

**OTERO COUNTY  
ORDINANCE NO. 22-03  
AN ORDINANCE ESTABLISHING LOCAL CANNABIS REGULATIONS**

**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 medical cannabis program and newly enacted recreational commerce which 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 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 diversion to the illegal cannabis market, including possession and use by persons under the age of twenty-one; and

**WHEREAS**, the Act empowers Otero County to adopt time, place and manner rules relating to cannabis use and operations so long as they are not inconsistent with the Act and the Dee Johnson Clean Indoor Air Act.

**NOW THEREFORE, BE IT ORDAINED** by the Governing Body of Otero County:

**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 who 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 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.
  
- f. “Cannabis testing laboratory” means a person that samples, collects and tests cannabis products and transports cannabis products for the purpose of testing.
  
- g. “Cannabis manufacturer” means a person who:
  - 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
  
- h. “Cannabis producer” means a person who:
  - 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.
  
- i. “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.
  
- j. “Cannabis retailer” means a person who sells cannabis products to qualified patients, primary caregivers or reciprocal participants or directly to consumers.
  
- k. “Integrated cannabis microbusiness” means a person who 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. couriating of cannabis products to qualified patients, primary caregivers or reciprocal participants or directly to consumers.
- l.** “Vertically integrated cannabis establishment” means a person who 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. Cannabis Odor.**

- a. Indoor Cannabis Production and Manufacturing Odors.** Cannabis producers and manufacturers that cultivate or manufacture cannabis plants indoors must minimize odorous matter and toxic or noxious matter through the use of techniques mandated by the New Mexico Cannabis Control Division. Should the New Mexico Cannabis Control Division not regulate indoor cannabis odors, cannabis, producers and manufacturers shall adhere to industry standard techniques, such as activated carbon filtration and regular maintenance of HVAC systems, to minimize odors.
- b. Retailer Odor Control.** Cannabis retail establishments located in buildings shared with other business operations must minimize the infiltration of the odor of cannabis beyond the confines of the cannabis retail establishment per techniques mandated by the New Mexico Cannabis Control Division. Should the New Mexico Cannabis Control Division not regulate indoor cannabis odors applicable to cannabis retailers, cannabis retailers must adhere to industry standard techniques and regularly maintain all facility HVAC systems.
- c. Cannabis Production Odors.** In addition to Section 2(b), cannabis producers and manufacturers that cultivate or manufacture cannabis plants must minimize odor production according to industry standard techniques.

## **3. Cannabis Consumption Areas.**

- a.** The smoking of cannabis in a public place is prohibited within County limits except in cannabis consumption areas and as permitted by state law.
- b.** A cannabis consumption area may be located inside any cannabis establishment building provided 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.

#### **4. 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 12:00 a.m. Monday through Sunday.
- b. Cannabis retailers, including vertically integrated cannabis establishments and integrated cannabis microbusinesses involved in retail, may only sell cannabis products between the hours of 7:00 a.m. and 12:00 a.m. Monday through Sunday.

#### **5. 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 County, subject to the following conditions imposed to minimize access to minors to cannabis:

- a. Any person cultivating or producing cannabis must take reasonable precautions to prevent the theft of cannabis and cannabis products;
- b. Any person cultivating or producing cannabis for personal use must conduct such activities inside an enclosed and locked dwelling unit or structure or with a fenced area no less than six feet in height.

#### **6. Non-Feminized Cannabis Seed and Plants Prohibited**

- a. The transfer, transportation, sale, processing, utilization, planting and/or cultivation of seeds or plants of nonfeminized cannabis seed are prohibited.
- b. Producers are limited to planting and growing female clones or using feminized seed.
- c. Since it is possible that one of 2,000 feminized seeds can produce a male plant, producers are responsible for removing male plants as soon as they are identified. Male plants present pollen sacks after several weeks of growth and are tall and slender with few leaves surrounding the flowers, while female plants are short and stocky with many leaves at each terminal inflorescence.

- d. Plants with both male and female flowers, developed through breeding and selection, are prohibited.
- e. Regardless of their plant propagation strategy, environmental stress may result in a higher concentration of male flowers, particularly during hot/wet spells, at the commencement of flowering, and nearing harvest. Accordingly, it is the duty of producers to monitor their crop and remove and destroy any male and/or hermaphrodite plants immediately upon detection.
- f. Any property with more than 0.05% male-to-female plant density shall be prohibited, and all cannabis plants (the crop) on that property are required to be immediately destroyed by the producer.
- g. As a condition of cultivating in the County of Otero, the producer consents, agrees and understands that if he/she fails to immediately destroy the crop with more than 0.05% male-to-female plant density, the County of Otero, after providing 48 hours' notice, is authorized to enter upon the producer's land to do so and assess the cost to the producer.

**7. Exemption for Seed and Plant Propagation**

- a. The use of male seed and plants is exempted from this ordinance for the limited purpose of producing feminized seeds and seedlings.
- b. Use of male seeds or plants for this limited purpose shall only be authorized if the production is accomplished using an enclosed greenhouse equipped to prevent any transfer of pollen from the greenhouse to the air outside.

**8. Taxation.** All County ordinances related to the taxation of businesses, establishments, and sales are hereby revoked to the extent that they conflict with the Cannabis Regulation Act and Lynn and Erin Compassionate Use Act.

**9. Enforcement.** The provisions of this Ordinance shall be enforced by the County's Code Enforcement Officer or a law enforcement officer tasked with enforcing the County'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 County from seeking injunctive relief, if appropriate.

**11. Authority.** This Ordinance shall become effective immediately pursuant to the statutory authority provided to the Otero County Board of Commissioners' authority to take emergency action to protect against the immediate danger to the public health, safety and welfare of the county or to ordinances pursuant to NMSA 1978, Section 4-37-7(C) (2003). See NMSA 1978, § 4-37-1- to – 4-37- 13 (1981).

**12. Repealer.**

- a. All County Ordinances or Resolutions inconsistent with this Ordinance are hereby repealed.
- b. Otero County Ordinance Section 143-6, Nonfeminized hemp seed and plants prohibited, is hereby repealed to the extent it is contrary to the Act or this ordinance.

**PASSED, APPROVED, AND ADOPTED by the Governing Body of Otero County, New Mexico, this \_\_\_\_\_ day of \_\_\_\_\_, 2022.**

**BOARD OF COUNTY COMMISSIONERS  
OTERO COUNTY, NEW MEXICO:**

**[SEAL]**

\_\_\_\_\_  
**Gerald Matherly, District 1**

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**Couy Griffin, District 2**

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**Vicki Marquardt, District 3**

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**Robyn Holmes, County Clerk**