ORDINANCE NO. 751

CITY OF PORTALES, NEW MEXICO:
ORDINANCE REGULATING THE TIME, PLACE AND MANNER OF CANNABIS SALES, MANUFACTURE AND CONSUMPTION

WHEREAS, Section 3-17-1 NMSA 2018 provides that Cities have the power to enact ordinances to "provide for the safety, preserve the health, promote the prosperity and improve the morals, order, comfort and convenience of any City or its inhabitants"; and,

WHEREAS, the Cannabis Regulation Act as adopted by House Bill 2 of the First Special Session of the 2021 New Mexico Legislature signed into law April 9, 2021, allows for recreational use of cannabis; and,

WHEREAS, the Cannabis Regulation 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; and,

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; and,

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; and,

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

WHEREAS, the Portales City Council of Portales, New Mexico finds that it will promote the public health, safety, and welfare to enact provisions regulating the use of Cannabis in the City of Portales.

NOW, THEREFORE, BE IT ORDAINED by the Portales City Council of Portales, New Mexico that:

Section 1. Title. This Ordinance may be cited as the "Cannabis Ordinance of the City of Portales, New Mexico."

Section 2. Definitions. As used in this Ordinance:

A. **"Cannabis"** means

1. 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 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 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 pursuant to the Cannabis Regulation Act as adopted by H.B. 2 of the First Special Session of the 2021 New Mexico Legislature.

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 producer microbusiness**. A cannabis producer at a single licensed premises that possesses no more than two hundred total mature cannabis plants at any one time;

H. **Cannabis product**. 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**. 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**. A person that sells cannabis products to qualified patients, primary caregivers or reciprocal participants or directly to consumers;

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

L. **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;

M. **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;

N. **City**. The area lying within the corporate boundaries of the City of Portales;

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

P. **Cultural center**. An organization, building or complex that promotes culture and arts;

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

R. **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;

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

T. **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;

U. **Integrated Cannabis Microbusiness**. 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;

V. **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;

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

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

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

Z. **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"** 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. **"Public Property"** means any property owned or occupied by the Portales City Council of Portales, New Mexico;

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

EE. **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;

FF. **Residence**. A place where someone lives.

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

HH. **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;

II. **Unprocessed.** Unaltered from an original, raw or natural state; and,

JJ. **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 3. Cannabis Smoking.

A. No person shall smoke Cannabis products in a Public Place, except in a Cannabis Consumption Area, or on Public Property.

B. No person shall smoke Cannabis products in any place where the smoke is detectable from a Public Place or on Public Property.

Section 4. Recreational and Medical Cannabis Zoning and other Regulations

A. In addition to the applicable authority set forth elsewhere in State law, the zoning and other regulations in this section are enacted pursuant to the City's authority in Section 12 of the Cannabis Regulation Act, Laws 2021 (1st S.S.), Chapter 4, and NMSA 1978, §§ 24-16-2 (1985) and 24-16-20 (2007).

B. The Cannabis Regulation Act has authorized a variety of uses related to the legalization of commercial cannabis activities, which legalization has the potential to greatly expand the legal cannabis market.

C. Cannabis cultivation, production, and manufacturing 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 se by persons under the age of twenty-one (21).

D. 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.

E. The smoking of cannabis products may create health risks due to exposure to secondhand smoke and vaporized cannabis concentrates.

F. Density limits are necessary to ensure that cannabis retailers and consumption areas are not unduly concentrated and do not crowd out other non-residential uses.

G. Cannabis consumption areas are subject to the following:

1. A cannabis consumption areas 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 City of Portales Clean Indoor Air Ordinance.

2. Cannabis consumption areas that allow consumption by consumers shall be treated the same as the following uses: Bars, taverns and nightclubs. Cannabis consumption areas that rea open to consumers are also subject to the following:

    a. the smoking of cannabis products is not allowed outdoors;

    b. the smoking of cannabis products is only allowed within a licensed cannabis consumption area that occupies a standalone building rom 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

    c. access to cannabis consumption areas open to consumers is restricted to persons twenty-one (21) years of age and older.

H. 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 license was sought 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.

I. Minimum separation distance: 1,000 feet. A cannabis establishment must maintain a minimum separation distance of 1,000 feet from any residence, religious assembly or church, library, cultural center, community center, public park, or government facility. The 1,000 feet separation distance does not apply to a school or daycare center.

J. 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 residence.

K. Cannabis retailers and cannabis consumption areas may not be located within 200 feet of another cannabis retailer or cannabis consumption area. For purposes of this section, all measurements taken in order to determine the location of a cannabis retailer or cannabis consumption area in relation to another cannabis retailer or cannabis consumption area shall be the shortest direct line measurement between the actual limits of the licensed premises of the existing cannabis retailer or cannabis consumption area and the actual limits of the proposed licensed premises of the proposed cannabis retailer or cannabis consumption area.

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

    1. Cannabis products may only be served and consumed in cannabis consumption areas between the hours of 7:00 am and 2:00 am Monday through Saturday and noon to midnight on Sundays.

    2. Cannabis retailers my only sell cannabis products for off-site consumption between the hours of 7:00 am and midnight Monday through Saturday and noon to midnight on Sundays.

M. Cannabis producers that cultivate cannabis plants indoors and cannabis manufacturers must fuse industry standard techniques to minimize odorous matter, toxic or noxious matter, such as activated carbon filtration and regular maintenance of HVAC systems.

N. Cannabis cultivation and production for personal use in quantities and as permitted by the City of Portales Revised Clean Indoor Air Ordinance 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).

O. Any person engaged in commercial cannabis activities and activities under the medical cannabis program other than personal production and use must obtain a City business license.

Section 5: Cannabis Registration Permit. Any person seeking to operate a cannabis establishment in the City may only obtain a cannabis establishment permit under the following conditions:

A. The permit shall be obtained from the City 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 City Manager and/or her/his 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.

D. Prior to issuance of a permit, the City Manager and/or her/his 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 City Manager, 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 Portales City Council. The Notice of Appeal shall be delivered to the City Manager and a hearing shall be scheduled within thirty (30) 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 Council 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 without a permit is a violation of this Ordinance.

Section 6: 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 7: Mobile Units. Cannabis sales from mobile, portable, or temporary units or drive-through locations are prohibited.

Section 8: 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 9: Enforcement. The City of Por Police Department may issue citations for violation of this Ordinance.

Section 10: 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 the City of Portales from seeking injunctive relief, if appropriate.

Section 11: Saving Clause. Should any portion of this Ordinance be declared unenforceable after a final, non-appeal 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 12: Emergency Clause and Effective Date. Because of the urgent need for regulation pursuant to this Ordinance, the Portales City Council 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 City for that purpose and authenticated by the signature of the City 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 City Clerk.

Section 13: Effective Date. This Ordinance shall take effect immediately upon passage.

PASSED, APPROVED, and ADOPTED this ____ day of _____, 2021.

PORTALES CITY COUNCIL

_____
Ronald Jackson, Mayor

ATTEST:

(SEAL)

_____
Joan Martinez-Terry, City Clerk

Approved as to Legal Sufficiency:

_____
Stephen Doerr, City Attorney