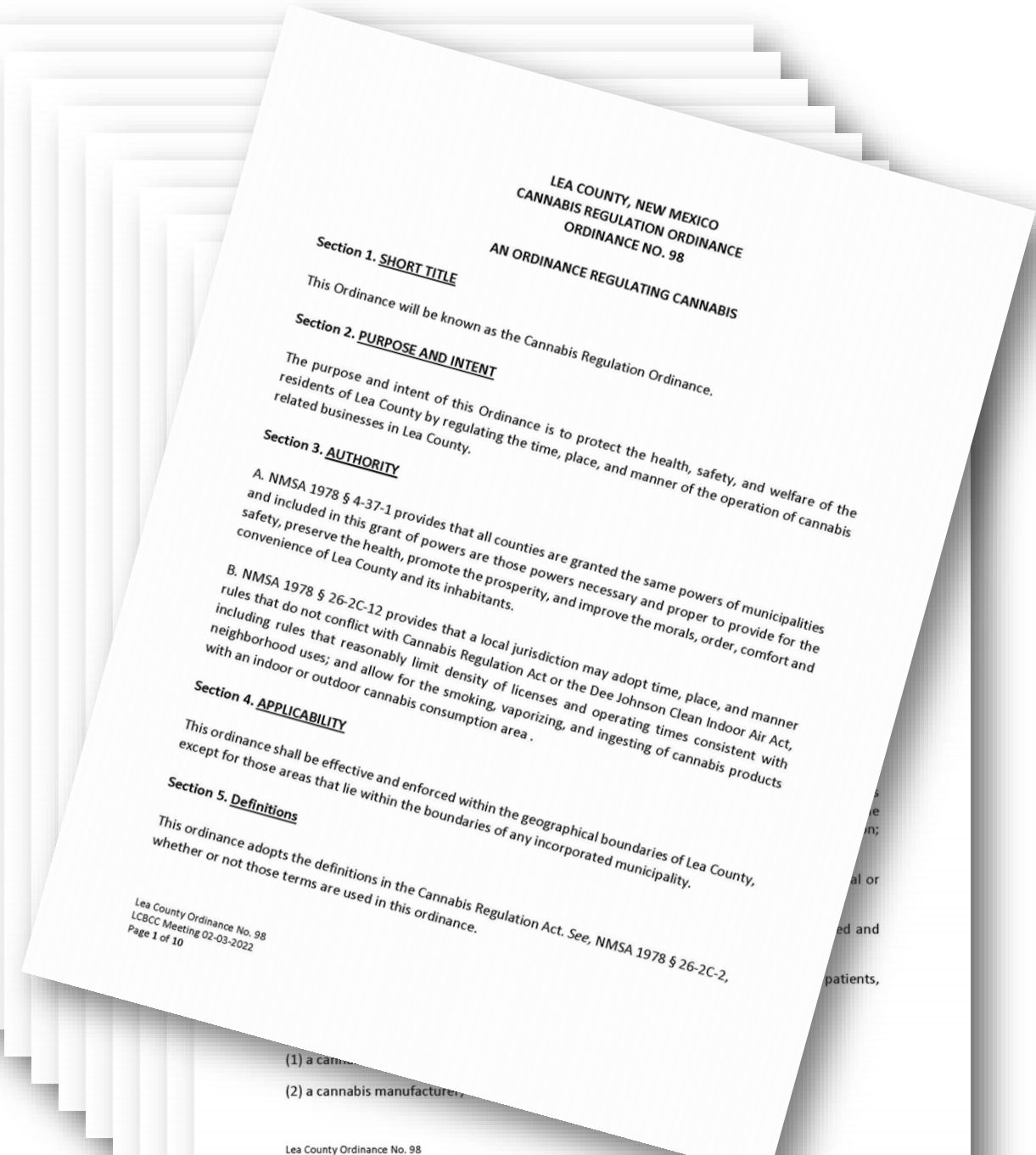


Consideration to Adopt Lea County Ordinance No. 98 An Ordinance Regulating Cannabis





**LEA COUNTY BOARD OF COUNTY COMMISSIONERS
AGENDA ITEM SUMMARY FORM**

LCBCC Meeting Date: Thursday, February 3, 2022

Submit this summary form & all attachments to the Finance Director clow@leacounty.net & cc the Executive Coordinator sstout@leacounty.net by: **Monday, January 24, 2022**

County Manager Approval mgallagher@leacounty.net required for all time sensitive issues that do not meet the above deadline.

DATE SUBMITTED mm-dd-yyyy: 01/25/2022	SUBMITTED BY Name, Title, Dept: John Caldwell, County Attorney, Legal Department	
SUBJECT: Hearing: Cannabis Regulation Ordinance	ATTACHMENT(S): Proposed Cannabis Regulation Ordinance	
NO. OF ORIGINALS FOR SIGNATURE: 1 Ordinance	ACTION REQUESTED: Action Item	
BUDGET LINE ITEM NUMBER: N/A	FISCAL BUDGET YEAR: N/A	
STRATEGIC PLAN Implementation of 5 Year Strategic Plan: 3.2 Economic Growth 3.4 Quality of Life 3.5 Safety		
SUMMARY: The New Mexico legislature and governor legalized the recreational use of cannabis in 2021. The statute allows local governments very limited discretion to adopt rules on time, manner, and place of cannabis operations. The proposed ordinance places restrictions on time, manner, and place of operations of recreational cannabis establishments.		
Requested Items Needed for Presentation Easels/Laptop/Projector/Etc.: Easel <input type="checkbox"/> Laptop <input checked="" type="checkbox"/> Projector <input checked="" type="checkbox"/> Other: <input type="checkbox"/> <small>If checked, how many:</small>	See Additional Summary Attached <input type="checkbox"/>	
SUBMITTER'S RECOMMENDATION(S):	Submitter's Signature Department Director, Etc. Digitally signed by John Caldwell Date: 2022.01.25 14:12:39 -0700 John Caldwell	
FINANCE REVIEW Fiscal Impact/Cost:	Reviewed by Finance Director	
LEGAL REVIEW: (Note: Travel does not need legal review)	Reviewed by County Attorney John Caldwell Digitally signed by John Caldwell Date: 2022.01.25 14:12:50 -0700	
COUNTY MANAGER REVIEW:	Approved by County Manager to be Placed on Agenda 	
Item No. <u>0304</u> RECORDING SECRETARY'S USE ONLY ~ COMMISSION ACTION TAKEN		
Approved: _____ Resolution No. _____ Continued To: _____	Denied: _____ Policy No. _____ Referred To: _____	Other: _____ Ordinance No. <u>98</u> Comments: _____

**LEA COUNTY, NEW MEXICO
CANNABIS REGULATION ORDINANCE
ORDINANCE NO. 98**

AN ORDINANCE REGULATING CANNABIS

Section 1. SHORT TITLE

This Ordinance will be known as the Cannabis Regulation Ordinance.

Section 2. PURPOSE AND INTENT

The purpose and intent of this Ordinance is to protect the health, safety, and welfare of the residents of Lea County by regulating the time, place, and manner of the operation of cannabis related businesses in Lea County.

Section 3. AUTHORITY

A. NMSA 1978 § 4-37-1 provides that all counties are granted the same powers of municipalities and included in this grant of powers are those powers necessary and proper to provide for the safety, preserve the health, promote the prosperity, and improve the morals, order, comfort and convenience of Lea County and its inhabitants.

B. NMSA 1978 § 26-2C-12 provides that a local jurisdiction may adopt time, place, and manner rules that do not conflict with 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 allow for the smoking, vaporizing, and ingesting of cannabis products with an indoor or outdoor cannabis consumption area .

Section 4. APPLICABILITY

This ordinance shall be effective and enforced within the geographical boundaries of Lea County, except for those areas that lie within the boundaries of any incorporated municipality.

Section 5. Definitions

This ordinance adopts the definitions in the Cannabis Regulation Act. *See*, NMSA 1978 § 26-2C-2, whether or not those terms are used in this ordinance.

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 establishment;
- (7) a cannabis producer microbusiness; or
- (8) an integrated cannabis microbusiness;

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) couriership of cannabis products to qualified patients, primary caregivers or reciprocal participants or directly to consumers;

HH. “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;

II. "local jurisdiction" means a municipality, home rule municipality or county;

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

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

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

MM. "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;

NN. "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;

OO. "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;

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

QQ. "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;

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

SS. “superintendent” means the superintendent of regulation and licensing;

TT. “unprocessed” means unaltered from an original, raw or natural state; and

UU. “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.

Section 6. LOCATION RESTRICTIONS

A. **Minimum separation distance.** A cannabis establishment and/or a cannabis consumption area must maintain a minimum separation distance of 300 feet from any religious assembly or church, community center, public park, school, or daycare center that was in existence at the time the cannabis establishment was licensed by the state.

B. **Density.** No cannabis retailer or cannabis consumption area shall be within 1250 feet of another cannabis retailer or cannabis consumption area.

B. **Measurement.** For the purposes of Section 6A and 6B of this ordinance, distances shall be measured in a straight line from property line to property line, without regard to intervening structures or objects.

Section 7. TIME/HOURS OF OPERATION

A. **Sales.** Cannabis retailers may sell cannabis products for off-site consumption only between the hours of 7:00 a.m. and 12:00 a.m. (midnight).

B. **Cannabis Consumption Areas.** Cannabis service and consumption in cannabis consumption areas may occur only between 7:00 a.m. and 12:00 a.m. (midnight).

Section 8. REGISTRATION WITHIN COUNTY

A. Cannabis Establishments. All cannabis establishments licensed by the state to do business or be physically present in Lea County shall register with the Lea County Environmental Department prior to doing business or within 10 days of locating in Lea County. Such establishments shall renew their registration annually.

B. Cannabis Consumption Areas. All cannabis consumption areas licensed by the state to do business or be physically present in Lea County shall register with the Lea County Environmental Department prior to doing business or within 10 days of locating in Lea County. Such cannabis consumption areas shall renew their registration annually.

C. Registration Requirements/Fees. Each registrant in 8A and 8B shall present a photocopy of its state license to the Lea County Environmental Department. Each registrant shall pay an initial registration fee of \$250.00. Each registrant shall pay a registration fee of \$150.00 at the time of each annual renewal of its registration.

Section 9. CANNABIS CONSUMPTION AREA

Cannabis consumption areas are subject to the following:

A. A cannabis consumption area may be located inside, provided that the smoking of cannabis products is limited to areas that have been designated smoking areas from which smoke does not infiltrate other indoor workplaces or indoor public places where smoking is otherwise prohibited pursuant to the Dee Johnson Clean Indoor Air Act, NMSA 1978 §§ 24-16-1 *et seq.*

B. Outdoor cannabis consumption areas shall have controlled access, such as fencing sufficient to prohibit access by unauthorized persons. The consumption of cannabis shall not be visible to the public from property outside the cannabis consumption area.

C. 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.

Section 10. ENFORCEMENT

Lea County Codes Enforcement Officers and certified Lea County Deputies may issue citations for violations of this ordinance.

Section 11. PROHIBITED ACTS/PENALTIES

A. It is prohibited to violate any requirement or restriction of Sections 6, 7, 8, and 9.

B. The maximum penalty per violation is \$300.00. Each day during the time in which a violation occurs shall be deemed a separate violation. Nothing herein shall prevent Lea County from seeking injunctive relief, if appropriate.

Section 12. SAVINGS CLAUSE

If any part of this ordinance is declared unenforceable by a court of competent jurisdiction, the remaining provisions or portions thereof shall, to the extent feasible, remain in full force and effect.

Section 13. EMERGENCY CLAUSE AND EFFECTIVE DATE

Because of the urgent need for regulation of cannabis activity in Lea County, the Board of County Commissioners for Lea County 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 Office of the Lea County Clerk. In the event that a court of competent jurisdiction finds that the adoption of this ordinance did not constitute an emergency, then the effective date of this ordinance shall be 30 days after this ordinance is recorded in the Office of the Lea County Clerk.

PASSED, APPROVED AND ADOPTED on this 3rd day of February, 2022, by the Lea County Board of County Commissioners in an open meeting in Lovington, New Mexico.

LEA COUNTY BOARD OF COUNTY COMMISSIONERS

Dean Jackson (District 1), Chair
Voted: Yes No Abstain

Gary G. Eidson (District 3), Vice Chair
Voted: Yes No Abstain

Rebecca Long (District 2), Member
Voted: Yes No Abstain

Jonathan Sena (District 4), Member
Voted: Yes No Abstain

Pat Sims (District 5), Member
Voted: Yes No Abstain

ATTEST: Keith Manes
Lea County Clerk

**APPROVED AS TO FORM AND LEGAL
SUFFICIENCY:**

By: _____
Teri Davis, Deputy Clerk

John W. Caldwell, County Attorney