

**CITY OF ELEPHANT BUTTE
ORDINANCE NO. 198**

**AN ORDINANCE ESTABLISHING ZONING AND OTHER REGULATIONS FOR
CANNABIS**

WHEREAS, the New Mexico Legislature passed the Cannabis Regulation Act (2021 N.M. HB 2) (“Act”), which went into effect on June 29, 2021;

WHEREAS, the 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;

WHEREAS, Cannabis is an intoxicating substance, 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 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 diversions to the illegal cannabis market, including possession and use by persons under the age of twenty-one; and

WHEREAS, the Act empowers the City of Elephant Butte to adopt time, place and manner rules relating to cannabis use and operations so long as they are not inconsistent with the Act or the Dee Johnson Clean Indoor Air Act.

NOW THEREFORE, BE IT ORDAINED by the Governing Body of the City of Elephant Butte as follows:

1. Definitions

- a. “Cannabis” 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 does not include:
 - i. 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
 - ii. 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, licensed by the New Mexico Cannabis Control Division, 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:
 - i. a cannabis testing laboratory;
 - ii. a cannabis manufacturer;
 - iii. a cannabis producer;
 - iv. a cannabis retailer;
 - v. a cannabis research laboratory;
 - vi. a vertically integrated cannabis establishment;
 - vii. a cannabis producer microbusiness; or
 - viii. an integrated cannabis microbusiness
- e. “Cannabis manufacturer” means a person that:
 - i. manufactures cannabis products;
 - ii. packages cannabis products;
 - iii. has cannabis products tested by a cannabis testing laboratory; or
 - iv. purchases, acquires, sells or transports wholesale cannabis products to other cannabis establishments
- f. “Cannabis producer” means a person that:
 - i. cultivates cannabis plants;
 - ii. has unprocessed cannabis products tested by a cannabis testing laboratory;
 - iii. transports unprocessed cannabis products only to other cannabis establishments; or
 - iv. sells cannabis products wholesale.
- g. “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.
- h. “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.
- i. “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.
- j. “Cannabis retailer” means a person that sells cannabis products to qualified patients, primary caregivers or reciprocal participants or directly to consumers.

- k. "Cannabis testing laboratory" means a person that samples, collects and tests cannabis products and transports cannabis products for the purpose of testing.
- l. "Daycare" means a facility required to be licensed by the State of New Mexico that provides care, services, and supervision for less than 24-hours a day to children.
- m. "Integrated cannabis microbusiness" means a person that is authorized to conduct one or more of the following:
 - i. 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;
 - ii. manufacture of cannabis products at a single licensed premises;
 - iii. sales and transportation of only cannabis products produced or manufactured by that person;
 - iv. operation of only one retail establishment; and
 - v. couriering of cannabis products to qualified patients, primary caregivers or reciprocal participants or directly to consumers.
- n. "School" means that part of a school district that is a single attendance center in which instruction is offered by one or more teachers and is discernible as a building or group of buildings generally recognized as either an elementary, middle, junior high or high school or any combination of those and includes a charter school.
- o. "Vertically integrated cannabis establishment" means a person that is authorized to act as any of the following:
 - i. a cannabis courier;
 - ii. a cannabis manufacturer;
 - iii. a cannabis producer; and
 - iv. a cannabis retailer.

2. Business Registration. All businesses operating within City limits are required by City Code Section 110.01 to apply for a business registration with the City and to pay a business registration fee. Business registrations shall not be issued to any cannabis establishment, cannabis consumption area, or cannabis courier unless the applicant has a provisional license issued by the New Mexico Cannabis Control Division. Upon receipt of the full license, the applicant or business must provide confirmation of it to the City.

3. Home Occupation Permits. City Code Section 155.006(G)(2) is hereby amended to include the following additional evaluation criteria for home occupation permits:

"(h) The business is not a cannabis establishment, cannabis consumption area, or cannabis courier."

4. Cannabis Zoning.

- a. **Residential-Agricultural Zoning.** City Code Section 155.031(H) is hereby amended to include the following conditional uses:

“(7) Cannabis producers, vertically integrated cannabis establishments that produce cannabis, cannabis producer microbusinesses and integrated cannabis microbusinesses that produce cannabis.

(a) Cannabis producers that cultivate cannabis plants indoors must use industry-standard techniques to minimize odorous matter, toxic or noxious matter, such as activated carbon filtration and regular maintenance of HVAC systems.

(b) The above conditional uses shall not be approved if the applicant proposes to operate out of a dwelling unit or an accessory structure to a dwelling unit. This conditional use is premised on the applicant operating out of a structure that is entirely distinct from and not subordinate to a dwelling unit.

- b. **Commercial Zoning.** City Code Section 155.033 (G) is hereby amended to include the following conditional uses:

“(30) Cannabis testing laboratories, cannabis manufacturers, cannabis retailers, cannabis research laboratories, vertically integrated cannabis establishments not producing cannabis, integrated cannabis microbusinesses not producing cannabis, and cannabis consumption areas.”

(a) cannabis manufacturers must use industry-standard techniques to minimize odorous matter, toxic or noxious matter, such as activated carbon filtration and regular maintenance of HVAC systems.

5. Cannabis Consumption Areas.

- a. The smoking of cannabis in public is prohibited within City limits, except in cannabis consumption areas.
- b. A cannabis consumption area 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.
- c. Unless licensed pursuant to the Lynn and Erin Compassionate Use Act, cannabis consumption areas shall be restricted to persons twenty-one years of age and older.

- d. City Code Section 97.05 is hereby amended to include the following additional smoking-permitted area:

“(O) A cannabis consumption area.”

6. Minimum Distances from Schools and Daycare Centers.

- a. No cannabis establishment or cannabis consumption area may be located within 300 feet of a school or daycare center in existence at the time the cannabis establishment, integrated cannabis microbusiness or cannabis consumption area was licensed.
- b. For the purpose of this section, all measurements for determining the location of a cannabis establishment or cannabis consumption area, in relation to schools or daycare centers shall be the shortest direct line 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 or cannabis consumption area.
- c. Any cannabis establishment or cannabis consumption area legally existing within the City by virtue of a license issued by the New Mexico Cannabis Control Division prior to the effective date of this Ordinance shall not be required to comply with these minimum distance requirements.

7. Hours of Operation.

- a. Cannabis products may only be served and consumed within cannabis consumption areas between the hours of 7:00 a.m. and 2:00 a.m. on the following day.
- b. Cannabis retailers, including vertically integrated cannabis establishments and integrated cannabis microbusinesses involved in retail, may only sell cannabis products for consumption off-premises between the hours of 7:00 a.m. until midnight Monday through Saturday and 8:00 a.m. to midnight on Sundays.
- c. Nothing in the section is meant to prohibit the lawful consumption of cannabis products outside of cannabis consumption areas as permitted under this Ordinance and pursuant to the Act.

8. Personal Use Cultivation and Production. Cannabis cultivation and production for personal use in quantities and as permitted by the Cannabis Regulation Act and Lynn and Erin Compassionate Use Act is allowed anywhere in the City subject to the following: Cannabis cultivation and production for personal use must not be visible from a public right-of-way.

9. Enforcement. The provisions of this Ordinance shall be enforced by the City's Code Enforcement Officer or a law enforcement officer tasked with enforcing the City's Code.

10. Penalties. Any violation of this Ordinance may be enforced in any court of competent jurisdiction. The maximum penalty per violation of this Ordinance, unless otherwise indicated, shall be \$300 or thirty (30) days in jail or both. Each day during the time in which a violation occurs shall be deemed a separate violation. Nothing herein shall prevent the City from seeking injunctive relief, if appropriate.

11. Repealer:

- a. City Code Section 133.05 "Marijuana, Possession, Prohibited" is hereby repealed and replaced with the following language:

"133.05 Cannabis Possession and Unlawful Distribution.

(A) A person younger than 21 years of age shall not possess cannabis products except as authorized under the Lynn and Erin Compassionate Use Act. A person who violates this subsection is guilty of civil violation and shall be subject to four hours of community service.

(B) A person 21 years of age or older shall not possess more than two ounces of cannabis, sixteen grams of cannabis extract and eight hundred milligrams of edible cannabis in public. A person who violates this subsection is guilty of civil violation and shall be subject to four hours of community service.


(C) It shall be unlawful for any person without a business permit from the City and a license under the Act or the Lynn and Erin Compassionate Use Act, to intentionally sell or barter cannabis products.

(1) a person under eighteen who violates this section shall be subject to four hours of community service.

(2) a person eighteen or older who violates this section shall be subject to a fine of up to \$500, 90 days in jail or both.


- b. The following provisions of City Code Section 130.02 "Definitions and Rules of Construction" are hereby repealed:
 - i. Subsection (7) of the definition of "Drug Paraphernalia";
 - ii. The term "marijuana" in Subsection (12) of the definition of "Drug Paraphernalia";
 - iii. Sub-subsection 12(e) of the definition of "Drug Paraphernalia";
- c. All City Ordinances or Resolutions inconsistent with this Ordinance are hereby repealed.

PASSED, APPROVED, AND ADOPTED by the Governing Body of the City of Elephant Butte, New Mexico, this 18th day of August 2021.



Edna Trager
Mayor

ATTEST:



Rani Bush
Clerk-Treasurer

