

Ordinance 01-2021

**AN ORDINANCE AMENDING THE PLANNING AND ZONING ORDINANCE TO
ESTABLISH
ZONING AND OTHER REGULATIONS FOR CANNABIS**

WHEREAS, the New Mexico Legislature passed the Cannabis Regulation Act, NMSA 1978, Chapter 26, Article 2C (“Act”), which went into effect on June 29, 2021;

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

WHEREAS, some cannabis products are intoxicating substances, 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 risks due to exposure to secondhand smoke and vaporized cannabis concentrates; and

WHEREAS, cannabis cultivation, production, and manufacturing create 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 diversions to the illegal cannabis market; and

WHEREAS, the Act empowers the Town of Estancia to adopt time, place, and manner rules relating to cannabis use and operations so long as they are not inconsistent with the Act or the Dee Johnson Clean Indoor Air Act, NMSA 1978, Chapter 24, Article 16; and

WHEREAS, the Act establishes the cannabis control division in the New Mexico regulation and licensing department to administer the Act and the licensing provisions of the Lynn and Erin Compassionate Use Act, NMSA 1978, Chapter 26, Article 2B; and

WHEREAS, licensees pursuant to the Act are specifically allowed to conduct other licensed activities, including activities pursuant to the Hemp Manufacturing Act, NMSA 1978, Chapter 76, Article 24, except for sales of alcoholic beverages; and

WHEREAS, the Town does not currently have ordinances regulating the local cannabis industry; 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; and

WHEREAS, the Town requires compliance with all applicable laws and regulations regarding the licensing, sale, cultivation, manufacturing, transport, production, distribution, and consumption of cannabis and cannabis related products; and

WHEREAS, by amending the current Planning and Zoning Ordinance, Ordinance 01-2020 the Town will regulate the time, place, and manner of cannabis use and operations; and

WHEREAS, the Governing Body held a public hearing on **October 18, 2021**, concerning this Ordinance.

NOW, THEREFORE, BE IT ORDAINED by the Governing Body of the Town of Estancia, New Mexico:

1. The Town of Estancia Planning and Zoning Ordinance 01-2020, Section 5(E) Home Occupations is hereby amended to include the following additional criteria for home occupations:

“6. Home occupation businesses shall not include cannabis establishments, cannabis consumption areas, or cannabis couriers as those terms are defined in Section 4 Definitions herein.”

2. The Town of Estancia Planning and Zoning Ordinance 01-2020 Section 4 Definitions is hereby amended to include the following:

Section 4. Definitions.

51. “Cannabis” 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 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.

See NMSA 1978, § 26-2C-2(B).

52. “Cannabis consumption area” means an area where cannabis products may be served and consumed; *See* NMSA 1978, § 26-2C-2(C).

53. “Cannabis courier” means a person that transports cannabis products to qualified patients, primary caregivers or reciprocal participants or directly to consumers. *See* NMSA 1978, § 26-2C-2(D).

54. “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
- See NMSA 1978, § 26-2C-2(E).*

55. “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
- See NMSA 1978, § 26-2C-2(H).*

56. “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.
- See NMSA 1978, § 26-2C-2(I).*

57. “Cannabis producer microbusiness” means a cannabis producer at a single licensed premise that possesses no more than two hundred total mature cannabis plants at any one time. *See NMSA 1978, § 26-2C-2(J).*

58. “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. *See NMSA 1978, § 26-2C-2(K).*

59. “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. *See NMSA 1978, § 26-2C-2(L).*

60. “Cannabis retailer” means a person that sells cannabis products to qualified patients, primary caregivers, or reciprocal participants or directly to consumers. *See NMSA 1978, § 26-2C-2(M).*

61. “Cannabis testing laboratory” means a person that samples, collects, and tests cannabis products and transports cannabis products for the purpose of testing. *See NMSA 1978, § 26-2C-2(P).*

62. “Daycare center” means a facility required to be licensed by the State of New Mexico that provides care, services, and supervision for less than 24-hours a day to children.

63. “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 premise; 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 premise;
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.

See NMSA 1978, § 26-2C-2(GG).

64. “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; *See NMSA 1978, § 26-2C-2(OO).*

65. “School” means that part of a school district that is a single attendance center in which instruction is offered by one or more teachers and is discernible as a building or group of buildings generally recognized as either an elementary, middle, junior high, or high school or any combination of those and includes a charter school.

66. “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.

See NMSA 1978, § 26-2C-2(UU).

3. The Town of Estancia Planning and Zoning Ordinance 01-2020 is hereby amended to include the following new sections:

Section 14.2 Cannabis Business Registration.

A. All businesses operating within Town limits are required by Town Ordinance 2018-01 to apply for a business registration with the Town and to pay a business registration fee. Business registrations shall not be issued to any cannabis establishment, cannabis consumption area, or cannabis courier unless the New Mexico Cannabis Control Division has issued either a license, or a provisional license letter (describing contingencies that

must be met in order to receive a license), to the applicant for the business activities in which the applicant is engaged or in which the applicant proposes to engage. *See* 16.8.2.8(S) NMAC.

Section 14.3 Cannabis Zoning Districts.

A. The purpose of this section is to ensure that the premises of all cannabis businesses are limited to those zoning districts where similar uses have already been identified in the Planning and Zoning Ordinance.

B. The below cannabis activities correspond with the identified uses in the Planning and Zoning Ordinance as follows:

1. Cannabis testing laboratories, cannabis research laboratories, and cannabis couriers shall be treated the same as the permissive use “general and professional offices” in the Commercial Business Zone. *See* P & Z Ord., Sec. 12.C-B(B)(3).
2. Cannabis manufacturers shall be treated the same as the conditional use “greenhouse, nursery, or landscaping service” and the conditional use “processing and packaging of goods from agricultural products and/or agricultural by-products” in the RR-1 Rural Residential Zone. *See* P & Z Ord., Sec. 10.RR-1(C)(3); Sec. 10.RR-1(C)(4).
3. Cannabis producers and cannabis producer microbusinesses which cultivate cannabis plants outdoors shall be treated the same as the designated use “dairy, slaughter house, or feed lot” in the Special Use Zone. *See* P & Z Ord., Sec. 14.S-U(D)(3).
4. Cannabis producers and cannabis producer microbusinesses which cultivate cannabis plants indoors shall be treated the same as the conditional use “Greenhouse, nursery, or landscaping service” in the RR-1 Rural Residential Zone. *See* P & Z Ord., Sec. 10.RR-1(C)(3).
5. Cannabis retailers and cannabis consumption areas shall be treated the same as the conditional use “Eating and drinking establishments” in the Commercial Business Zone. *See* P & Z Ord., Sec. 12.C-B(C)(3).

C. Vertically integrated cannabis establishments and integrated cannabis microbusinesses may only be located in a zoning district in which each of the authorized activities proposed for the premises is allowed, whether as a permitted use or pursuant to a conditional use permit.

Section 14.4 Cannabis Consumption Areas.

A. The consumption of cannabis products in a public place is prohibited within Town limits, except in a cannabis consumption area as allowed pursuant to the Act and this Ordinance. *See* NMSA 1978, § 26-2C-26.

B. A cannabis consumption area may only be located indoors; provided, however, that smoking of cannabis products in such cannabis consumption areas is only allowed if the cannabis consumption area occupies a standalone 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. *See* NMSA 1978, § 26-2C-6(I).

C. Unless licensed pursuant to the Lynn and Erin Compassionate Use Act, cannabis consumption areas shall be restricted to persons twenty-one years of age and older. *See* NMSA 1978, § 26-2C-12(A)(2)(a).

Section 14.5 Minimum Distances from Schools and Daycare Centers.

A. No cannabis establishment or cannabis consumption area may be located within 300 feet of a school or daycare center in existence at the time the cannabis establishment or cannabis consumption area was licensed. *See* NMSA 1978, §§ 26-2C-12(A)(2)(b), 26-2C-12(B)(4).

B. For purpose of this section, all measurements for determining the location of a cannabis establishment or cannabis consumption area, in relation to a school or daycare center shall be the shortest direct line between the actual limits of the real property of the school or daycare center and the actual limits of the real property of the proposed cannabis establishment or cannabis consumption area.

C. Any cannabis establishment or cannabis consumption area legally existing within the Town by virtue of a license issued by the New Mexico Cannabis Control Division prior to the effective date of this Ordinance shall not be required to comply with these minimum distance requirements. *See* NMSA 1978, § 26-2C-12(B)(5).

Section 14.6 Minimum Distances from Other Retailers and Consumption Areas

A. Cannabis retailers and cannabis consumption areas may not be located within 200 feet of another cannabis retailer or cannabis consumption area.

B. For purpose of this section, all measurements for determining the location of cannabis retailers or cannabis consumption areas in relation to one another shall be the shortest direct line between the actual limits of the real property of the cannabis retailers or cannabis consumption areas.

C. Any cannabis retailers or cannabis consumption areas legally existing within the Town by virtue of a license issued by the New Mexico Cannabis Control Division prior to the effective date of this Ordinance shall not be required to comply with these minimum distance requirements. *See* NMSA 1978, § 26-2C-12(B)(5).

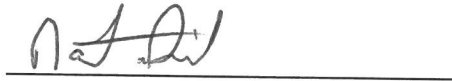
Section 14.7 Hours of Operation.

A. Cannabis products may only be served and consumed within cannabis consumption areas between the hours of 10:00 a.m. and 10:00 p.m. Monday through Saturday.

B. Cannabis retailers, including vertically integrated cannabis establishments and integrated cannabis microbusinesses involved in retail, may only sell cannabis products between the hours of 10:00 a.m. and 10:00 p.m. Monday through Saturday.

Section 14.8 Personal Use Cultivation and Production. Cannabis cultivation and production for personal use in quantities and as permitted by the Cannabis Regulation 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 be conducted securely, in order that the plants are not easily accessible to non-household members. This may be inside an enclosed and locked dwelling unit or an appropriate locked accessory structure (e.g., a controlled-environment agricultural structure). If grown outside, the cultivation area must be secured by a locked gate and fence and shielded from being readily viewed from outside the fenced area.

PASSED, APPROVED, AND ADOPTED THIS 6th DAY OF DECEMBER 2021.



Mayor Nathan Dial

Attest:



Clerk/Treasurer Michelle Jones