

ORDINANCE NO. S2021-6

AN ORDINANCE CONCERNING ZONING REGULATING CANNABIS FOR RECREATIONAL USE BY AMENDING SECTIONS 10-2-B-d-i-C, 10-3-B, 10-3-C-c, 10-3-C-j, 10-3-C-k, 10-3-C-u, 10-5-B-d-iii, AND 10-6, OF THE LAND DEVELOPMENT STANDARDS OF THE CITY OF GALLUP, AND DECLARING AN EMERGENCY AS FOLLOWS:

BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF GALLUP, NEW MEXICO, that:

Section 1. Section 10-2-B-d-i-C “District Specific Standards”, 1. “Permitted Uses” is amended by addition of new language to read as follows:

**“10-2-B-d-i-C District Specific Standards
1. Permitted Uses**

- a. Permitted and conditional uses as established by the base district shall also be permitted in the DO district, except for the following uses which are specifically prohibited:

- iii. Cannabis Cultivation*
- iv. Cannabis-related Manufacturing”*

Section 2. Sections 10-2-B-d-i-C1a.iii and 10-2-B-d-i-C1a.iv are renumbered respectively.

Section 3. Sub-section 10-3-B “Use Table” of the Land Development Standards of the City of Gallup is amended by addition of the following land uses as follows:

Table 10-3-1: Use Table													
P = Permissive; C = Conditional; A = Accessory; AC = Accessory Conditional (requires permit)													
	Districts>	RR	SFR	MFRL	MFRM	MFRH	MHP	MXN	MXC	GC	HC	-	
Use Categories	Use Types												Supplemental Use Standards
Agriculture Uses	Cannabis Cultivation										C	P	10-3-C-c-ii
Retail Sales	Cannabis Sales								C	C	P	C	10-3-C-j-iii
Manufacturing, Production and Extraction	Manufacturing, Cannabis-Related										C	P	10-3-C-k-ii
Accessory Uses	Cannabis Home Cultivation	P	P	P	P	P	P	P	P				10-3-C-u

Section 4. Section 10-3-C-c “Commercial: Agricultural Related” is amended by enacting a new Sub-section 10-3-C-c-ii “Cannabis Cultivation”, to read as follows:

“10-3-C-c-ii Cannabis Cultivation

1. This use must comply with all applicable local and state regulations and licensing.
2. No Cannabis Cultivation facility shall be licensed if located within three hundred (300) feet of any residential zone district or residential use, and uses listed under the civic and institutional category with the exception of public safety facilities, hospitals and medical clinics.
3. If any residential zone district, residential use and/or civic and institutional use listed in subsection 10-3-C-c-ii-2-b above locates within three hundred (300) feet of an existing cannabis cultivation use that was originally in compliance, the cannabis cultivation use shall still be considered a conforming use. The cannabis cultivation use will be rendered nonconforming if it ceases to operate for a period of one hundred eighty (180) days or more and may not recommence operation in its location.
4. This use shall require a Conditional Use Permit pursuant to Section 10-5-B-d-iii if within 300 feet of another Cannabis-related establishment.
5. The distance between any such facility shall be measured in a straight line, without regard to intervening structures or objects, from the closest property line in which the cannabis cultivation facility is located.
6. All cultivation activities associated with this use shall be conducted within fully enclosed, secured building, greenhouse, or other enclosed structure. Outdoor cultivation is prohibited.
 - a. For purposes of this subsection, a “secured building” means a building that is accessible only to the owner or employees of the facility growing or processing the cannabis plants for commercial use. Secured buildings shall be locked to prevent access by children, visitors, or anyone not authorized to possess cannabis.
7. This use shall be screened from view from each property line not facing a public street using Type C buffer as described in Section 10-4-C-d-vii Required Landscape Buffers and Screens. Street facing property lines that do not contain a building frontage, shall be screened by a solid eight (8) foot privacy wall setback a minimum of five (5) feet from the property line with landscaping in front of the wall.
8. The incidental Retail Sales of goods produced on the property is allowed, provided it complies with Section 10-3-C-j-iii and the New Mexico Cannabis Regulation Act.
9. Incidental outdoor storage is permitted, provided it complies with Section 10-3-C-z.”

Section 5. Section 10-3-C-j “Commercial: Retail Sales” is amended by enacting a new Subsection 10-3-C-j-iii “Cannabis Sales”, to read as follows:

“10-3-C-j-iii Cannabis Sales”

1. This use must comply with all applicable local and state regulations and licensing.
2. No Cannabis Sales shall be licensed if located within three hundred (300) feet of any residential zone district or residential use, and uses listed under the civic and institutional category with the exception of public safety facilities, hospitals and medical clinics.
3. If any residential zone district, residential use and/or civic and institutional use listed in subsection 10-3-C-j-iii-2 above locates within three hundred (300) feet of an existing Cannabis Sales use that was originally in compliance, the cannabis sales use shall still be considered a conforming use. The cannabis sales use will be rendered nonconforming if it ceases to operate for a period of one hundred eighty (180) days or more and may not recommence operation in its location.
4. This use shall require a Conditional Use Permit pursuant to Section 10-5-B-d-iii Conditional Uses if located within 300 feet of another cannabis sales establishment.
5. The distance between any such facility shall be measured in a straight line, without regard to intervening structures or objects, from the closest property line in which the cannabis sales establishment is located.
6. Cannabis Sales establishments may only sell cannabis products for off-site consumption between the hours of 10:00 a.m. and midnight Monday through Saturday and noon to midnight on Sundays.

Section 6. Sections 10-3-C-j-iii through 10-3-C-j-vi are renumbered respectively.

Section 7. Section 10-3-C-k “Industrial: Manufacturing, Production and Extraction”, is amended by enacting a new Subsection 10-3-C-k-ii “Manufacturing, Cannabis-related”, to read as follows:

“10-3-C-k-ii Manufacturing, Cannabis-related”

1. This use must comply with all applicable local and state regulations and licensing.
2. No Cannabis-related Manufacturing facility shall be licensed if located within three hundred (300) feet of any residential zone district or residential use, and uses listed under the civic and institutional category with the exception of public safety facilities, hospitals and medical clinics.

3. If any residential zone district, residential use and/or civic and institutional use listed in subsection 10-3-C-k-ii-2 above locates within three hundred (300) feet of an existing Cannabis-related Manufacturing use that was originally in compliance, the cannabis-related manufacturing use shall still be considered a conforming use. The cannabis cultivation use will be rendered nonconforming if it ceases to operate for a period of one hundred eighty (180) days or more and may not recommence operation in its location.
4. This use shall obtain a Conditional Use Permit pursuant to Section 10-5-B-d-iii Conditional Uses if located within three hundred (300) feet of another Cannabis-related manufacturing use.
5. The distance between any such facility shall be measured in a straight line, without regard to intervening structures or objects, from the closest property line in which the cannabis-related manufacturing facility is located.
6. All manufacturing activities associated with this use must be conducted within fully enclosed portions of a building.
7. This use shall be screened from view from each property line not facing a public street using a Type C buffer as described in Section 10-4-C-d-vii Required Landscape Buffers and Screens. Street facing property lines that do not contain a building frontage, shall be screened by a solid eight (8) foot privacy wall setback a minimum of five (5) feet from the property line with landscaping in front of the wall.
8. The incidental Cannabis Sales of goods produced on the property is allowed, provided it complies with Section 10-3-C-j-iii Cannabis Sales and the New Mexico Cannabis Regulation Act.
9. Incidental outdoor storage is permitted, provided it complies with Section 10-3-C-z.

Section 8. Sections 10-3-C-k-ii through 10-3-C-k-vi are renumbered respectively.

Section 9. Section 10-3-C-u “Accessory Uses: Home Occupation” is amended by enacting a new Section 10-3-C-u “Accessory Use: Cannabis Home Cultivation” to read as follows:

“10-3-C-u Accessory Uses: Cannabis Home Cultivation

1. This use must comply with all applicable local and state regulations.
2. All personal cultivation and processing of cannabis shall be conducted in a fully enclosed, secured area within the dwelling or a fully enclosed accessory structure, provided it complies with the standards of Section 10-3-C-r.

- a. For purposes of this subsection, a “Secure Area” means an area within the dwelling or accessory structure that is accessible only to the person possessing, growing or processing the cannabis plants for personal use. Secure areas shall be locked or partitioned off to prevent access by children, visitors, or anyone not authorized to possess cannabis.
3. Personal cannabis cultivation and processing shall not occur in the common areas of a multi-family dwellings or attached residential development.
4. The use of compressed gasses including, but not limited to butane, propane, and hexane, in the cultivation, production, growing and possessing of cannabis shall be prohibited.
5. Possession, growing and processing of cannabis plants must not be perceptible from the exterior of the primary residence or accessory structure, including but not limited to:
 - a. Common visual observation, including any form of signage;
 - b. Unusual odors, smell, fragrances, or other olfactory stimulus; or
 - c. Light pollution, glare, or brightness that disturbs the repose of another
6. Outdoor grow operations and home cultivation in a greenhouse are prohibited.
7. The Incidental sale or distribution of any portions of the plant, product, or by-product associated with home cultivation is prohibited.”

Section 10. Sections 10-3-C-u through 10-3-C-hh are renumbered respectively.

Section 11. Section 10-5-B-d-iii “Conditional Uses” is amended by deletion of certain language and addition of new language as follows:

10-5-B-d-iii Conditional Uses

1. **Applicability:** This section applies to all applications for uses listed as conditional (C) or conditional accessory (AC) in Table 10-3-1: Use Table.
2. **Conditional Use Criteria:** ~~“Acceptable grounds for requesting and granting a conditional use permit are determined by the following criteria: The Board of Adjustment shall~~ determine whether or not the proposed Conditional Use will be detrimental to the health, safety, and general welfare of the City based on the following criteria:”
 - a. The use will not have a significant adverse effect on the character and value of adjacent properties or surrounding neighborhood.

- b. The use will not create a hazard, a public nuisance or be injurious to individuals or to the public
 - c. “The use will not generate unfavorable affects or impacts on other existing or permitted uses on abutting sites, including but not limited to, traffic congestion, noise, light, glare, erosion, odor or waste to the extent such impacts exceed those which reasonably may result from use of the site by permitted use.
 - ~~d. The use will not generate undue traffic congestion.~~
 - ~~e. The use will not cause noise which is excessive for the area.”~~
 - d. The use will not have a significant adverse effect on the natural environment and attractiveness of an area.
 - e. The use will not be contrary to the public interest.
 - f. The applicant will be able to meet any requirements specified for such a use in these Land Development Standards and any additional conditions that the board may impose
 - g. The applicant will be able to meet all requirements imposed by applicable local, state and federal laws, regulations and licenses.
 - h. The use is consistent with the policies and recommendations of the adopted City Master Plan.
3. “Conditions Use Conditions of Approval: The Board of Adjustment may impose conditions that are found necessary to ensure that the use is compatible with other uses in the vicinity, and that the negative impact of the proposed use on the surrounding uses and public facilities is minimized. These conditions include, but are not limited to, the following:
- a. Limiting the hours, days, place and/or manner of operation;
 - b. Requiring site or architectural design features or systems which minimize environmental impacts such as noise, vibration, exhaust/emissions, light, glare, erosion, odor, and/or dust;
 - c. Requiring waste disposal plans to ensure products are properly disposed and do not contribute to the deterioration of the environment from materializing in landfills;
 - d. Requiring larger setback areas, lot area and/or lot depth or width;

- e. Limiting the building height, size or lot coverage, and/or location on the site;
- f. Designating the size, number, location and/or design of vehicle access points or parking areas;
- g. Requiring street right-of-way to be dedicated and street(s), sidewalks, curbs, planting strips, pathways, or trails to be improved;
- h. Requiring landscaping, screening, drainage, water quality facilities, and/or improvement of parking and loading areas;
- i. Limiting the number, size, location, height and/or lighting of signs;
- j. Limiting or setting standards for the location, design, and/or intensity of site lighting;
- k. Requiring berms, screening or landscaping and the establishment of standards for their installation and maintenance;
- l. Requiring and designing the size, height, location and/or materials for fences;
- m. Requiring the dedication of sufficient land for the public, and/or construction of pedestrian/bicycle pathways in accordance with the adopted Transportation Safety Plan;
- n. Such other conditions as will make possible orderly and efficient development in conformance to the City Master Plan and this LDS."

Section 12. Section 10-6 "Definitions" is amended by enacting new definitions to read as follows:

"Cannabis Cultivation Facility

A facility licensed by the State in which cannabis is grown, harvested, dried, cured, graded or trimmed.

Cannabis-related Establishment

Any cannabis facility such as a cannabis cultivation facility, cannabis testing facility, cannabis product manufacturing facility, a cannabis sales establishment, or a cannabis consumption area.

Cannabis Home Cultivation

The use of a residential property for the cultivation and growing cannabis by the primary

resident for personal use.

Cannabis Manufacturing

A facility licensed by the State in which cannabis is processed into products intended for use or consumption other than by smoking, including but not limited to, edible products, ointments, and tinctures.

Cannabis Sales

A retail sales establishment licensed by the State to sell cannabis, cannabis products including edible products, ointments, and tinctures, and cannabis related equipment or paraphernalia.

Cannabis Products

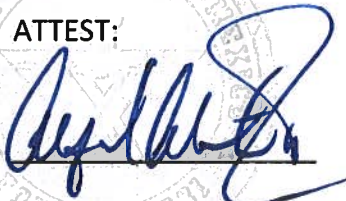
A product that is or that contains cannabis or cannabis extract, including edible or topical products that may also contain other ingredients.”

Section 13. This ordinance is declared to be an emergency measure on the grounds of urgent public need and shall become effective immediately upon five (5) days passage by the City Council.

PASSED, ADOPTED AND APPROVED THIS 24TH DAY OF AUGUST 2021

CITY OF GALLUP, MCKINLEY COUNTY, NEW MEXICO

ATTEST:



Alfred Abeita, City Clerk

BY:



Louis Bonaguidi, Mayor