

Ordinance No. 326-001

AN ORDINANCE OF THE BOARD OF TRUSTEES, VILLAGE OF COLUMBUS, RELATING TO THE REGULATION OF MEDICAL AND RECREATIONAL MARIJUANA; ESTABLISHING A PURPOSE; SETTING FORTH DEFINITIONS; PROHIBITING MARIJUANA USE OF PUBLIC PROPERTY; RELATING MARIJUANA TESTING FACILITIES AND MARIJUANA ESTABLISHMENTS; ESTABLISHING REGULATIONS FOR MARIJUANA AT AN INDIVIDUAL'S PRIMARY RESIDENCE; AUTHORIZING RETAIL SALES OF MARIJUANA AND MARIJUANA PRODUCTS; SETTING FORTH VIOLATIONS; AND PROVIDING FOR ENFORCEMENT AND PENALTIES.

WHEREAS, marijuana 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 is a violation of federal law pursuant to 21 U.S.C. § 841 et. Al., and

WHEREAS, the New Mexico Cannabis Regulation Act, allow the establishment and operation of nonprofit medical marijuana dispensaries in Village of Columbus according to a prescribed statutory and regulatory process, and

WHEREAS, New Mexico Governor Michelle Lujan Grisham (D) signed House Bill 2 (HB 2) on April 12, 2021., and 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 marijuana by an individual who is at least twenty-one (21) years of age; authorizing possession, transport, cultivation or processing of marijuana plants in a primary residence by adults age 21 years and older; allowing a nonprofit medical marijuana plants in a primary residence by adults age 21 years and older; allowing a nonprofit medical marijuana dispensary or other non-dispensary applicant to apply to the Department of Health Services to become a licensed marijuana establishment authorized to engage in the retail sale, cultivation, and manufacturing of marijuana; and allowing the Department, or another entity designated by the Department, to become a marijuana testing facility to test the potency of marijuana and detect any harmful contaminants, and

WHEREAS, Village of Columbus finds that the New Mexico Cannabis Regulation Act authorizes marijuana establishments to use chemical extraction or chemical synthesis, including butane and other flammable gases, to extract marijuana concentrate, which poses a threat to the health, safety and security of the community and increases the responsibilities of law enforcement and County departments to respond to violations of state and local laws, including building, electrical and fire codes;

WHEREAS, Village of Columbus seeks to protect public health, safety, and welfare by prohibiting marijuana testing facilities in the unincorporated areas of Village of Columbus, and

WHEREAS, Village of Columbus seeks to protect public health, safety, and welfare by enacting reasonable regulations on marijuana establishments in unincorporated areas of Village of Columbus.

NOW THEREFORE, pursuant to N.M.R.S. §§ 3-19-4, §3-21-1, 3-18-1, §26-2B-4, §26-2B-5, the Village of Columbus Board of Trustees adopts the following ordinance for the regulation of marijuana possession, consumption, sale, purchase, cultivation, processing, manufacturing and transporting marijuana within the unincorporated areas of Village of Columbus, New Mexico:

Section I. In General.

A. Purpose

This article is adopted to protect the health, safety, and welfare of the community. Except as allowed by law for personal, private use, Village of Columbus enacts reasonable regulations and requires compliance with laws for the retail sale, cultivation and manufacturing of marijuana or marijuana products in a marijuana establishment or marijuana testing facility and the cultivation, processing and manufacturing of marijuana in a primary residence. Nothing in this Ordinance is intended to promote or condone the sale, cultivation, manufacture, transport, production, distribution, possession, or use of marijuana or marijuana products in violation of any applicable law.

B. Definitions.

The below words and phrases, wherever used in this article, shall be construed as defined in this section unless, clearly from the context, a different meaning is intended. Words used in the present tense include the future tense, words in the plural number include the singular number, and words in the singular number include the plural number.

- A. *"Chemical Extraction"* means the process of removing a particular component of a mixture from others present, including removing resinous tetrahydrocannabinol from marijuana.
- B. *"Chemical Synthesis"* means production of a new particular molecule by adding to, subtracting from, or changing the structure of a precursor molecule.
- C. *"Consume," "Consuming,"* and *"Consumption"* mean the act of ingesting, inhaling or otherwise introducing marijuana into the human body.
- D. *"Consumer"* means an individual who is at least twenty-one years of age and who purchases marijuana or marijuana products.
- E. *"Cultivate"* and *"Cultivation"* mean to propagate, breed, grow, prepare and package marijuana.
- F. *"Department"*. means the State of New Mexico Department of Health Services or its successor agency.
- G. *"Dual Licensee"* means an entity that holds both a nonprofit medical marijuana dispensary registration and a marijuana establishment license.

- H. *"Extraction"* means the process of extracting or separating resin from marijuana to produce or process any form of marijuana concentrates using water, lipids, gases, solvents, or other chemicals or chemical processes.
- I. *"Manufacture"* and *"Manufacturing"* mean to compound, blend, extract, infuse or otherwise make or prepare a marijuana product.

*"Marijuana"*

1. Means all parts of the plant of the genus cannabis, whether growing or not, as well as the seeds from the plant, the resin extracted from any part of the plant, and every compound, manufacture, salt, derivative, mixture or preparation of the plant or its seeds or resin.
2. Includes cannabis as defined in N.M.R.S. §26-2B-4, §26-2B-5
3. Does not include industrial hemp, the fiber produced from the stalks of the plant of the genus cannabis, oil or cake made from the seeds of the plant, sterilized seeds of the marijuana to prepare topical or oral administrations, food, drink or other products.

K. *"Marijuana Concentrate:"*

1. Means resin extracted from any part of a plant of the genus cannabis and every compound, manufacture, salt, derivative, mixture or preparation of that resin or tetrahydrocannabinol.
2. Does not include industrial hemp or the weight of any other ingredient combined with cannabis to prepare topical or oral administrations, food, drink or other products.

*"Marijuana Establishment"* means an entity licensed by the Department to operate all of the following:

1. A single retail location at which the licensee may sell marijuana and marijuana products to consumers, cultivate marijuana and manufacture marijuana products.
2. A single off-site cultivation location at which the licensee may cultivate marijuana, process marijuana and manufacture marijuana products, but from which marijuana and marijuana products may not be transferred or sold to consumers.
3. A single off-site location at which the licensee may manufacture marijuana and marijuana products and package and store marijuana and marijuana products, but from which marijuana and marijuana products may not be transferred or sold to consumers.

- M. *"Marijuana Products"* means marijuana concentrate and products that are composed of marijuana and other ingredients and that are

intended for use or consumption, including edible products, ointments, and tinctures.

- N. *"Marijuana Testing Facility"* means the Department or another entity that is licensed by the Department to analyze the potency of marijuana and test marijuana for harmful contaminants.
- O. *"Nonprofit Medical Marijuana Dispensary"* means a non-profit entity as defined in N.M.R.S. §26-2B-4, §26-2B-5.
- P. *"Open Space"* means a public park, public sidewalk, public walkway or public pedestrian thoroughfare.
- Q. *"Person"* means an individual, partnership, corporation, association, or any other entity of whatever kind or nature.
- R. *"Process" and "Processing"* means to harvest, dry, cure, trim or separate parts of the marijuana plant.
- S. *"Public Place"* has the same meaning prescribed in the Dee Johnson Clean Indoor Air Act, N.M.R.S. § 24-16-3.
- T. *"Smoke"* means to inhale, exhale, burn, carry or possess any lighted marijuana or lighted marijuana products, whether natural or synthetic.

**Section 5-7-3 Marijuana Prohibited on Public Property.**

- A. The use, sale, cultivation, manufacture, production, storage or distribution of marijuana or marijuana products is prohibited on property that is occupied, owned, controlled or operated by the Village.
- B. It is unlawful for an individual to smoke marijuana or consume marijuana products on property that is occupied, owned, controlled or operated by the Village.
- C. It is unlawful for an individual to smoke marijuana or consume marijuana products in any open space in the Village.
- D. It is unlawful for an individual to smoke in a public place in the Village.

**Section 5-7-4 Marijuana Establishment Prohibited; Dual Licensee Exception.**

- A. To the fullest extent allowable by law, the operation of a marijuana establishment is not permitted in the Village, except were authorized for a dual licensee who:

1. Operates both a nonprofit medical marijuana dispensary and marijuana establishment cooperatively in a shared location; and
2. Has not forfeited or terminated the nonprofit medical marijuana dispensary registration from the Department.

**Section 5-7-5 Marijuana Testing Facility Prohibited.**

- A. To the fullest extent allowable by law, the operation of a marijuana testing facility is not permitted in the Village.

**Section 5-7-6 Violations and Penalties.**

- A. It is unlawful and a violation of this article for a person to sell, cultivate, process, manufacture, store, or transport marijuana or marijuana products, if the person fails to meet all requirements in this article or state law, including the Departments rules.
- B. Each day any violation of any provision of this article shall continue shall constitute a separate offense.
- C. Except as otherwise provided in N.M.R.S. §26-2B-4, §26-2B-5 or as otherwise provided above, any violation of this article shall be a class one misdemeanor.
- D. Violations of this article are in addition to any other violation enumerated within the Village Ordinances or the Village Code and in no way limits the penalties or abatement procedures which may be taken by the Village for any violation of this article, which is also a violation of any other ordinance or Code provision of the Village or federal or state law. Conviction and punishment of judgement and civil sanction against any person under this article shall not relieve such person from the responsibility of correcting prohibited conditions, or removing prohibited structures or improvements, and shall not prevent the enforced correction or removal thereof.
- E. The remedies provided in this article shall be cumulative and in addition to any federal, state, or local remedy, which may be available. Nothing contained herein shall be construed to preclude prosecution under any other applicable state, ordinance, rule, order, or regulation.

**SECTION II. Providing for Repeal of Conflicting Ordinances.**

All ordinances and parts of ordinances in conflict with the provisions of this Ordinance or any part of the Code adopted herein by reference, are hereby repealed.

SECTION III. Recitals.

The recitals above are fully incorporated in this Ordinance by reference.

SECTION IV. Emergency.

Because of the urgent need for the implementation of the Village's regulations concerning recreational marijuana, the immediate operation of this Ordinance is necessary for the preservation of the health, safety, and general welfare. An emergency is hereby declared to exist and this Ordinance shall be in full force and effect from and after its passage and approval by the Mayor and Council as required by law.

SECTION V. Zoning Considerations.

In accordance with Article II, Sections 2 and 24, Constitution of New Mexico, the Village of Columbus council has considered the individual property rights and personal liberties of the residents of the Town before adopting this ordinance.

SECTION VI. Preservation of Rights and Duties.

This Ordinance does not affect the rights and duties that matured, penalties that were incurred, or proceedings that were begun before the effective date of this Ordinance.

SECTION VII. 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.

SECTION VIII. Amendment Corporation

The Village Clerk of the Village of Columbus shall incorporate the Amendment set forth herein in to the Village of Columbus Village Code.

PASSED, ADOPTED AND APPROVED BY THE MAYOR AND COMMON COUNCIL  
OF THE Village of Columbus, NEW MEXICO, this \_\_\_\_ day of \_\_\_\_\_, 2021.