

**CITY OF TUCUMCARI
ORDINANCE 1161**

**AN ORDINANCE AMENDING ORDINANCE 1160 RELATING TO THE
ZONING ORDINANCE OF THE CITY OF TUCUMCARI, CREATING THE
CANNABIS REGULATION ORDINANCE RELATING TO THE TIME, PLACE
AND MANNER REGULATION OF CANNABIS**

SECTION 1: SHORT TITLE

Sections 1 through 11 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. The CRA contains provisions authorizing the production, possession, consumption, purchase, processing, manufacturing and transport of cannabis by individuals who are at least twenty-one (21) years of age. Further, the CRA provides for the licensing and operation of cannabis establishments. Pursuant to the guidelines contained in the CRA, the City of Tucumcari desires to adopt time, place, manner and other reasonable restrictions related to cannabis establishments, 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, manner and other reasonable restrictions on cannabis production, manufacture retail and consumption. The City of Tucumcari requires compliance with all applicable laws regarding the use, retail sale, cultivation, transport, and manufacturing of cannabis.

Nothing in this Ordinance is intended to promote or condone the sale, cultivation, manufacture, transport, production, distribution, possession, or use of cannabis or cannabis products in violation of any applicable law.

SECTION 3: DEFINITIONS

As used in the Cannabis Regulation Ordinance

A. "cannabis" or "marijuana":

(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;

B. "cannabis consumption area" means an area 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 extract":

(1) means a product obtained by separating resins, tetrahydrocannabinols or other substances from cannabis by extraction methods approved by the Cannabis Control Division of the New Mexico Department of Regulation & Licensing; 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;

F. "cannabis flowers" means only the flowers of a cannabis plant;

G. "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;
- (5) Class I: A licensee that only packages or repackages cannabis products, or labels or relabels the cannabis product container.

(6) 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.

(7) Class III: A licensee that conducts Class I and Class II activities, and extracts using mechanical methods or nonvolatile solvents;

(8) Class IV: A licensee that conducts Class I, Class II, and Class III activities, and extracts using volatile solvents or supercritical CO₂.

H. "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;

I. "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;

J. "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;

K. "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;

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

M. "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;

N. "cannabis server permit education provider" means a person that provides cannabis server education courses and examinations;

O. "cannabis testing laboratory" means a person that samples, collects and tests cannabis products and transports cannabis products for the purpose of testing;

P. "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;

Q. "chemical extraction" means the process of removing a particular component of a mixture from others present, including removing resinous tetrahydrocannabinol from cannabis;

R. "chemical synthesis" means production of a new particular molecule by adding to, subtracting from or changing the structure of a precursor molecule;

S. "commercial cannabis activity":

(1) means the cultivation, production, possession, manufacture, storage, testing, researching, labeling, transportation, couriering, 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;

T. "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;

U. "Department" means the Regulation and Licensing Department of the State of New Mexico

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

W. "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;

X. "immature cannabis plant" means a cannabis plant that has no observable flowers or buds;

Y. "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;

Z. "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;

AA. "manufacture" means to compound, blend, extract, infuse, package or otherwise prepare a cannabis product;

BB. "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;

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

SECTION 4: PERMIT PROCEDURES FOR CANNABIS RELATED ACTIVITIES.

A. Cannabis related activities, approval and permit required.

(1) No person(s) or entity shall engage in the production, manufacture, or sale of cannabis or cannabis products in any zones without a valid Cannabis permit issued by the City of Tucumcari, permitting the specific cannabis-related activity or activities sought to be permitted on the premises. Cannabis permits are issued to the applicant(s) and are not assignable or transferable.

(2) Application and fee. Anyone wishing to conduct cannabis-related activity must submit a completed application. The application shall be returned to the City Clerk accompanied by the appropriate application fee for the use(s) to be permitted, and must show, at a minimum:

(a) possession of a valid City of Tucumcari business license; and
(b) a valid New Mexico tax identification number; and
(c) evidence that the property is owned by the applicant or that the applicant has written authorization from the property owner to carry on a cannabis- related business; and

(d) compliance with existing fire and life safety requirements; and
(e) the cannabis-related activities are appropriately subject to licensure by the State Regulation and Licensing Department pursuant to the Cannabis Regulation Act.

B. 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 a permit is granted for the cannabis establishment, cannabis consumption area, or cannabis courier. For purpose of this section, all measurements for the purpose of determining the location of a cannabis establishment, cannabis consumption area, or cannabis courier in relation to schools or daycare centers shall be the shortest direct line measurement 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, cannabis consumption area, or cannabis courier.

SECTION 5: LOCATION OF CANNABIS ESTABLISHMENTS

A. Cannabis establishments are restricted to property where commercial cannabis activity is permitted as follows:

- a. C-1 and C-2 Commercial Zones for cannabis establishments, and Class I and Class II cannabis manufacturers as defined.
- b. A-1 Agricultural Zones for cannabis producers and Class I and Class II manufacturers. Existing Industrial Zones and R-3 Residential Zones utilizing land for agricultural purposes shall be grandfathered in to allow for growing, consistent with State Statute and state regulations.
- c. I-1 Industrial Zones will allow for Class I, II, III, and IV cannabis manufacturers.

B. Cannabis establishments shall not be permitted within 300ft of an existing school, pre-school, or daycare center.

C. A variance process may be considered for those that do not meet the requirements contained in this ordinance as long as it does not conflict with state statute, or the rules and regulations adopted by the Cannabis Control Division of the New Mexico Department of Regulation & Licensing.

SECTION 6: DESIGN AND ARCHITECTURAL STANDARDS

The purpose of this section is to preserve, protect, enhance, perpetuate, and promote the use of structures and areas of historical, cultural, architectural, engineering, archeological, or geographic significance located in the city; to strengthen the city's economic base by stimulating the tourist industry; to enhance the identity of the city by protecting the city's heritage and prohibiting the unnecessary destruction or defacement of its cultural assets; and to conserve existing urban developments as viable economic and social entities.

- A. Architectural Style for Route 66 Overlay Zone – All new buildings and buildings that undergo substantial exterior renovation should be constructed in an art deco, pueblo revival, mission revival, or kitsch style consistent with historical development that occurred along Route 66 before Interstate 40 was constructed. All modifications to historic properties will be consistent with the Secretary of Interior Standards for the Treatment of Historic properties. Unique, eclectic buildings are encouraged. Numerous examples can be found in historical photos found on the internet or in books.

- B. Architectural Style for Main Street District – All new buildings and buildings that undergo substantial exterior renovation should be constructed in an art deco, mission revival, or other style consistent with Main Street District's historical development. All modifications to historic properties will be consistent with the Secretary of Interior Standards for the Treatment of Historic properties. Unique, eclectic buildings are encouraged. Numerous examples can be found in historical photos found on the internet or in books.
- C. Neon Highlighting – Where feasible and architecturally sensible, exposed and/or hidden neon lighting or an approved alternative shall be used to highlight building architectural features and free-standing signage. Neon lighting shall be shielded or positioned to prevent light and glare from nearby residential areas.
- D. Any cannabis establishments located outside of the Route 66 Overlay Zone or Main Street District should fit the compatibility with the existing development pattern and character of the area.
- E. All other design and architectural standards shall be in accordance with ordinance 1052.

SECTION 7: OPERATIONAL REQUIREMENTS

- A. Cannabis retail and manufacturing establishments must operate within a fully enclosed and stationary building or structure, capable of being locked and secured. Due to design and architectural standards, shipping containers shall not be allowed.
- B. Cannabis establishments may not display products, engage consumers or consummate sales outside of the licensed property.
- C. Cannabis establishments shall have recorded video surveillance covering all plants and the entire exterior. The recorded video surveillance shall be operating 24 hours a day, seven days a week. Records of surveillance shall be kept for a minimum of 30 days. For purposes of the security requirements contained in this paragraph, in the event state law is more restrictive, state law will prevail.
- D. Cannabis establishments shall utilize sufficient odor mitigation technology, such as carbon filtration systems, to minimize cannabis odor from escaping the licensed premise.
- E. Cannabis establishments must provide for off-site disposal of cannabis products and other solid waste in compliance with state, federal and local law.
- F. Cannabis establishments shall be allowed to operate only during the hours of 7:00 a.m. to 9:00 p.m. local time.
- G. Cannabis establishments shall not provide drive-thru services for delivery of cannabis products.

SECTION 8: STANDARDS FOR DESIGNATED CANNABIS CONSUMPTION AREA

Cannabis establishments having a designated Cannabis Consumption Area on site shall meet the following standards to the satisfaction of the City:

- A. Smoking in a cannabis consumption area on a licensed premises shall be allowed only if the cannabis consumption area is in a designated smoking area or in 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
- B. The designated Cannabis Consumption Area shall have signage to identify established cannabis consumption areas.
- C. The designated 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 premises pursuant to the Dee Johnson Clean Indoor Air Act.
- D. The designated Cannabis Consumption Area shall be completely separated from the remainder of the premises, and all doors leading to the designated

Cannabis Consumption Area shall be self-closing.

SECTION 9: ANNUAL LICENSE FEES

- A. Fees will be set by Resolution.

SECTION 10: 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, or the rules adopted by the Cannabis Control Division of the New Mexico Regulation & Licensing Department.
- B. Any person found in violation of this ordinance is subject to a fine of up to \$500 or imprisonment for a period of up to 90 days in jail or both.
- C. Each day that a violation of any provision of this ordinance occurs shall constitute a separate offense.
- D. The City reserves the right to terminate any City-issued or City-provided licenses, registrations, approvals, utilities, or other such matter upon a second violation of this ordinance. Nothing herein shall prevent the City from seeking injunctive relief.

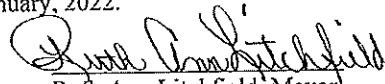
SECTION 11: SEVERABILITY

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.

SECTION 12. EFFECTIVE DATE

This ordinance shall be in full force and effect, five (5) days after this approval, adoption and publication as provided by law.

PASSED, ADOPTED AND APPROVED this 27th day of January, 2022.


Ruth Ann Litchfield, Mayor

ATTEST:

By: 
Angelica M. Gray, City Clerk

