

City of \_\_\_\_\_ Ordinance No. \_\_\_\_\_

**AN ORDINANCE ADOPTING THE LEGISLATIVE INTENT, FINDINGS, AND PURPOSE RELATING TO THE REGULATION OF CANNABIS; SETTING FORTH VIOLATIONS; AND PROVIDING FOR ENFORCEMENT AND PENALTIES.**

**SECTION 1: SHORT TITLE**

Sections 1 through 10 may be cited as the “Cannabis Regulation Ordinance”

**SECTION 2: RECITALS**

**WHEREAS**, The Cannabis Regulation Act (“CRA”) was signed into law on April 12, 2021.

**WHEREAS**, the CRA contains provisions authorizing the possession, consumption, purchase, processing, manufacturing, and transport of cannabis and cannabis related products by an individual who is at least twenty-one (21) years of age.

**WHEREAS**, the CRA provides the regulatory framework for the licensing and operation of cannabis establishments which are authorized to engage in the retail sale, cultivation, manufacturing of cannabis and cannabis related products; and

**WHEREAS**, the CRA authorizes local jurisdictions to adopt rules regulating the time, place, and manner of cannabis businesses, so long as they do not conflict with the CRA or the Dee Johnson Clean Indoor Air Act, including rules that reasonably limit the density of licenses and operating times that are consistent with neighborhood uses; and

**WHEREAS**, the City of [REDACTED] (“City”) desires to adopt such rules regulating the time, place, and manner of cannabis businesses, and other restrictions related to cannabis establishments as provided by applicable law, and

**WHEREAS**, the CRA authorizes cannabis manufacturers to use chemical extraction techniques or chemical synthesis, including the use of solvents such as butane, hexane, and other flammable gasses, to extract marijuana concentrate, which poses a threat to the health, safety, and welfare of the community and increases the responsibilities of law enforcement and City departments to respond to violations of state and local laws, including building, electrical, and fire codes, and

**WHEREAS**, this ordinance is adopted to protect the health, safety, and welfare of the community as it relates to the regulation and use of cannabis by imposing certain time, place, and manner restrictions on cannabis businesses.

**WHEREAS**, the City requires compliance with all applicable laws and regulations regarding the sale, cultivation, manufacturing, transport, production, distribution, and consumption of cannabis and cannabis related products.

**WHEREAS**, this Ordinance is subject to amendment from time to time, as the CRA or the governing rules and regulations adopted by the Cannabis Control Division of the New Mexico Department of Regulation & Licensing change.

**NOW THEREFORE**, the City adopts the following ordinance for the regulation of cannabis consistent with the CRA and all applicable law.

**SECTION 3: DEFINITIONS**

The following word or phrases shall be construed as defined in the Cannabis Regulation Act:

“advertisement”

- (1) means a statement or a depiction that is intended to induce the purchase of cannabis products and that is displayed in printed material or on a sign or other outdoor display or presented in a radio, television or other media broadcast or in digital media; and
- (2) does not include:
  - (a) a sign or outdoor display or other statement permanently affixed to a licensed premises that is intended to induce the sale of a cannabis product produced or sold on the premises
  - (b) a label affixed to a cannabis product or the covering, wrapper or container of a cannabis product; or
  - (c) an editorial or other material printed in a publication when the publication of the editorial or material was not paid for by a licensee and was not intended to promote the sale of cannabis products by a particular brand or company;

“cannabis”

- (1) means all parts of the plant genus Cannabis containing a delta-9-tetrahydrocannabinol concentration of more than three-tenths percent on a dry weight basis, whether growing or not; the seeds of the plant; the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture or preparation of the plant, its seeds or its resin; and,
- (2) does not include:
  - (a) the mature stalks of the plant; fiber produced from the stalks; oil or cake made from the seeds of the plant; any other compound, manufacture, salt, derivative, mixture or preparation of the mature stalks, fiber, oil or cake; or the sterilized seed of the plant that is incapable of germination; or
  - (b) the weight of any other ingredient combined with cannabis products to prepare topical or oral administrations, food, drink or another product;

“cannabis consumption area” means an area where cannabis products may be served and consumed

“cannabis courier” means a person that transports cannabis products to qualified patients, primary caregivers or reciprocal participants or directly to consumers;

“cannabis establishment” means: (1) a cannabis testing laboratory; (2) a cannabis manufacturer; (3) a cannabis producer; (4) a cannabis retailer; (5) a cannabis research laboratory; (6) a vertically integrated cannabis establishment; (7) a cannabis producer microbusiness; or (8) an integrated cannabis microbusiness;

“cannabis extract”

- (1) means a product obtained by separating resins, tetrahydrocannabinols or other substances from cannabis by extraction methods approved by the division; and
- (2) does not include the weight of any other ingredient combined with cannabis extract to prepare topical or oral administrations, food, drink or another product;

“cannabis flowers” means only the flowers of a cannabis plant;

“cannabis manufacturer” means a person that: (1) manufactures cannabis products; (2) packages cannabis products; (3) has cannabis products tested by a cannabis testing laboratory; or (4) purchases, acquires, sells or transports wholesale cannabis products to other cannabis establishments;

“cannabis producer” means a person that: (1) cultivates cannabis plants; (2) has unprocessed cannabis products tested by a cannabis testing laboratory; (3) transports unprocessed cannabis products only to other cannabis establishments; or (4) sells cannabis products wholesale;

“cannabis producer microbusiness” means a cannabis producer at a single licensed premises that possesses no more than two hundred total mature cannabis plants at any one time;

“cannabis product” means a product that is or that contains cannabis or cannabis extract, including edible or topical products that may also contain other ingredients;

“cannabis research laboratory” means a facility that produces or possesses cannabis products and all parts of the plant genus Cannabis for the purpose of studying cannabis cultivation, characteristics or uses;

“cannabis retailer” means a person that sells cannabis products to qualified patients, primary caregivers or reciprocal participants or directly to consumers;

“cannabis server permit” means an authorization that allows a person to directly offer, sell or serve cannabis or cannabis products as part of commercial cannabis activity in a cannabis consumption area;

“cannabis server permit education provider” means a person that provides cannabis server education courses and examinations;

“cannabis testing laboratory” means a person that samples, collects and tests cannabis products and transports cannabis products for the purpose of testing;

“cannabis training and education program” means a practical or academic curriculum offered by a New Mexico public post-secondary educational institution designed to prepare students for participation in the cannabis industry;

“commercial cannabis activity”

- (1) means the cultivation, production, possession, manufacture, storage, testing, researching, labeling, transportation, couriership, purchase for resale, sale or consignment of cannabis products; and,
- (2) does not include activities related only to the medical cannabis program, to cannabis training and education programs or to the personal cultivation or use of cannabis;

“consumer” means a person twenty-one years of age or older who purchases, acquires, owns, possesses or uses a cannabis product for a purpose other than resale;

“contaminant” means pesticides and other foreign material, such as hair, insects or other similar adulterants, in harvested cannabis;

“controlling person”

- (1) means a person that controls a financial or voting interest of ten percent or more of, or an officer or board member of, a cannabis establishment; and,
- (2) does not include a bank or licensed lending institution;

“cultivation” means any activity involving the planting, growing, harvesting, drying, curing, grading or trimming of cannabis;

“department” means the regulation and licensing department;

“director” means the director of the division;

“division” means the cannabis control division of the department;

“dry weight basis” when used in the context of regulation of commercial cannabis activity, means a process by which delta-9-tetrahydrocannabinol concentration is measured relative to the aggregate weight of all parts of the plant genus Cannabis, whether growing or not, including the leaves of the plant, the flowers and buds of the plant, the seeds of the plant, the resin of the plant and the stalks of the plant at the point of harvest by a licensee and with no moisture added to the harvested plant;

“facility” means a building, space or grounds licensed for the production, possession, testing, manufacturing or distribution of cannabis, cannabis extracts or cannabis products;

“financial consideration” means value that is given or received, directly or indirectly, through sales, barter, trade, fees, charges, dues, contributions or donations;

“homegrown” or “homemade” means grown or made for purposes that are not dependent or conditioned upon the provision or receipt of financial consideration;

“household” means a housing unit and includes any place in or around the housing unit at which an occupant of the housing unit produces, manufactures, keeps or stores homegrown cannabis or homemade cannabis products;

“immature cannabis plant” means a cannabis plant that has no observable flowers or buds;

“industry standards” means the prevailing customary standards of business practice in the cannabis industry in jurisdictions within the United States;

“integrated cannabis microbusiness” means a person that is authorized to conduct one or more of the following:

- (1) production of cannabis at a single licensed premises; provided that the person shall not possess more than two hundred total mature cannabis plants at any one time;
- (2) manufacture of cannabis products at a single licensed premises;
- (3) sales and transportation of only cannabis products produced or manufactured by that person;
- (4) operation of only one retail establishment; and
- (5) couriering of cannabis products to qualified patients, primary caregivers or reciprocal participants or directly to consumers;

“licensed premises” means a location that includes:

- (1) all enclosed public and private areas at the location that are used in the business and includes offices, kitchens, restrooms and storerooms;
- (2) all areas outside of a building that are specifically included in the license for the production, manufacturing, wholesale sale or retail sale of cannabis products; and
- (3) with respect to a location that is specifically licensed for the production of cannabis outside of a building, the entire unit of land that is created by subsection or partition of land that the licensee owns, leases or has a right to occupy;

“local jurisdiction” means a municipality, home rule municipality or county;

“manufacture” means to compound, blend, extract, infuse, package or otherwise prepare a cannabis product;

“medical cannabis” means cannabis products used by a qualified patient or reciprocal participant in accordance with the Lynn and Erin Compassionate Use Act;

“medical cannabis program” means the program created pursuant to the Lynn and Erin Compassionate Use Act;

“medical cannabis registry” means the system by which the department of health approves or denies applications and issues and renews registry identification cards for qualified patients;

“primary caregiver” means a resident of New Mexico who is at least eighteen years of age and who is responsible for managing the well-being of a qualified patient with respect to the medical use of cannabis pursuant to the Lynn and Erin Compassionate Use Act;

“public place” means a place to which the general public has access and includes hallways, lobbies and other parts of apartment houses and hotels that do not constitute rooms or apartments designed for actual residence; highways; streets; schools; places of amusement; parks; playgrounds; and places used in connection with public passenger transportation;

“qualified patient” means a resident of New Mexico who holds a registry identification card pursuant to the Lynn and Erin Compassionate Use Act;

“reciprocal participant” means a person who is not a resident of New Mexico and who holds proof of enrollment by a governmental regulatory authority to participate in the medical cannabis program of another state of the United States, the District of Columbia or a territory or commonwealth of the United States in which the person resides or a person who holds proof of enrollment by a governmental regulatory authority of a New Mexico Indian nation, tribe or pueblo to participate in its medical cannabis program;

“retail establishment” means a location at which cannabis products are sold to qualified patients, primary caregivers and reciprocal participants and directly to consumers;

“superintendent” means the superintendent of regulation and licensing;

“unprocessed” means unaltered from an original, raw or natural state; and

“vertically integrated cannabis establishment” means a person that is authorized to act as any of the following: (1) a cannabis courier; (2) a cannabis manufacturer; (3) a cannabis producer; and (4) a cannabis retailer.

#### **SECTION 4: CANNABIS PRODUCTION**

A. The City shall allow cannabis production, provided that all production facilities comply with state law requirements and regulations. All cannabis production facilities shall be properly licensed by the state of New Mexico.

B. There shall be no cannabis production activity within 300 feet of any school or child day care facility that was in existence at the time the cannabis producer obtained its license to produce cannabis from the state of New Mexico.

**C. [ADDITIONAL INDIVIDUAL REGULATIONS MAY BE ADDED AS DESIRED, IN COMPLIANCE WITH THE CRA AND CCD REGULATIONS]**

**For example...**

Cannabis production facilities may not operate in an area zoned for residential use.

Cannabis production facilities must utilize odor mitigation technology or techniques to mitigate the odor created by cannabis plants and products.

Cannabis production facilities must develop and utilize an air filtration plan that is approved by \_\_\_\_\_ prior to commencing cannabis production in the City.

## **SECTION 5: CANNABIS RETAIL**

- A. The City shall allow cannabis retail establishments to operate pursuant to the CRA and all applicable rules and regulations adopted by the Cannabis Control Division of the New Mexico Regulation & Licensing Department. All cannabis retail establishments shall be properly licensed by the state of New Mexico.
- B. Cannabis retailers shall not operate within 300 feet of any school or child day care facility that was in existence at the time the cannabis retailer obtained its license to sell cannabis from the state of New Mexico.
- C. [ADDITIONAL INDIVIDUAL REGULATIONS MAY BE ADDED AS DESIRED, IN COMPLIANCE WITH THE CRA AND CCD REGULATIONS]

For example...

Cannabis retail establishments may not operate in an area zoned for residential use.

Customer visits and deliveries are prohibited between the hours of 12:00 a.m. and 8:00 a.m.

All storage, dispensing, or retail activities shall be conducted indoors.

## **SECTION 6: CANNABIS MANUFACTURING**

- A. Cannabis-derived products manufacturing is allowed, provided that the establishment complies with all New Mexico law, and the rules and regulations adopted by the Cannabis Control Division of the New Mexico Regulation & Licensing Department.
- B. Cannabis manufacturers shall not operate within 300 feet of any school or child day care facility that was in existence at the time the cannabis manufacturer obtained its license to manufacture cannabis from the state of New Mexico.
- C. The manufacturing of cannabis derived products must take place indoors within a fully enclosed building on the licensed manufacturing premises.
- D. Cannabis manufacturers may use chemical extraction techniques or chemical synthesis, so long as the techniques used do not contradict those allowed under the CRA and the rules

and regulations adopted by the Cannabis Control Division of the New Mexico Regulation & Licensing Department. However, the use of solvents such as butane, hexane, and other flammable gases to extract cannabis concentrate (“extraction”) poses a threat to the health, safety and security of the community and increases the responsibilities of law enforcement and City departments to respond to potential violations of state and local laws, including building, electrical and fire codes. Due to the increased health and safety risks extraction shall only occur in commercial and manufacturing zoned areas. Cannabis manufacturers must obtain a permit from the City Fire Marshall prior to commencing cannabis manufacturing.

E. For purposes of this section, “chemical extraction” means the process of separating resins, tetrahydrocannabinols, or other substances from cannabis. “Chemical synthesis” means the artificial execution of useful chemical reactions to obtain one or several products that undergo a transformation when subjected to certain conditions.

F. [ADDITIONAL INDIVIDUAL REGULATIONS MAY BE ADDED AS DESIRED, IN COMPLIANCE WITH THE CRA AND CCD REGULATIONS]

For example...

Cannabis manufacturing facilities may not operate in an area zoned for residential use.

Cannabis manufacturing facilities must utilize odor mitigation technology and an air filtration plan must be approved by \_\_\_\_\_.

Customer visits and deliveries are prohibited between the hours of 12:00 a.m. and 8:00 a.m.

## **SECTION 7: LOCATION OF CANNABIS CONSUMPTION AREAS**

- A. Cannabis consumption areas must be located in areas zoned as general commercial and industrial.
- B. No commercial, retail, or medical cannabis consumption establishments may conduct operations in areas zoned for residential use.
- C. Properly licensed cannabis establishments having a designated cannabis consumption area on site shall comply with the CRA, the Dee Johnson Clean Indoor Air Act, and the rules adopted by the Cannabis Control Division of the New Mexico Regulation & Licensing Department. They must also satisfy the following standards required by the City:
  - (1) The cannabis consumption area shall be located in a restricted access area that employees are not required to enter as a condition of their employment.
  - (2) The cannabis consumption area shall have a separate heating, ventilation, and air conditioning (HVAC) system such that none of the air in the Designated Cannabis

Consumption Area will be recirculated into other parts of the Cannabis establishment premises.

- (3) The cannabis consumption area shall be completely separated from the remainder of the premises, and all doors leading to the cannabis consumption area shall be self-closing.

## **SECTION 8: OPERATIONAL REQUIREMENTS**

- A. Cannabis establishments may not display products, engage consumers, or consummate sales outside of a fully enclosed building or structure.
- B. Cannabis establishments shall provide and maintain at each premises a digital video surveillance system with a minimum camera resolution of 1280 x 720 pixels. The digital video surveillance system shall further comply with the following requirements:
  - (1) the digital video surveillance system shall at all times be able to effectively and clearly record images of the area under surveillance;
  - (2) each camera shall be permanently mounted and in a fixed location;
  - (3) cameras shall be placed in a location that allows the camera to clearly record activity occurring on the licensed premises that digital video surveillance is required, and shall provide a clear and certain identification of any person and activities in those areas.

**Areas of digital video surveillance:** Areas that shall be recorded on the digital video surveillance system include the following:

- (1) areas where cannabis and cannabis products are cultivated, produced, manufactured, weighed, packed, stored, loaded, and unloaded for transportation, prepared, or moved within the licensed premises;
- (2) limited-access areas;
- (3) areas storing a digital video surveillance-system storage device;
- (4) entrances and exits to the licensed premises; and
- (5) all point of sale (POS) locations to capture sale transactions.

**Digital Video Surveillance Recording:** Licensees shall comply with the following digital video surveillance recording requirements:

- (1) cameras shall record continuously 24 hours per day, or may be motion activated, and at a minimum of 15 frames per second (FPS);
- (2) the physical media or storage device on which digital video surveillance recordings are stored shall be secured in a manner to protect the recording from tampering or theft;
- (3) digital video surveillance recordings shall be kept for a minimum of 30 days and recordings of theft or security incidents as set forth in Subsection N of 16.8.2.8 NMAC shall be kept for a minimum of 12 months;
- (4) digital video surveillance recordings are subject to inspection by the division, and shall be kept in a manner that allows the division to view and obtain copies of the recordings at the licensed premises immediately upon request;

- (5) upon request, licensees shall send or otherwise provide copies of the recordings to the division within 48 hours;
- (6) recorded images shall clearly and accurately display the time and date of the recording; and
- (7) time shall be measured in accordance with the United States national institute standards and technology standards.

- C. Cannabis establishments must provide for off-site disposal of cannabis products and other solid waste in compliance with state, federal, and local law.
- D. Cannabis establishments shall not provide drive-thru services for delivery of cannabis products.

**E. [OTHER PROVISIONS MAY BE ADDED AS DESIRED]**

**SECTION 9: VIOLATIONS AND PENALTIES**

- A. It is unlawful and a violation of this article for a person to sell, cultivate, process, manufacture, store, or transport cannabis or cannabis products, if the person fails to meet all requirements in this ordinance, the Cannabis Regulation Act NMSA 1978 Sections 26-2C-1 through 42, and the rules adopted by the Cannabis Control Division of RLD.
- B. The sale of homegrown or homemade cannabis and cannabis products without a valid license issued by the State of New Mexico is prohibited.
- C. Any person found in violation of this ordinance is subject to a fine of up to \$500 and/or imprisonment for a period of up to 90 days in jail.
- D. An individual or business may be charged with multiple offenses for continuing violations of this ordinance. To that end, violations occurring on separate calendar days shall constitute separate offenses.

**SECTION 10: SEVERABILITY**

If any section, subsection, paragraph, phrase, or other portion of this ordinance shall be declared invalid for any reason whatsoever by a court or competent jurisdiction, then such decision shall not affect the validity or enforceability of the remaining portions of this ordinance.

This Ordinance will shall be in full force and effect after its adoption, approval, and publication as provided by law.

**PASSED, APPROVED AND ADOPTED THIS \_\_\_ DAY OF \_\_\_\_\_, 2021.**

---

**Mayor**

**Attest:**

---

**City Clerk**