

CITY OF LOVINGTON, NEW MEXICO CANNABIS ORDINANCE NO. 588

AN ORDINANCE RELATING TO CANNABIS BUSINESS LICENSES, REGISTRATION, AND
PERMITTING, AMENDING SECTION 5.40 RESERVED

WHEREAS, the Cannabis Regulation Act has authorized a variety of uses related to the legalization of medical and recreational, commercial cannabis activities, which legalization had the potential to greatly expand the legal cannabis market; and

WHEREAS, Cannabis cultivation, production and manufacturing creates strong odors, can involve the use of significant amounts of energy and water, and requires security and other measures to reduce the risk of theft or other diversion to the illegal cannabis market, including possession and use by persons under the age of twenty-one; and

WHEREAS, Cannabis is an intoxicating drug, making it appropriate to regulate the hours during which cannabis products may be sold and the areas in which cannabis products may be consumed; and

WHEREAS, the smoking of cannabis products may create health risk due to exposure to secondhand smoke and vaporized cannabis concentrates; and

WHEREAS, NMSA § 26-2C-12 prohibits a municipality or county from completely prohibiting the operation of licensed adult-use cannabis operations allowed under the Act; preventing the transportation cannabis products on public roads when such transport is in compliance with the Act; prohibit or limit signage attached to or located on licensed premises that identifies the premises as a cannabis establishment; require a licensed premises or a cannabis consumption area to any more than three hundred feet from a school or daycare center that was in existence at the time the cannabis establishment was licensed; require an existing licensee to relocate, or prohibit a person from producing homegrown cannabis as provided for in the Act; and

WHEREAS, the board of City Commissioners of the City of Lovington, New Mexico, find that it will promote the public health, safety, and welfare to enact the following provisions

BE IT ORDAINED BY THE GOVERNING BODY, THAT IS, THE CITY COMMISSION OF THE CITY OF LOVINGTON, NEW MEXICO THAT TITLE 5, CHAPTER 5.40 RESERVED BE AND HEREBY IS AMENDED AS FOLLOWS:

5.40 Cannabis Regulation

Sections:

5.40.010 Definitions

5.40.020 Adopted

5.40.030 Zoning Permit Required

5.40.040 Hours of Operation

5.40.050 Cannabis Consumption area

5.40.060 Mobile Units

5.40.070 Smoking of Cannabis in Public Places

5.40.080 Personal use cultivation and production

5.40.090 Location Restrictions

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5.40.010 DEFINITIONS

For the purpose of this chapter the following definitions shall apply unless the context clearly indicates or requires a different meaning.

CANNABIS. 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 does not include:

(1) 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

(2) The weight of any other ingredient combined with cannabis products to prepare topical or oral administrations, food, drink or another product.

CANNABIS CONSUMPTION AREA. An area, licensed by the New Mexico Cannabis Control Division, where cannabis products may be served and consumed.

CANNABIS COURIER. A person that transports cannabis products to qualified patients, primary caregivers or reciprocal participants or directly to consumers and is licensed by the New Mexico Cannabis Control Division.

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 MANUFACTURER. 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. 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. A cannabis producer at a single licensed premises that possesses no more than 200 total mature cannabis plants at any one time.

CANNABIS PRODUCT. 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. 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. A person that sells cannabis products to qualified patients, primary caregivers or reciprocal participants or directly to consumers.

CANNABIS TESTING LABORATORY. A person that samples, collects and tests cannabis products and transports cannabis products for the purpose of testing.

INTEGRATED CANNABIS MICROBUSINESS. 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 200 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.

VERTICALLY INTEGRATED CANNABIS ESTABLISHMENT. 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.

5.40.020 ADOPTED

A. The city commission adopts by reference the state Occupational and Professional Licensing Commercial and Medical Cannabis; Title 16 Chapter 8 Part 2 NMSA, or any adopted edition adopted by the State of New Mexico henceforth.

B. A copy of the State Occupational and Professional Licensing Commercial and Medical Cannabis code shall be kept in the office of the City Manager at the city hall and will be available at all reasonable times and subject to inspection.

5.40.030 ZONING PERMIT REQUIRED

In addition to the business registration fee, there is imposed a Zoning permit. Any person seeking to operate a cannabis establishment in the City may obtain a cannabis permit under the following conditions:

- A. The permit shall be obtained from the Community Service Department

- B. The cost of the permit shall be \$250.00 for the initial permit, and \$100.00 for annual renewal of the permit. The annual renewal date shall coincide with business registration. Fee shall not be prorated.
- C. The Community Service Department Zoning Coordinator shall require the following information from the applicant:
 - a. The name, address and business organization of the applicant and location the applicant intends to transact business, as well as the specific business to be transacted.
 - b. Site Plan or premises diagram
 - c. If the applicant is an individual, the residence address of the applicant as well as the applicant's birthdate and social security number.
 - d. If the applicant is a partnership, the names, residence addresses, birthdates, and social security number of all partners.
 - e. If the applicant is a Limited Liability Company, the state of organization, address of the resident agent in New Mexico sufficient for service of process, the name of the managing member together with residence address, birthdate, and social security number and the name, residence address, birthdate and social security number of each member of the company.
 - f. If the applicant is a corporation, the state of corporation, the name and address of the registered agent in New Mexico sufficient for service of process, the name, residence, birthdate, and social security number of each officer or director of the corporation.
 - g. Prior to the issuance of a permit, any Limited Liability Company or corporation shall provide a certificate of good standing.
 - h. The applicant shall provide Federal and State tax identification numbers.
- D. Prior to issuance of a permit or annual renewal the Code Enforcement Officer shall inspect for compliance of all applicable city codes.
- E. Prior to issuance or annual renewal of a permit the Fire Marshall or designee shall inspect for compliance with Fire Codes.
- F. A temporary permit may be issued for state licensing purposes as long as all requirements of this section are meet. A final permit shall be issued upon proof of a provisional license issued by the New Mexico Cannabis Control Division.

- G. No permit shall issue to a mobile, temporary or portable building.
- H. No permit shall issue to a drive-through cannabis establishment
- I. Failure to meet the conditions above will result in a non-issuance of a permit
 - a. If a denial of an application for a new permit or renewal is deemed necessary by the Community Service Planning Zoning Coordinator, written notice of the decision shall be provided to the applicant.
 - b. Any person or entity denied a permit may, within ten (10) days of the receipt of a notice of denial, file an appeal with the City Commission. The Notice of the appeal shall be delivered to the City Manager and a hearing shall be scheduled within thirty (30) days of receipt of the notice. The commission shall make a written findings of fact and conclusions of law supporting its decision.
 - c. Operation of cannabis establishment without a permit is a violation of this ordinance.

5.40.040 HOURS OF OPERATION

It is a violation of this chapter for any Cannabis retailers and cannabis consumption areas to operate other than the following hours:

- (A) Cannabis Consumption Areas. Products may only be served and consumed between the hours of 7:00 am and midnight Monday through Sunday.
- (B) Cannabis Retailers. Cannabis retailers may only sell cannabis products for off-site consumption between the hours of 7:00 am and midnight Monday through Sunday.

5.40.050 CANNABIS CONSUMPTION AREAS

Cannabis consumption areas are subject to the following:

- (A) A cannabis consumption area in which consumption is limited to consumption by qualified patients or reciprocal participants may be located inside any cannabis retailer, provided, however that smoking of cannabis products in such consumption areas is only allowed if the cannabis consumption area is in a designated smoking area or in a stand alone building from which smoke does not infiltrate other indoor work

spaces or other indoor public places where smoking is otherwise prohibited pursuant to the Dee Johnson Clean Indoor Act, NMSA 1978, Chapter 24, Article 16.

- (B) Cannabis consumption areas that are open to consumers are subject to the following:
- a. The smoking of cannabis products is only allowed within a license cannabis consumption area that occupies a designated smoking area or a stand-alone building from which smoke does not infiltrate other indoor workplaces or other indoor public places where smoking is otherwise prohibited pursuant to the Dee Johnson Clean Indoor Air Act. NMSA 1978, Chapter 24, Article 16: and
 - b. Access to cannabis consumption areas open to consumers is restricted to persons twenty-one years of age and older.

5.40.060 MOBILE UNITS

Cannabis sales from mobile, portable, or temporary units or drive-through locations are prohibited.

5.40.070 SMOKING OF CANNABIS IN PUBLIC PLACES

Smoking of cannabis products in a public place, except as permitted by state law, is prohibited.

5.40.080 PERSONAL USE CULTIVATION AND PRODUCTION

Cannabis cultivation and production for personal use in quantities and as permitted by the Cannabis Regulations ACT and Lynn and Erin Compassionate Use Act is allowed anywhere in the city subject to the following: Cannabis cultivation and production for personal use must not be visible from the public –right-of-way.

5.40.090 Location Restrictions

A. Minimum separation distance.

A cannabis establishment and/or cannabis consumption area must maintain a minimum separation distance of 300 feet from any religious assembly or church, community center, public park, school, or daycare center that was in existence at the time the cannabis establishment was licensed by the state.

B. Density

No cannabis establishment, or cannabis consumption area. Shall be within 300 feet of another cannabis establishment, or consumption area.

C. Measurements

For the purposes of Section 5.40.090A and 5.40.090B of this section of the ordinance, distances shall be measured in a straight line from property line to property line, without regard to intervening structures or objects.

D. Zone requirements

1. No cannabis establishment or consumption area as defined in this chapter shall be in Zone A or Zone B.
2. Cannabis establishments or consumption area as defined in this chapter shall be in Zone(s) C, D, or E and must meet all requirements in the Zone it is located in.

5.40.110 ENFORCEMENT

A City of Lovington Code Officer, a certified City of Lovington Police Officer, a Lea County deputy or City of Lovington Fire Marshal or designee may issue citations for violation of this Ordinance.

5.40.120 PENALTIES

The maximum penalty per violation shall be \$300.00. Each day during the time in which a violation occurs shall be deemed a separate violation. Nothing

herein shall prevent City of Lovington from seeking injunctive relief; if appropriate.

ADOPTED BY THE GOVERNING BODY OF THE CITY OF LOVINGTON ON ____ DAY OF FEBRUARY __, 2022.

DAVID TRUJILLO, MAYOR

ATTEST:

SHANNON LESTER, CITY CLERK