

City of Belen Ordinance No. 2021-10

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

WHEREAS, cannabis contains tetrahydrocannabinol (“THC”), which remains on Schedule 1 of the Controlled Substances Act pursuant to 21 U.S.C. § 811 et al. and any possession and use thereof is a violation of federal law pursuant to 21 U.S.C. § 841 et. al., and

WHEREAS, the New Mexico Cannabis Regulation Act (“CRA”), allows the establishment and operation of certain cannabis dispensaries in City of Belen according to a prescribed statutory and regulatory process, and

WHEREAS, New Mexico Governor Michelle Lujan Grisham signed House Bill 2 (HB 2) on April 12, 2021, which passed the House 38-32 and the Senate 22-15 during a special legislative session called by the governor, and contains provisions authorizing the possession, consumption, purchase, processing, manufacturing or transporting of cannabis by an individual who is at least twenty-one (21) years of age; authorizing possession, transport, cultivation or processing of cannabis plants in a primary residence by adults age 21 years and older; allowing a certain medical cannabis plants in a primary residence by adults age 21 years and older; allowing a certain medical cannabis dispensary or other non-dispensary applicant to apply to the Department of Health Services (the “Department”) to become a licensed cannabis establishment authorized to engage in the retail sale, cultivation, and manufacturing of cannabis; and allowing the Department, or another entity designated by the Department, to become a cannabis testing facility to test the potency of cannabis and detect any harmful contaminants, and

WHEREAS, the City of Belen finds that the New Mexico Cannabis Regulation Act (“NMCRA”) authorizes cannabis establishments to use chemical extraction or chemical synthesis, including butane and other flammable gases, to extract cannabis concentrate (“extraction”), which 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 violations of state and local laws, including building, electrical and fire codes; and due to significant health and safety risks will only be allowed in commercial and manufacturing zoned areas. It is required that a permit be obtained from the City of Belen Fire Marshall pursuant to the International Fire Code Operational Permit 105.6.49 (Cannabis extraction systems regulated thereunder).

WHEREAS, the City of Belen finds that the NMCRA authorizes the City of Belen to (1) adopt time, place and manner rules that do not conflict with the Cannabis Regulation Act or the Dee Johnson Clean Indoor Air Act, including rules that reasonably limit density of licenses and operating times consistent with neighborhood uses; and

(2) Allow for the smoking, vaporizing and ingesting of cannabis products within an indoor or outdoor cannabis consumption area if:

- (a) unless licensed pursuant to the Lynn and Erin Compassionate Use Act, access to the cannabis consumption area is restricted to persons twenty-one years of age and older; and
- (b) The cannabis establishment or integrated cannabis microbusiness is located at a minimum distance from a school or daycare center as determined by the local jurisdiction, but which minimum distance shall not be set at any more than 300 feet from a school or daycare center that was in existence at the time the establishment or microbusiness was licensed.

WHEREAS, City of Belen seeks to protect public health, safety, and welfare by enacting reasonable regulations on cannabis establishments in unincorporated areas of Belen consistent with its comprehensive zoning plan.

WHEREAS, this ordinance is subject to change or amendment as the New Mexico Cannabis Regulation Act (“CRA”)’s rules and regulations are amended and adopted, and it shall comply with NMCRA and its regulations.

NOW THEREFORE, the City of Belen adopts the following ordinance for the regulation of cannabis consistent with the NMCRA.

1. Purpose

This Ordinance is adopted to protect the health, safety, and welfare of the community. Except as allowed by CRA and its pertinent laws or regulations for personal or private use, the City of Belen enacts reasonable regulations and requires compliance with the CRA and its pertinent laws or regulations.

2. Definitions

The below words and phrases, wherever used in this article, shall be construed as defined in the NMCRA or pertinent laws and regulations with their subsequent amendments.

A. "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;

B. "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;

C. "cannabis consumption area" means an area where cannabis products may be served and consumed;

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

E. "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

F. "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;

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

H. "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;

I. "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;
- J. "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;
- K. "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;
- L. "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;
- M. "cannabis retailer" means a person that sells cannabis products to qualified patients, primary caregivers or reciprocal participants or directly to consumers;
- N. "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;
- O. "Cannabis server permit education provider" means a person that provides cannabis server education courses and examinations;
- P. "cannabis testing laboratory" means a person that samples, collects and tests cannabis products and transports cannabis products for the purpose of testing;
- Q. "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;
- R. "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;
- S. "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;
- T. "contaminant" means pesticides and other foreign material, such as hair, insects or other similar adulterants, in harvested cannabis;
- U. "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;
- V. "cultivation" means any activity involving the planting, growing, harvesting, drying, curing, grading or trimming of cannabis;
- W. "department" means the regulation and licensing department;
- X. "director" means the director of the division;
- Y. "division" means the cannabis control division of the department;
- Z. "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;

AA. "Facility" means a building, space or grounds licensed for the production, possession, testing, manufacturing or distribution of cannabis, cannabis extracts or cannabis products;
BB. "financial consideration" means value that is given or received, directly or indirectly, through sales, barter, trade, fees, charges, dues, contributions or donations;
CC. "homegrown" or "homemade" means grown or made for purposes that are not dependent or conditioned upon the provision or receipt of financial consideration;
DD. "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;
EE. "Immature cannabis plant" means a cannabis plant that has no observable flowers or buds;
FF. "industry standards" means the prevailing customary standards of business practice in the cannabis industry in jurisdictions within the United States;
GG. "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;
- (6) All enclosed public and private areas at the location that are used in the business and includes offices, kitchens, restrooms and storerooms;
- (7) 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
- (8) 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;

HH. "Local jurisdiction" means a municipality, home rule municipality or county;

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

JJ. "Medical cannabis" means cannabis products used by a qualified patient or reciprocal participant in accordance with the Lynn and Erin Compassionate Use Act;

KK. "Medical cannabis program" means the program created pursuant to the Lynn and Erin Compassionate Use Act;

LL. "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;

MM. "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;

NN. "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;

OO. "Qualified patient" means a resident of New Mexico who holds a registry identification card pursuant to the Lynn and Erin Compassionate Use Act;

PP. "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;

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

RR. "Superintendent" means the superintendent of regulation and licensing;

SS. "unprocessed" means unaltered from an original, raw or natural state; and

TT. "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

3. Cannabis Retail

- A. Cannabis retail is allowed, provided that the establishment complies with all New Mexico State law requirements, including but not limited to any required spacing from other uses or facilities. For the purposes of this article, all measurements for Cannabis Retail shall be from the licensed premises as defined by CRA.
- B. This use shall not include a storage or display area outside of fully enclosed portions of a building.
- C. A licensed premises, as defined by NMCRA, is prohibited within 300 feet of any school or child day care facility.
- D. This use is conditional if cannabis will be consumed on-site. If cannabis is consumed on-site, an air filtration plan approved by the City's Environmental Health Department is required.
- E. On-site consumption is allowed in the following areas; a designated smoking area or in a standalone building from which smoke does not infiltrate other indoor work places or other indoor public places where smoking is otherwise prohibited pursuant to the Dee Johnson Clean Air Act. Alcohol consumption in a cannabis consumption area is prohibited.
- F. This use shall be conditional within 600 feet of another Cannabis Retail Establishment. Nothing herein prohibits multiple licenses from operating from a single premise.
- G. Customer visits and deliveries are prohibited between 12:00 a.m. and 8:00 a.m.

4. Cannabis Cultivation Facility (Industrial Uses)

- A. Cannabis cultivation is allowed, provided that the establishment complies with all New Mexico State law requirements, including but not limited to any required spacing from other uses or facilities. For the purposes of this Article, all measurements for Cannabis Cultivation shall be from the licensed premises as defined by NMCRA.

- B. All licensed premises as defined by the NMCRA is prohibited within 300 feet of any Residential zone district, school, or child day care facility.
- C. Except as specified in Subsection (d) below, all activities in this use must be conducted within the fully enclosed portions of a building unless a Conditional Use Approval is obtained to conduct specific activities outside of the fully enclosed portions of a building.
- D. An incidental storage area is allowed outside of the fully enclosed portions of a building, but must be screened from view from each property line in which a permit is required.
- E. An air filtration plan approved by the City's Development Services Director is required which is following the Dee Johnson Clean Air Act.
- F. Customer visits and deliveries are prohibited between 12:00 a.m. and 8:00 a.m. for any Cannabis Cultivation Facility located within 300 feet of a Residential zone district.

5. Cannabis-derived Products Manufacturing

- A. Cannabis-derived products manufacturing is allowed, provided that the establishment complies with all New Mexico State law requirements, including but not limited to any required spacing from other uses or facilities. For the purposes of the article, all measurements for Cannabis-derived Product Manufacturing shall be from the licensed premises as defined by NMCRA.
- B. All licensed premises, as defined by NMCRA, is prohibited within 300 feet of any Residential zone district, school, or child day care facility.
- C. Except as specified in Subsection (d) below, all activities in this use shall be conducted within the fully enclosed portions of a building unless a Conditional Use Approval is obtained to conduct specific activities outside of the fully enclosed portions of a building.
- D. An incidental storage area is allowed outside of the fully enclosed portions of a building but shall be screened from view from each property line.
- E. An air filtration plan approved by the City Environmental Health Department is required.
- F. Customer visits and deliveries are prohibited between 12:00 a.m. and 8 a.m. for any Cannabis-derived Products facility.
- G. Commercial on-site cannabis consumption is prohibited in all zones until regulations promulgated by the State become effective, in which cases all other City provision regarding on-site consumption not prohibited by state regulation will be effective.
- H. Commercial on-site consumption of cannabis is the commercial cannabis activity of smoking, vaporizing, and ingesting of cannabis or cannabis products in a licensed cannabis consumption area. Commercial on-site consumption is considered part of Cannabis Relief. Unless license pursuant to the Lynn and Erin compassionate use act, access to the cannabis consumption area is restricted to persons 21 years of age and older.

6. Delivery permit restrictions.

The following restrictions shall be placed on cannabis delivery permits:

Only medical or retail cannabis transporters who qualify as a social equity applicant as defined in and by the National Cannabis Industry Membership hold a valid license and a

delivery permit issued may deliver regulated cannabis to private residences of customers and patients, subject to the provisions the NMRCA and its pertinent regulations and rules.

7. Allowable land use zoning:

- A. R-1, R-1A, R-2, R-3, and R-4: Private property consumption, and cultivation of up to 12 mature and 12 immature plants.
- B. A-R, Agricultural allows cultivation.
- C. C-1 and C-2: Cannabis testing Laboratory, Cannabis producer, Cannabis retail, Microbusiness, Cannabis testing laboratory, vertically integrated cannabis establishment, Cannabis training and education.
- D. M-C: Cannabis manufacturer. Safe and secure extraction is only allowed in this zone.
- E. C/R Zone- Cannabis Consumption area with a conditional use permit.

8. Fees

- A. Planning and Building Cannabis application/inspection fee \$581.00
- B. Planning and Building preliminary site plan review fee \$556.00
- C. Planning and Building records management fee \$100.00
- D. For Cultivation cottage or nursery Planning and Building /inspection fee \$838.00
- E. Hazardous Materials Inventory Statement Plan Review - \$50
- F. Cannabis Transporter Permit \$225
- G. Hazardous Materials and Flammable Liquids Permits – Use, Storage \$100
- H. A cannabis waste plan review-\$50
- I. Must comply with Ordinance #2009-09 Section 1:1 The International Fire Code (IFC) 2018 edition, chapter 38.

9. Renewal annual application fee for all cultivation permit types

- A. Planning and Building cannabis application/inspection fee \$581.00
- B. Planning and Building records management fee \$100.00
- C. Planning and Building site inspection (not charged unless required).

10. Renewal annual application fee for all other permit types

- A. Planning and Building cannabis application/inspection fee \$581.00
- B. Planning and Building records Management fee \$100.00
- C. City issued Business License \$35.00
- D. Cannabis Transporter Permit \$225
- E. Any other necessary licenses permitted by the NMCRA \$250.00
Licensee shall ensure that all licensed premises are in compliance with Construction Industries Licensing Act, and comply with the Occupational Health and Safety Act.

11. Providing for Severability.

If any section, subsection, sentence, clause, phrase or portion of this Ordinance or any part of the Code adopted herein by reference, is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions thereof.12. Applicability of other laws.

All cannabis uses are subject to all other applicable sections of the City's ordinances.

13. Due to the nature of this NMRCA's continuing developing rules and regulations, the City Manager or his designee including Development Services Director may implement all necessary and proper measures to comply with NMCRA and its regulations.

PASSED, ADOPTED AND APPROVED BY THE MAYOR AND GOVERNING BODY OF THE City of Belen, NM, and this 19th day of July, 2021.



Jerah Cordova, Mayor

Attest:



Dorothy Flores, City Clerk/Treasurer