Ordinance No. 1-2021

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.

WHEREAS, the CRA contains provisions authorizing the possession, consumption, purchase, processing, manufacturing and transport of cannabis and cannabis related products by an individual who is at least twenty-one (21) years of age.

WHEREAS, the CRA provides the regulatory framework for the licensing and operation of cannabis establishments which are authorized to engage in the retail sale, cultivation, manufacturing of cannabis and cannabis related products; and

WHEREAS, the CRA authorizes local jurisdictions to adopt rules regulating the time, place, and manner of cannabis businesses, so long as they do not conflict with the CRA or the Dee Johnson Clean Indoor Air Act, including rules that reasonably limit the density of licenses and operating times that are consistent with neighborhood uses; and

WHEREAS, the City of Bayard ("City") desires to adopt such rules regulating the time, place, manner of cannabis businesses, and other restrictions related to cannabis establishments, and

WHEREAS, the CRA authorizes cannabis manufacturers to use chemical extraction techniques or chemical synthesis, including the use of solvents such as butane, hexane, and other flammable gasses, to extract marijuana concentrate, which poses a threat to the health, safety, and welfare 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

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, and manner restrictions on cannabis producers, retailers, and manufacturers, and cannabis consumption establishments.

WHEREAS, the City requires compliance with all applicable laws regarding the retail sale, cultivation, and manufacturing of cannabis and cannabis related products. 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 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;

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;

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 separating resins, tetrahydrocannabinols, or other substances from cannabis;

R. “chemical synthesis” means the artificial execution of useful chemical reactions to obtain one or several products that undergo a transformation when subjected to certain conditions;

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 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;

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: PUBLIC PROPERTY RESTRICTIONS

A. The use, sale, cultivation, manufacture, production, storage or distribution of cannabis or cannabis products is prohibited on property that is occupied, owned, controlled or operated by the City.

B It is unlawful for an individual to use cannabis products on property that is occupied, owned, controlled, or operated by the City.

C. It is unlawful for an individual to use cannabis products in any public place, excluding those locations that are properly licensed cannabis consumption lounges.

SECTION 5: 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 Bayard, permitting the specific cannabis-related activity or activities sought to be permitted on the premises. Cannabis permits are not assignable or transferable.

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

(a) the cannabis-related activity or activities appropriately licensed by the State Regulation and Licensing Department pursuant to the Cannabis Regulation Act.

(b) applications for permits submitted prior to receiving a temporary or final license from the Department will be refused on the basis of an incomplete application.

SECTION 6: LOCATION OF CANNABIS ESTABLISHMENTS

A. Cannabis establishments are restricted to areas zoned as general commercial or industrial within the City of Bayard Zoning Ordinance.
B. No commercial, retail, or medical cannabis establishments may conduct operations in areas zoned for residential use.

SECTION 7: TYPES OF CANNABIS ESTABLISHMENTS

A. **Cannabis Production**. This subsection shall apply to all applicants seeking a permit to allow for the growth of cannabis plants (i.e. cannabis producer) in quantities greater than twelve (12) mature cannabis plants for commercial purposes. Any individual seeking to grow more than twelve (12) mature cannabis plants for commercial purposes must obtain a permit to operate within the City of Bayard pursuant to this subsection.

1. The applicant shall provide:

(a) a survey plat depicting the proposed location for the growth of cannabis, which identifies the total area to be covered.

(b) a map that identifies the location of the business property.

(c) the document(s) provided to the Regulation and Licensing Division (RLD) which applicant(s) utilized to apply for a cannabis producer license pursuant to the Cannabis Regulation Act and the rules adopted by the Cannabis Control Division of RLD. In lieu thereof,

applicants may provide a copy of the current, valid license issued to the applicant by RLD. Temporary licenses are acceptable for purposes of this subsection. However, applicants will need to provide supplemental proof that a final license is issued by RLD in order to satisfy this requirement.

1. If the applicant fails to provide documentation or provides incomplete or otherwise insufficient documentation regarding the status of their license application through RLD, the City Clerk shall inform the applicant of the deficiencies in writing and shall take no further action on the application until the deficiencies are remedied. If the applicant fails to correct the deficiencies indicated in the letter deeming the application incomplete within sixty (60) calendar days of receipt of notice of deficiencies, the application shall be considered withdrawn, and it will be returned to the applicant.

2. The City Clerk may issue a permit only upon receipt of proof that the applicant(s) received a current, valid license issued by RLD, and compliance with the additional permitting requirements set forth by the City herein.

B. **Cannabis Manufacturing**. This subsection shall apply to all applicants seeking a permit to allow for the manufacture of cannabis products, packaging of cannabis products, and the purchase, acquisition, sale or transport of wholesale cannabis products to other cannabis establishments.

1. The applicant shall provide:

(a) a survey plat depicting the proposed location for the manufacture of cannabis, which identifies the total area to be covered.

(b) a map that identifies the location of the business property.

(c) the document(s) provided to the Regulation and Licensing Division (RLD) which applicant(s) utilized to apply for a cannabis manufacturer license pursuant to the Cannabis Regulation Act and the rules adopted by the Cannabis Control Division of RLD. In lieu thereof, applicants may provide a copy of the current, valid license issued to the applicant by RLD. Temporary licenses are acceptable for purposes of this subsection. However, applicants will need to provide supplemental proof that a final license is issued by RLD in order to satisfy this requirement.

1. If the applicant fails to provide documentation or provides incomplete or otherwise insufficient documentation regarding the status of their license application through RLD, the City Clerk shall inform the applicant of the deficiencies in writing and shall take no further action on the application until the deficiencies are remedied. If the applicant fails to correct the deficiencies indicated in the letter deeming the application incomplete within sixty (60) calendar days of receipt of notice of deficiencies, the application shall be considered withdrawn, and it will be returned to the applicant.

2. The City Clerk may issue a permit only upon receipt of proof that the applicant(s) received a current, valid license issued by RLD, and compliance with the additional permitting requirements set forth by the City herein.

C. **Cannabis Retailers** This subsection shall apply to all applicants seeking a permit to allow for the sale of cannabis and cannabis products to qualified patients, primary caregivers, reciprocal participants, or directly to consumers.

1. The applicant shall provide:

(a) a survey plat depicting the proposed location for the manufacture of cannabis, which identifies the total area to be covered.

(b) a map that identifies the location of the business property.

(c) the document(s) provided to the Regulation and Licensing Division (RLD) which applicant(s) utilized to apply for a cannabis retailer license pursuant to the Cannabis Regulation Act, and the rules adopted by the Cannabis Control Division of RLD. In lieu thereof, applicants may provide a copy of the current valid license issued to the applicant by RLD. Temporary licenses are acceptable for purposes of this subsection. However, applicants will need to provide supplemental proof that a final license is issued by RLD in order to satisfy this requirement.

1. If the applicant fails to provide documentation or provides incomplete or otherwise insufficient documentation regarding the status of their license application through RLD, the City Clerk shall inform the applicant of the deficiencies in writing and shall take no

further action on the application until the deficiencies are remedied. If the applicant fails to correct the deficiencies indicated in the letter deeming the application incomplete within sixty (60) calendar days of receipt of notice of deficiencies, the application shall be considered withdrawn, and it will be returned to the applicant.

2. The City Clerk may issue a permit only upon receipt of proof that applicant(s) received a current, valid license issued by RLD, and compliance with the additional permitting requirements set forth by the City herein.

SECTION 8: OPERATIONAL REQUIREMENTS

A. Cannabis establishments must comply with all security requirements and restrictions imposed by the Cannabis Regulation Act and the rules adopted by the Cannabis Control Division of RLD.
B. Cannabis producers must utilize odor mitigation technology or techniques to mitigate the odor created by cannabis plants and products so as not to create a nuisance to neighboring properties or establishments.
C. Cannabis establishments may not display products, engage consumers or consummate sales outside of a fully enclosed building or structure.
D. Cannabis establishments shall provide and maintain at each premises a digital video surveillance system with a minimum camera resolution of 1280 x 720 pixels. The digital video surveillance system shall further comply with the following requirements:
   (1) the digital video surveillance system shall at all times be able to effectively and clearly record images of the area under surveillance;
   (2) each camera shall be permanently mounted and in a fixed location;
   (3) cameras shall be placed in a location that allows the camera to clearly record activity occurring on the licensed premises that digital video surveillance is required under subsection E of this section, and shall provide a clear and certain identification of any person and activities in those areas.

E. Areas of digital video surveillance: Areas that shall be recorded on the digital video surveillance system include the following:
   (1) areas where cannabis and cannabis products are cultivated, produced, manufactured, weighed, packed, stored, loaded, and unloaded for transportation, prepared, or moved within the licensed premises;
   (2) limited-access areas;
   (3) areas storing a digital video surveillance-system storage device;
   (4) entrances and exits to the licensed premises; and
   (5) all point of sale (POS) locations to capture sale transactions.

F. Digital Video Surveillance Recording**:** Licensees shall comply with the following digital video surveillance recording requirements:

(1) cameras shall record continuously 24 hours per day, or may be motion activated, and at a minimum of 15 frames per second (FPS);

(2) the physical media or storage device on which digital video surveillance recordings are stored shall be secured in a manner to protect the recording from tampering or theft;

(3) digital video surveillance recordings shall be kept for a minimum of 30 days and recordings of theft or security incidents as set forth in Subsection N of 16.8.2.8 NMAC shall be kept for a minimum of 12 months;

(4) digital video surveillance recordings are subject to inspection by the division, and shall be kept in a manner that allows the division to view and obtain copies of the recordings at the licensed premises immediately upon request;

(5) upon request, licensees shall send or otherwise provide copies of the recordings to the division within 48 hours;

(6) recorded images shall clearly and accurately display the time and date of the recording; and

(7) time shall be measured in accordance with the United States national institute standards and technology standards.

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. Hours of operation for Cannabis Retailers shall be limited to the time period between 7:00 a.m. until midnight.

G. Cannabis establishments shall not provide drive-thru services for delivery of cannabis products.

SECTION 9: STANDARDS FOR DESIGNATED CANNABIS CONSUMPTION AREAS

Cannabis establishments having a Designated Cannabis Consumption Area on site shall comply with the Cannabis Regulation Act, the Dee Johnson Clean Indoor Air Act, and the rules adopted by the Cannabis Control Division of RLD. They must also satisfy the following standards required by the City:

A. The Designated Cannabis Consumption Area shall be located in a restricted access area that employees are not required to enter as a condition of their employment.

B. The Designated Cannabis Consumption Area shall have signage to designate 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 Cannabis establishment premises.

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 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, and the rules adopted by the Cannabis Control Division of RLD.

B. The sale of homegrown or homemade cannabis and cannabis products without a valid license issued by the State Regulation and Licensing Department is prohibited.

C. Any person found in violation of this ordinance is subject to a fine of up to $500 and/or imprisonment for a period of up to 90 days in jail.

D. An individual or business may be charged with multiple offenses for continuing violations of this ordinance. To that end, violations occurring on separate calendar days shall constitute separate offenses.

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.

PASSED, APPROVED AND ADOPTED THIS _____ DAY OF _____, 2021.

_____
Mayor

Attest:

_____
City Clerk