



ORDINANCE NO. 2010-018 (Amendment ~~2~~ 3)

AN ORDINANCE AMENDING LAND USE ORDINANCE TO ESTABLISH ZONING AND OTHER REGULATIONS FOR CANNABIS

WHEREAS, the New Mexico Legislature passed the Cannabis Regulation Act (2021 N.M. HB 2) (“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 recreational commercial cannabis activities, which legalization has the potential to greatly expand the legal cannabis market;

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

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

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, including possession and use by persons under the age of twenty-one; and

WHEREAS, the Act empowers the City of Anthony 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;

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

WHEREAS, amending the current Land Use Zone Ordinance, Ordinance 2010-018 will allow the City to regulate the time, place, and manner of cannabis use and operations;

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

NOW, THEREFORE, BE IT ORDAINED by the Governing Body of the City of Anthony, New Mexico:

1. The City of Anthony Land and Zone Ordinance 2010-018, Section 8.3(A) is hereby amended to include the following additional criteria for home occupations:

“7. Home occupation businesses shall not include cannabis establishments, cannabis consumption areas, or cannabis couriers as those terms are defined in Article 13 herein.”



2. The City of Anthony Land Use and Zone Ordinance, Ordinance 2010-018, is hereby amended to include the following article:

“Article 13. Cannabis Regulations

Section 13.1 Definitions

- A. “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.
- B. “Cannabis consumption area” means an area, licensed by the New Mexico Cannabis Control Division, where cannabis products may be served and consumed;
- C. “Cannabis courier” means a person that transports cannabis products to qualified patients, primary caregivers or reciprocal participants or directly to consumers.
- D. “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
- E. “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



License Types: The division may license four classes of manufacture:

- I. **Class I:** A licensee that only packages or repackages cannabis products, or labels or relabels the cannabis product container;
- II. **Class II:** A licensee that conducts Class I activities, and manufactures edible products or topical products using infusion processes, or other types of cannabis products other than extracts or concentrates, and does not conduct extractions;
- III. **Class III:** A licensee that conducts Class I and Class II activities, and extracts using mechanical methods or nonvolatile solvents; and
- IV. **Class IV:** A licensee that conducts Class I, Class II, and Class III activities, and extracts using volatile solvents or supercritical CO₂.

F. “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.

G. “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.

H. “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.

I. “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.

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

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

L. “Daycare” 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.

M. “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.

N. "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 Pre- Kindergarten, elementary, middle school, or high school or any combination of those and includes a charter school.

O. "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.

~~P. Hours of Operation / Business hours—Cannabis hours will correspond to the hours provided by New Mexico State for the sale of alcohol.~~

Section 13.2 Cannabis Zoning.

A. All businesses operating within City limits are required by City Ordinance 2010-004 to apply for a business registration with the City 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 applicant has a provisional license issued by the New Mexico Cannabis Control Division for the business activities in which the applicant is engaged or in which the applicant proposes to engage.

Section 13.3 Cannabis Zoning.

- A. The purpose of this section is to ensure that the premises of all cannabis establishments and cannabis couriers are limited to those zoning districts where similar uses have already been identified in the Land Use Classification Matrixes found in Articles 10-11, above.
- B. The below cannabis activities correspond with the identified uses from the Land Use Classification Matrixes found in Articles 10-11, above:
 1. Cannabis testing laboratories and cannabis research laboratories shall be treated the same as "professional and scientific offices and services."
 2. Cannabis manufacturers shall be treated the same as "agricultural packaging and warehousing," "food and fiber processing," and "manufacturing."



3. Cannabis producers and cannabis producer microbusinesses which cultivate cannabis plants outdoors shall be treated the same as “dairies and related operations.”
 4. Cannabis producers and cannabis producer microbusinesses which cultivate cannabis plants indoors shall be treated the same as “greenhouses and nurseries.”
 5. Cannabis retailers shall be treated the same as “Bars and Lounges.”
 6. Cannabis couriers shall be treated the same as “ground transportation terminals.”
- 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.
1. For example, a vertically integrated cannabis establishment that is a cannabis manufacturer, cannabis producer cultivating cannabis plants outdoors and a cannabis retailer could not locate in an area zoned CC-1 (community commercial) unless an appropriate PUD Type 2 Overlay Zone has been established because the outdoor cultivation of cannabis is only allowed in areas with PUD Type 2 overlay zoning. *See* Community and Village District Land Use Classification Matrix, Ordinance 2010-018 Article 11.

Section 13.4 Cannabis Consumption Areas.

- A. The smoking of cannabis in public is prohibited within City limits, except in cannabis consumption areas.
- B. A cannabis consumption area may be located inside any cannabis establishment; provided, however, that smoking of cannabis products in such 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, NMSA 1978, Chapter 24, Article 16.
- C. Unless licensed pursuant to the Lynn and Erin Compassionate Use Act, cannabis consumption areas shall be restricted to person twenty-one years of age and older.

Section 13:5 Minimum Distances from Schools and Daycare Centers.

- A. No cannabis establishment, cannabis consumption area, or cannabis courier may be located within 300 feet of a school or daycare center in existence at the time the cannabis establishment, cannabis consumption area, or cannabis courier was licensed.
- B. For purpose of this section, all measurements for determining the location of a cannabis establishment or cannabis consumption area, in relation to schools or daycare centers 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, cannabis consumption area, or cannabis courier legally existing within the City 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.

Section 13.6 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 City 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

Section 13.7 Hours of Operation.

- A. Cannabis products may only be served, sold, and consumed within cannabis consumption areas between the hours of ~~operation~~ 7:00 a.m. - 10:00 p.m. Monday - Sunday.
- B. Cannabis retailers, including vertically integrated cannabis establishments and integrated cannabis microbusinesses involved in retail, may only sell cannabis products between the hours of operation as in section 13.1P.

Section 13.8 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 inside an enclosed and locked dwelling unit or an appropriate accessory structure (e.g., a controlled-environment agricultural structure).” Refer to Section 1.4, Definitions – Purpose and Use of Terms.

Repealer. All-City ordinances or resolutions inconsistent with this Ordinance are hereby repealed.



PASSED, APPROVED, AND ADOPTED THIS 16TH DAY OF FEBRUARY 2022.

Diana M. Trujillo, Mayor

{SEAL}

ATTEST:

Esther Motongo, CMC - City Clerk

ROLL CALL VOTE:

| | | | |
|----------------------------|-----|----|-------|
| Mayor Pro Tem, Elva Flores | YES | NO | _____ |
| Trustee Javier Silva | YES | NO | _____ |
| Trustee Daniel Barreras | YES | NO | _____ |
| Trustee Gabriel Holguin | YES | NO | _____ |

Adopted: September 2, 2021

Amendment No. 2: November 18, 2021

Amendment No.3: February 16th, 2022

Amendment KEY:

Blue & Red Color – approved language by P&Z commission.