applicants when the conditions are met.**

Thank you for your professional review of this program.