

NOTICE OF INTENT TO ADOPT AN ORDINANCE AMENDING APPENDIX C, LAND USE AND ZONING CODE OF 2010, ARTICLE III, DISTRICT REGULATIONS, SECTION 3.2, USE TABLE, AND SECTION 3.3, USE REGULATIONS, SUBSECTION 3.3.1, USE-SPECIFIC STANDARDS, BY ADDING A NEW PARAGRAPH 3.3.1 H), ENTITLED “CANNABIS ESTABLISHMENTS,” OF THE MUNICIPAL CODE OF THE TOWN OF SILVER CITY, GRANT COUNTY, NEW MEXICO, TO PROVIDE ZONING AND REGULATION OF CANNABIS ESTABLISHMENTS PURSUANT TO THE CANNABIS REGULATION ACT OF 2021

The Council of the Town of Silver City, Grant County, New Mexico hereby gives notice of its intention to adopt an amendment to the Town of Silver City Code of Ordinances.

This notice is hereby given the title as follows:

ORDINANCE NO. 1307

AN ORDINANCE AMENDING APPENDIX C, LAND USE AND ZONING CODE OF 2010, ARTICLE III, DISTRICT REGULATIONS, SECTION 3.2, USE TABLE, AND SECTION 3.3, USE REGULATIONS, SUBSECTION 3.3.1, USE-SPECIFIC STANDARDS, BY ADDING A NEW PARAGRAPH 3.3.1 H), ENTITLED “CANNABIS ESTABLISHMENTS,” OF THE MUNICIPAL CODE OF THE TOWN OF SILVER CITY, GRANT COUNTY, NEW MEXICO, TO PROVIDE ZONING AND REGULATION OF CANNABIS ESTABLISHMENTS PURSUANT TO THE CANNABIS REGULATION ACT OF 2021

Sponsored by Councilor Guadalupe Cano

WHEREAS, the state legislature of New Mexico passed House Bill 2 known as the “Cannabis Regulation Act” on March 31, 2021 in a special session of the legislature; and

WHEREAS, the governor signed the Cannabis Regulation Act (“Act”) on April 4, 2021, and

WHEREAS, the Act establishes and regulates cannabis establishments, and the sale and distribution of cannabis in the state; and

WHEREAS, pursuant to the Act, the state permits municipalities a means to adopt limited “time, place, and manner” rules that do not conflict with the Act; and

WHEREAS, the Planning and Zoning Commission, after conducting a public hearing on November 2, 2021, recommended that Ordinance 1307 be adopted by the Town Council in its entirety by a vote of 3-0; and

WHEREAS, the Town Council finds that the town should amend its Land Use and Zoning Code of 2010 of the Town Code in order to provide for the orderly regulation and administration of cannabis establishments and the testing, production, distribution and sale of cannabis products within the municipal boundaries of the town, and said amendment to the local ordinance is appropriate for the health, safety and welfare of the Town and its inhabitants;

NOW, THEREFORE, BE IT ORDAINED BY THE GOVERNING BODY OF THE TOWN OF SILVER CITY, GRANT COUNTY, NEW MEXICO, that:

1. The Land Use and Zoning Code of 2010, Article III, District Regulations, Section 3.2, Use Table, is hereby amended to include the addition of Cannabis Retailer to the “Retail Sales and Service” category in the “Commercial” section, and the addition of Cannabis Testing Laboratory, Cannabis Manufacturer, Cannabis Producer, Cannabis Research Laboratory, Vertically Integrated Cannabis Establishment, Cannabis Producer Microbusiness, and Integrated Cannabis Microbusiness, to the “Manufacturing and Production” category in the “Industrial” section, with the additions in Table 3.2. to read as follows (*the remainder of Table 3:2 is not affected and therefore not set out*):

Category	Specific Use Type	R u	R A	R B- 1	R B- 2	R C	M U	C - H D	C - L t	C- Hwy	I	Use-Specific Standard
A = Allowed, C = Allowed with Conditional Use Permit, X = Not Allowed												
COMMERCIAL												

Retail Sales and Service	Bed and Breakfast (5 or more guest rooms)	C	X	C	A	A	A	A	A	A	X	
	Cannabis Retailer	A	X	X	X	X	C	A	A	A	A	3.3.3 (H)
	Contractors Yard	X	X	X	X	X	X	X	C	A	A	
INDUSTRIAL												
Manufacturing and Production	Batch or Asphalt Plant	X	X	X	X	X	X	X	X	X	A	3.3.1 (G)
	Cannabis Testing Laboratory	X	X	X	X	X	X	X	X	X	A	3.3.1 (H)
	Cannabis Manufacturer	A	X	X	X	X	X	A	A	A	A	3.3.1 (H)
	Cannabis Producer	A	X	X	X	X	X	A	A	A	A	3.3.1 (H)
	Cannabis Research Laboratory	X	X	X	X	X	X	X	X	X	A	3.3.1 (H)
	Vertically Integrated Cannabis Establishment	A	X	X	X	X	X	A	A	A	A	3.3.1 (H)
	Cannabis Producer Microbusiness	A	X	X	X	X	C	A	A	A	A	3.3.1 (H)

Integrated Cannabis Microbusiness	A	X	X	X	X	X	C	A	A	A	A	3.3.1 (H)
All Other	C	X	X	X	X	X	X	X	X	X	X	3.3.1 (V, W)

2. The Land Use and Zoning Code of 2010, Article III, District Regulations, Section 3.3, Use Regulations, Subsection 3.3.1, Use-Specific Standards, is hereby amended by adding and inserting a new paragraph 3.3.1 H) (and by re-denominating the following remaining lettered paragraphs as “I” through “EE”), entitled “Cannabis Establishments,” to read as follows:

H) *Cannabis Establishments.*

1) *Definitions.* As used in this section, the following terms shall have the meanings set forth below:

a) *cannabis:* (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 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;

d) *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;

e) *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;

f) *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;

g) *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;

h) *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;

i) *cannabis retailer* means a person that sells cannabis products to qualified patients, primary caregivers or reciprocal participants or directly to consumers;

j) *cannabis testing laboratory* means a person that samples, collects and tests cannabis products and transports cannabis products for the purpose of testing;

k) *commercial cannabis activity*: (1) means the cultivation, production, possession, manufacture, storage, testing, researching, labeling, transportation, couriership, 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;

l) *cultivation* means any activity involving the planting, growing, harvesting, drying, curing, grading or trimming of cannabis;

m) *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;

n) *daycare center* means a child care center, or other child care facility, required to be licensed by the State that provides care, services and supervision to children for less than 24-hours a day, pursuant to N.M. Code R. § 8.16.2.7(l), but does not include non-licensed family child care homes;

o) *department* means the regulation and licensing department;

p) *director* means the director of the division;

q) *division* means the cannabis control division of the department;

r) *facility* means a building, space or grounds licensed for the production, possession, testing, manufacturing or distribution of cannabis, cannabis extracts or cannabis products;

s) *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 premises; (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;

t) *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;

u) *manufacture* means to compound, blend, extract, infuse, package or otherwise prepare a cannabis product;

v) *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; sidewalks, schools; places of amusement; parks; playgrounds; open spaces; and places used in connection with public passenger transportation;

w) *school* means a discernable building or group of buildings where one or more teachers offer on-site instruction and is generally recognized as an elementary, middle, junior-high or high school, or any combination thereof, and includes public, private, and charter schools, but does not include home schools;

x) *smoking or to smoke* means 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.

y) *standalone building* means a building whose heating, air conditioning and ventilation system services only that building.

z) *retail establishment* means a location at which cannabis products are sold to qualified patients, primary caregivers and reciprocal participants and directly to consumers;

aa) *vertically integrated cannabis establishment* means 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.

2) The following cannabis establishments are allowed in the following zoning districts:

- a) A cannabis retailer is allowed in the Ru zone, the C-HD zone, the C-LT zone, the C-Hwy zone, in the MU zone after review and approval of a conditional use permit, and the I zone;
- b) A cannabis testing laboratory is allowed only in the I zone;
- c) A cannabis manufacturer is allowed in the Ru zone, the C-HD zone, the C-LT zone, the C-Hwy zone, and the I zone;
- d) A cannabis producer is allowed in the Ru zone, the C-HD zone, the C-LT zone, the C-Hwy zone, and the I zone;
- e) A cannabis research laboratory is allowed only in the I zone;
- f) A vertically integrated cannabis establishment is allowed Ru zone, the C-HD zone, the C-LT zone, the C-Hwy zone, and the I zone;

- g) A cannabis producer microbusiness is allowed in the Ru zone, the C-HD zone, the C-LT zone, the C-Hwy zone, the I zone, and in the MU zone after review and approval of a conditional use permit; and
- h) An integrated cannabis microbusiness allowed in the Ru zone, the C-HD zone, the C-LT zone, the C-Hwy zone, the I zone, and in the MU zone after review and approval of a conditional use permit.

3) No person or cannabis establishment shall engage in the production, manufacture, sale, testing or research of cannabis or cannabis products in any zoning district without a valid business license issued by the Community Development Department of the Town. All cannabis establishments shall abide by and be licensed pursuant to the provisions, terms, and conditions of the Cannabis Regulation Act, and must abide by all state law, state regulations, and all town laws and regulations.

4) Cannabis retailers and cannabis consumption areas may operate only during the following hours:

- a) Cannabis retailers may sell cannabis products for off-site consumption only between the hours of 7:00 a.m. until midnight.
- b) Cannabis products may be served and consumed in cannabis consumption areas between the hours of 7:00 a.m. and 2:00 a.m. the following day.

5) Cannabis retailers, cannabis consumption areas, and other cannabis establishments are subject to the following distance requirements:

- a) A cannabis establishment is prohibited within 300 feet from a school or daycare center that existed at the time the cannabis establishment was licensed by the state.
- b) Cannabis retailers and cannabis consumption areas may not be located within 300 feet of another cannabis retailer or cannabis consumption area

6) It shall be unlawful for any person to smoke a cannabis product in or at any public place, except at a cannabis consumption area. Any person who violates the provision of this paragraph shall be subject to a civil penalty of fifty dollars (\$50.00).

7) Cannabis retailers, cannabis producers that cultivate cannabis plants indoors, cannabis manufacturers, and cannabis laboratories located within the town municipal limits after the effective date of this ordinance shall be required to be in a standalone building or structure, having a separate heating, ventilation, and air conditioning (HVAC) system that is dedicated solely to the establishment. Such establishments must use industry standard techniques to minimize odorous matter, and toxic or noxious matter, must conduct regular maintenance of HVAC systems, and use all necessary means to abate odors and prevent odors from escaping the establishment.

8) Cannabis consumption areas are subject to the following requirements:

- a) A cannabis consumption area shall be allowed only in a designated, co-located area of a cannabis retailer.
- b) The smoking of cannabis products is only allowed within an indoor licensed cannabis consumption area that shall be completely separated by physical barrier from the remainder of the cannabis retail establishment. All doors leading into the cannabis consumption area where smoking of cannabis products is permitted shall have self-closing doors. All such cannabis consumption areas shall be located in a standalone building having a separate heating, ventilation and air conditioning system (HVAC) such that none of the air in the consumption area will be recirculated into the other parts of the establishment's premises, other indoor workplaces, or other indoor public places where smoking is otherwise prohibited pursuant to the Dee Johnson Clean Indoor Air Act, NMSA 1978, § 24-16-1 et seq.

d) Access to cannabis consumption areas open to consumers is limited to persons twenty-one years of age or older, unless licensed pursuant to the Lynn and Erin Compassionate Use Act, NMSA 1978, § 26-2B-1 et seq.

9) Any person convicted of violating the provisions of this paragraph, for which a penalty has not been already prescribed, shall be subject to punishment as prescribed by general penalty section 1-9 of Chapter 1.

PASSED, ADOPTED AND APPROVED by vote of the Town Council of the Town of Silver City, Grant County, New Mexico, this ____ day of _____, 2021.

TOWN OF SILVER CITY

(Seal)

Ken Ladner, Mayor

ATTEST:

Maria C. Sublasky, Acting Town Clerk