

**UNION COUNTY, NEW MEXICO  
CANNABIS REGULATION ORDINANCE  
ORDINANCE NO. 2021-43**

**AN ORDINANCE REGULATING MEDICAL AND RECREATIONAL  
CANNABIS ESTABLISHMENTS, OTHER CANNABIS BUSINESSES,  
PRODUCTION OF CANNABIS AND CANNABIS PRODUCTS.**

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

**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;

**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;

**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 can create strong and offensive odors;

**WHEREAS**, limiting the density of Cannabis establishments, Cannabis retailers and Cannabis consumption areas are necessary to ensure that Cannabis activities are not unduly concentrated and do not crowd out other uses; and

**WHEREAS**, the Board of County Commissioners of Union County, New Mexico finds that it will promote the public health, safety, and welfare to enact provisions regulating the use of Cannabis in Union County.

**THEREFORE, BE IT ORDAINED BY THE BOARD OF COUNTY  
COMMISSIONERS OF UNION COUNTY, NEW MEXICO:**

**SECTION 1. DEFINITIONS.**

**(A) 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;

(B) **Cannabis Consumption Area.** An area where cannabis products may be served and consumed;

(C) **Cannabis courier.** 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;

(8) an integrated cannabis microbusiness; or

(9) a cannabis consumption area.

(E) **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;

(F) **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;

(G) **Cannabis product.** A product that is or that contains cannabis or cannabis extract, including edible or topical products that may also contain other ingredients;

(H) **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;

(I) **Cannabis Retailer.** A person that sells cannabis products to qualified patients, primary caregivers or reciprocal participants or directly to consumers;

(J) **Cannabis Testing Laboratory.** A person that samples, collects and tests cannabis products and transports cannabis products for the purpose of testing;

(K) **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;

(L) **Consumer.** 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;

(M) **County.** The area lying within the corporate boundaries of the County of Union and outside the boundaries of any incorporated municipality.

(N) **Cultivation.** Any activity involving the planting, growing, harvesting, drying, curing, grading or trimming of cannabis;

(O) **Facility.** A building, space or grounds licensed for the production, possession, testing, manufacturing or distribution of cannabis, cannabis extracts or cannabis products;

(P) **Government Facility.** A facility, agency or area used for public purposes, and owned or operated by an instrumentality or agency of federal, state or local government.

(Q) **Homegrown or Homemade.** Grown or made for purposes that are not dependent or conditioned upon the provision or receipt of financial consideration;

(R) **Household.** 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;

(S) **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 the number of mature cannabis plants specified by regulations of the regulation and licensing department, cannabis control division 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;

(T) **Licensed Premises.** 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;

(U) **Manufacture.** To compound, blend, extract, infuse, package or otherwise prepare a cannabis product;

(V) **Medical Cannabis.** Cannabis products used by a qualified patient or reciprocal participant in accordance with the Lynn and Erin Compassionate Use Act;

(W) **Medical Cannabis Program.** The program created pursuant to the Lynn and Erin Compassionate Use Act;

(X) **Medical Cannabis Registry.** The system by which the department of health approves or denies applications and issues and renews registry identification cards for qualified patients;

(AA) **Mobile, Portable or Temporary Unit.** Any motorized or non-motorized vehicle, trailer, or other device designed to be portable and not permanently attached to the ground from which items are ordinarily vended, served, or offered for sale.

(BB) **Public Place.** 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) **Qualified Patient.** A resident of New Mexico who holds a registry identification card pursuant to the Lynn and Erin Compassionate Use Act;

(DD) **Reciprocal Participant.** 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;

(EE) **Residence.** A place where someone lives.

(FF) **Retail Establishment.** A location at which cannabis products are sold to qualified patients, primary caregivers and reciprocal participants and directly to consumers;

(GG) **Smoke.** To inhale, exhale, burn or carry any lighted or heated device or pipe or any other lighted or heated cannabis products intended for inhalation, whether natural or synthetic, in any manner or in any form.

(HH) **Unprocessed.** Unaltered from an original, raw or natural state; and

(II) **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.

## SECTION 2. LOCATION

(A) **Separation:** A Cannabis producer or a Cannabis manufacturer shall not be located within 1,000 feet of a residence located in an unincorporated area. A Cannabis establishment shall not be located within five hundred (500) feet of another Cannabis establishment located in an unincorporated area. Cannabis establishments may be co-located.

(B) **Minimum separation distance for schools and daycare centers.** A cannabis establishment must maintain a minimum separation distance of at least 300 feet from any school or daycare center that was in existence at the time the cannabis establishment was licensed by the state.

(C) **Measurement.** For the purposes of this Ordinance, distances shall be measured in a straight line, without regard to intervening structures or objects, from the nearest point on the property line of the lot on which the cannabis establishment is located to the nearest point on any property line of a residence or cannabis establishment.

(D) **Exception for Subsequent Uses of Nearby Property.** A cannabis establishment, lawfully operating under this Ordinance, shall not be deemed to be in violation of the location restrictions set forth above solely because a specific use subsequently locates within the minimum required distance of the cannabis establishment, or when any other lot or tract within the required minimum distance of the cannabis establishment subsequently becomes a school or daycare center.

### **SECTION 3. OPERATING TIMES.**

Cannabis retailers and cannabis consumption areas may only operate during the following hours:

(A) **Cannabis Consumption Areas.** Products may only be served and consumed in cannabis consumption areas between the hours of 7:00 a.m. and midnight Monday through Saturday and noon to midnight on Sundays.

(B) **Cannabis Retailers.** Cannabis retailers may only sell cannabis products for off-site consumption between the hours of 7:00 a.m. and midnight Monday through Saturday and noon to midnight on Sundays.

### **SECTION 4. 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 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.

(B) Cannabis consumption areas that are open to consumers are also subject to the following:

(1) the smoking of cannabis products is only allowed within a licensed cannabis consumption area that 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; and

(2) access to cannabis consumption areas open to consumers is restricted to persons twenty-one years of age and older.

## **SECTION 5. BUSINESS REGISTRATION**

Any person engaged in commercial cannabis activities must comply with the Union County Business Registration Fee Ordinance, Ordinance No. 7 (1987).

## **SECTION 6. CANNABIS ESTABLISHMENT PERMIT**

Any person seeking to operate a cannabis establishment in the County may obtain a cannabis establishment permit under the following conditions:

(A) The permit shall be obtained from the Union County Manager's Office.

(B) The cost of the permit shall be \$250 for the initial permit, and \$100 for annual renewal of the permit.

(C) The County Manager or their designee shall require the following information from the applicant:

(1) 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.

(2) If the applicant is an individual, the residence address of the applicant as well as the applicant's birthdate and social security number.

(3) If the applicant is a partnership, the names, residence addresses, birthdates, and social security numbers of all partners.

(4) 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.

(5) If the applicant is a corporation, the state of incorporation, 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.

(6) Prior to the issuance of a permit, any Limited Liability company or corporation shall provide a certificate of good standing.

(7) The applicant shall provide Federal and State tax identification numbers.

(8) The applicant shall provide proof of compliance with the Union County Ordinance No. 7, the Business Registration Fee Ordinance.

(D) Prior to issuance of a permit, the County Manager or their designee shall confirm compliance with distancing and fencing requirements as provided in Section 2 (Location) and Section 7 (Fencing).

(E) No permit shall issue to a temporary or portable building.

(F) No permit shall issue to a drive-through cannabis establishment.

(G) Failure to meet the conditions above will result in non-issuance of a permit.

(H) If denial of an application for a new permit or renewal permit is deemed necessary by the County Manager or their designee, written notice of the decision shall be provided to the applicant.

(I) Any person or entity denied a permit may, within ten (10) days of the receipt of notice of the denial, file an appeal with the Board of County Commissioners of Union County. The Notice of Appeal shall be delivered to the County Manager and a hearing shall be scheduled within sixty (60) days of receipt of the Notice. The appeal shall be de novo and the burden of proof shall be on the applicant to establish entitlement to a permit. The Commission shall make written findings of fact and conclusions of law supporting its decision. Any further appeal shall be to the District Court, in accordance with NMSA 1978, Section 39-3-1.1 and Rule 1-074 NMRA.

(J) Operation of a cannabis establishment or engaging in commercial cannabis activity without a license in hand from the New Mexico Regulation and Licensing Department (“RLD”) and a permit in hand from Union County is a violation of this Ordinance and shall be punished as specified herein.

(K) Issuance of a permit hereunder is conditioned upon a license being issued to the applicant from RLD for the commercial cannabis establishment. Proof of issuance of a license from RLD shall be submitted to the County within ten (10) days of issuance. Failure to present a valid license from RLD shall invalidate any permit issued herein, upon written notice to the applicant from the County.

## **SECTION 7. FENCING**

Each cannabis producer, cannabis research laboratory, and cannabis testing laboratory is required to erect and maintain a lockable fence of sturdy construction measuring at least six feet in height enclosing and screening from view the area where cannabis is located. The enclosure shall remain securely locked during non-business hours.



**SECTION 8. MOBILE UNITS**

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

**SECTION 9. SMOKING OF CANNABIS IN PUBLIC PLACE**

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

**SECTION 10. EXISTING MEDICAL CANNABIS ESTABLISHMENTS**

Any medical cannabis establishment existing as of the date of the passage of this Ordinance shall not be required to comply with the location requirements of Section 2. However, the owners of such businesses shall, within 90 days of the effective date of this Ordinance, submit an application for a permit.

**SECTION 11. ENFORCEMENT.**

A certified Union County Sheriff's deputy may issue citations for violation of this Ordinance.

**SECTION 12. PENALTIES.**

With the exception of Section 9, which is punishable by State law, any violation of this Ordinance may be enforced in any court of competent jurisdiction. The maximum penalty per violation shall be \$300. Each day during the time in which a violation occurs shall be deemed a separate violation. Nothing herein shall prevent Union County from seeking injunctive relief, if appropriate.

**SECTION 13. SAVING CLAUSE.**

Should any portion of this Ordinance be declared unenforceable after a final, non-appealable decision of a court of competent jurisdiction, the remaining provisions of this Ordinance shall, to the extent feasible, remain in full force and effect.

**SECTION 14. EMERGENCY CLAUSE AND EFFECTIVE DATE.**

Because of the urgent need for regulation pursuant to this Ordinance, the Board of County Commissioners declares that it is necessary for the public peace, health and safety that this Ordinance take effect immediately after passage when it is recorded in the book kept by the County for that purpose and authenticated by the signature of the County Clerk. In the event a court of competent jurisdiction finds that the passage of this Ordinance did not constitute an emergency, then the effective date of this Ordinance shall be 30 days after this Ordinance is recorded with the County Clerk.

PASSED, APPROVED AND ADOPTED this 27<sup>th</sup> day of August, 2021.

**BOARD OF COUNTY COMMISSIONERS  
OF UNION COUNTY, NEW MEXICO**



By: Justin Bennett  
Justin Bennett, Chair

Clayton Kiesling  
Clayton Kiesling, Member

Walter Hall  
Walter Hall, Member

Brenda Green  
Brenda Green, County Clerk