

Ordinance 2021-02: Establishing Zoning and Other Regulations for Cannabis

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

WHEREAS, the New Mexico Cannabis Regulation Act (NMCRA) 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; and

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; and

WHEREAS, the smoking of cannabis products may create health risks due to exposure to secondhand smoke and vaporized cannabis concentrates; and

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~~ NMCRA empowers the Town of Mesilla to adopt time, place and manner rules relating to cannabis use and operations so long as they are not inconsistent with the ~~Act~~ NMCRA or the Dee Johnson Clean Indoor Air Act; and

WHEREAS, this ordinance is subject to change or amendment as the ~~New Mexico Cannabis Regulation Act ("CRA")'s rules and regulations applicable state law and regulations~~ are revised, amended, and adopted, and it shall comply with NMCRA and its the regulations adopted by the Cannabis Control Division of the New Mexico Department of Regulation & Licensing.

NOW THEREFORE, BE IT ORDAINED by the Governing body of the Town of Mesilla that:

SECTION 1. Purpose

This Ordinance is adopted to protect the health, safety, and welfare of the community. Except as allowed by NMCRA and its pertinent laws or regulations for personal or private use, the Town of Mesilla enacts reasonable regulations and requires compliance with the NMCRA and its pertinent laws or regulations.

SECTION 2.

1. Definitions

- a) "Adjacent grounds" means all areas that ~~the a cannabis~~ licensee has an exclusive right to possess by virtue of his or her ownership or lease, which are outside the enclosed licensed premises, but adjacent and contiguous to the licensed premises, including but not limited to porches, patios, decks, entryways, lawns, parking lots, and similar areas and all fixed and portable things in those areas, including but not limited to lights, signs, speakers, and security devices.
- ~~b) "Approve a business license" means to find that the requirements for a license have been met but does not give the applicant the right to operate a cannabis establishment in the Town until the license is issued. This standard applies even where the applicant has already obtained a State of New Mexico cannabis license.~~
- ~~e)b)~~ "Character and record" includes all aspects of a person's character and public record, including but not limited to ~~moral character~~, criminal record, serious traffic offenses, record of previous sanctions against liquor licenses, gambling licenses, or cannabis licenses, which the person owned, in whole or in part, or in which the person served as a principal, manager, or employee; education, training, experience, civil judgments, ~~truthfulness, honesty~~, and financial responsibility.
- ~~e)c)~~ "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,

Commented [j1]: I would define what constitutes a "serious" traffic offense to avoid confusion.

Commented [csh2R1]: Defined below now

- 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.

For the purpose of this Ordinance, the term “cannabis” ~~includes both recreational and medical cannabis and all related cannabis derived products, and medical cannabis are interchangeable.~~

~~e)d)~~ “cannabis consumption area” means an area where cannabis products may be served and consumed;

~~f)e)~~ “Cannabis courier” means a person that transports cannabis products to qualified patients, primary caregivers or reciprocal participants or directly to consumers.

~~g)f)~~ “Cannabis establishment” means:

- a. A single retail location where the licensee may sell ~~marijuanacannabis~~ and ~~marijuanacannabis~~ infused products to consumers, including edibles. It includes both recreational and medical ~~marijuanacannabis~~.
- b. An offsite manufacturing and production facility at which the licensee may manufacture and produce ~~marijuanacannabis~~ and ~~marijuanacannabis~~ infused products, which are not sold on location but are sold or transferred to consumers at other locations. It includes both recreational and medical ~~marijuanacannabis~~.
- c. A cultivation facility at which the licensee may grow or cultivate ~~marijuanacannabis~~ and ~~marijuanacannabis~~ infused products, which are not sold on location but are sold or transferred to consumers at other locations. It includes both recreational and medical ~~marijuanacannabis~~.
- d. A combined retail, production, and manufacturing location where the licensee may produce and manufacture ~~marijuanacannabis~~ and ~~marijuanacannabis~~ infused products, including edibles, and sell these products to consumers at the same location. It includes both recreational and medical ~~marijuanacannabis~~.
- ~~e.) A combined retail, production, manufacturing, and cultivation/growing location, where the licensee may cultivate and grow marijuanacannabis, produce and manufacture marijuanacannabis, including marijuanacannabis infused products and edibles, and also sell these products to consumers at the same location. It includes both recreational and medical marijuanacannabis.~~

~~g)~~ “immature cannabis plant” means a cannabis plant that has no observable flowers or buds.

~~“Cannabis, immature plant” means the germination, seedling, and vegetative stages are~~

~~classified as immature cannabis plants and are excluded from a licensee's approved cannabis plant level.~~

- h) "Cannabis, mature plant" means a female cannabis plant in the flowering stage.
- ~~h) "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; "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 purchases, acquires, sells, or transports wholesale cannabis products to other cannabis establishments~~
 - ~~Class I: A licensee that only packages or repackages cannabis products, or labels or relabels the cannabis product container;~~
 - ~~Class II: A licensee that conducts Class I activities, and manufactures edible products or topical products using infusion processes, or other types of cannabis products other than extracts or concentrates, and does not conduct extractions;~~
 - ~~Class III: A licensee that conducts Class I and Class II activities, and extracts using mechanical methods or nonvolatile solvents; and~~
 - ~~Class IV: A licensee that conducts Class I, Class II, and Class III activities, and extracts using volatile solvents or supercritical CO₂.~~
- i) "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.
- j) "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.
- k) "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.

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- l) “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.
- m) “Cannabis retailer” means a person that sells cannabis products to qualified patients, primary caregivers, or reciprocal participants or directly to consumers.
- n) “Cannabis testing laboratory” means a person that samples, collects, and tests cannabis products and transports cannabis products for the purpose of testing.
- o) “Complaint” means a document filed with the Town seeking sanctions against a cannabis business license.
- p) “Contiguous” means located within the same building as the cannabis establishment, located in a separate building on the same parcel of land as the cannabis establishment, or located in a separate building on a separate parcel of land that is adjacent to and shares at least fifty percent (50%) of a common lot line with the lot on which the cannabis establishment is located.
- q) “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.
- r) “Employee” means the licensee’s or proposed licensee’s employees, including both part time and full-time employees.
- s) “Harm” or “harmful to public health, safety or welfare” means any matter that adversely affects the health, safety, or welfare of any person or group of persons within the Town ~~or any adjacent community~~, including but not limited to matters related to crime, lighting, security, traffic, graffiti, litter, parking, and noise. ~~A showing of actual harm shall not be required and a showing of potential or threatened harm shall be sufficient.~~ Any violation of any criminal statute or ordinance is per se substantially harmful to public health, safety, and welfare, without any showing of actual or threatened harm. The mere possession, advertising, sale, cultivation, processing, smoking, or ingestion of cannabis or cannabis infused products, when performed lawfully, shall not in itself be considered harmful to public health, safety, and welfare.
- t) “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.
- u) "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; schools; places of amusement; parks; playgrounds; and places used in connection with public passenger transportation ~~"In public" means any area that the public may generally enter, including any business open to the public. The term includes the licensed premises and the adjacent grounds if the cannabis establishment has not also obtained a consumption license from the State of New Mexico. The term includes persons in motor vehicles located in a public place. It also includes property owned or leased by the Town, State or Federal government.~~
- v) "Issue a business license" means to finalize issue the Town's local license upon an applicant after a the applicant successfully obtains a license previous approval of the licenseto operate a cannabis business from the State of New Mexico. Granting of the local license shall be subject to the applicant's satisfactory compliance with the Town's application requirements, so long as such requirements are not inconsistent with applicable State law, and may or may not occur after approval of the license, depending on any completions, inspections, approvals, or conditions that the Town may require to be satisfied before issuance. ~~Issuance gives the licensee the ability to operate a cannabis facility within the Town boundaries, provided that the licensee also obtainsmaintains a proper valid license to operate a cannabis business from the State of New Mexico license.~~
- w) "License" under this Ordinance means a local business license issued by the Town of Mesilla for the sale, production, manufacturing, cultivation, or ~~distribution-transport~~ of cannabis or cannabis infused products.
- x) "Licensee" means the person or entity holding a local Town cannabis business license under this Article.
- y) "Licensed premises" means the area inside a building in which the cultivation, manufacture, processing, infusion, possession, weighing, display, packaging, sale, and exchange of cannabis and cannabis infused products is licensed under this Ordinance.

~~z)~~ “Lynn and Erin Ceompassionate Uuse Aact” means NMSA -26-2B-1 through 26-2B-7an aet to allow the benefieial use of medical cannabis in a regulated system for alleviating symptoms caused by debilitating medical conditions and their medical treatments.

~~z)aa)~~ “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 -private and/or charter schools.

~~aa)bb)~~ “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.

~~bb)~~ “Operate” or “operation” means the matters described in this Ordinance, as amended.

~~cc)~~ “serious traffic violation” means— (A) excessive speeding, as defined by the Secretary by regulation; (B) reckless driving, as defined under State or local law; (C) a violation of a State or local law on motor vehicle traffic control (except a parking violation) and involving a fatality; (D) driving a commercial motor vehicle when the individual has not obtained a commercial driver’s license; (E) driving a commercial motor vehicle when the individual does not have in his or her possession a commercial driver’s license unless the individual provides, by the date that the individual must appear in court or pay any fine with respect to the citation, to the enforcement authority that issued the citation proof that the individual held a valid commercial driver’s license on the date of the citation; (F) driving a commercial motor vehicle when the individual has not met the minimum testing for the specific class of vehicle the individual is operating; or for the type of cargo the vehicle is carrying; and (G) any other similar violation of a State or local law on motor vehicle traffic control (except a parking violation) that the state designates by regulation as serious.

~~ee)dd)~~ “Person” means any natural person and any entity.

~~dd)ee)~~ “Principal” means:

- a. In the case of any entity, including any general or limited partnership, corporation, limited liability company, or other entity: any person who has a five percent (5%) or greater interest in the ownership of the entity, and any person who has the day-to-day authority to or actually does manage the entity’s finances.

- b. In the case of a corporation: the persons described as a representative or applicant for any entity and the president, vice president, secretary, chief executive officer, chief financial officer, and any person who holds five percent (5%) or more of the capital stock of the corporation.
- c. In the case of a limited liability company: the persons described as a representative or applicant for any entity and any member of the limited liability company.
- d. In the case of a sole proprietorship, the individual owner.

~~ee) "Public property" means property that is occupied, owned, controlled, or operated by the Federal, State, or Town government.~~

2) General Requirements:

- a) It shall be unlawful to use, sell, manufacture, cultivate, produce, or distribute cannabis ~~on public property in a public place located~~ within the Town of Mesilla.
- b) Cannabis establishments shall not allow a person to consume cannabis on site, or on adjacent grounds, ~~except as where~~ with the exception of those establishments authorized by the New Mexico Cannabis Regulation Act, as amended, including which maintain a valid license to operate a cannabis consumption area, as defined by the Cannabis Regulation Act obtaining a consumption license.

~~e) Cannabis establishments shall provide for proper and secure disposal of all cannabis products and byproducts, consistent with the Cannabis Regulation Act, and shall abide comply with by the Town's regulations regarding rubbish and discharges into the municipal wastewater system.~~

~~d) Cannabis establishments shall not emit fumes, dust, odors, or vapors into the environment or disturb adjacent uses.~~

~~e) Cannabis establishments shall not display or keep visible from outside the licensed establishment any must store all cannabis-cannabis and cannabis products in a designated limited access area, as set forth by the rules and regulations adopted by the Cannabis Control Division of the New Mexico Department of Regulation & Licensing, to ensure they are not visible from a public place products or paraphernalia.~~

3) Establishing Business Registration.

The Town of Mesilla, ~~as the local cannabis business licensing authority,~~ shall have the following powers and authority:

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- a) To issue, deny, ~~or revoke, or renew~~ a Town ~~cannabis~~ business license ~~and renewals of the same for cannabis businesses~~, and where necessary, to conduct public hearings related thereto.
- b) To impose any sanctions on a ~~Town~~ cannabis business licensed ~~to operate within Town boundaries~~, including revocation, upon its own authority and initiation, or in response to a complaint by any person for any violation by the licensee after investigation and a public hearing, at which the licensee shall be afforded an opportunity to be heard. Such hearings will allow for the presentation of evidence by the ~~applicant~~ licensee and Town staff, and will be followed by the adoption of formal findings and conclusions.
- c) To adopt application forms, fees, and submission requirements for a Town cannabis business license.
- d) No person or ~~corporate entity~~ business may operate a cannabis establishment within the Town without first obtaining a Town cannabis business license. ~~It is illegal to operate a cannabis establishment in the Town without first obtaining a local Town cannabis business license.~~
- e) All licenses will be administered and approved by the Town provided that the applicant has met all conditions and requirements established herein.
 - ~~f) It is illegal to operate a cannabis establishment in the Town without first obtaining a local Town cannabis business license.~~
 - ~~g) f)~~ Upon issuance, the Town's cannabis business license shall be displayed ~~within-on~~ the ~~licensed~~ premises and be visible to public view.
 - ~~g)~~ Registration shall be renewed by June 30 annually.

4) General Licensing Requirements.

To obtain a Town cannabis business license under this Ordinance, ~~the each successful~~ applicant ~~must shall~~ demonstrate the following:

- a) The proposed licensed premises and adjacent grounds ~~meet-satisfy~~ all requirements for issuance of a State of New Mexico cannabis license and all applicable laws and regulations.
- b) The applicant ~~shows provisional~~ demonstrates proof of ~~submittal for~~ a valid State of New Mexico cannabis license. ~~After licensure is obtained, a copy of the certificate from the State of New Mexico must be submitted as part of the file.~~

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- c) The applicant has met all requirements, including payment of any applicable taxes and fees, both state and local.
- d) The applicant has obtained a separate Town business license for any other business activity that will also be operated on the licensed premises and paid all applicable license fees.
- e) The premises ~~and adjacent grounds~~ are not licensed or operated as an establishment for the sale or service of alcoholic beverages, or as a massage parlor, a dance hall, adult business, ~~firearm retailer gun sales~~ or an amusement facility.
- f) The applicant has applied for a Town cannabis business license on the established forms, that the Community Development Coordinator or designee has determined is complete.
- g) ~~In the case of any retail cannabis establishment, establishments and Class I and/or II manufacturers, as defined in the Cannabis Regulation Act must operate the applicant has demonstrated that the proposed licensed premises is located on or within property zoned or used as Historical Commercial (HC) Zone (MTC 18.35) or General Commercial (GC) Zone (MTC 18.45). A combined retail and production, manufacturing or growing establishment is not. Only combined retail and manufacturing classes I and II shall be allowed in these zones. Cannabis businesses and license holders other than retail and Class I and/or II manufacturers may not operate within these zones.~~
- h) ~~In the case of a cannabis establishment that is manufacturing Classes III and IV manufacturers and; cannabis producing producers, or including those producers who cultivating for medical or commercial use (non-personal use), and even where combined with a retail cannabis establishment distribution either independently or as part of a vertically integrated cannabis license, the applicant has demonstrated that the proposed licensed premises is located must operate on or within property zoned or used as Rural Farm (RF) Zone (MTC 18.20) or Residential/Agricultural (RA) Zone (MTC 18.25) or Single-Family Residential (R-1) Zone (MTC 18.30), or as otherwise specified in the Town's land use and zoning regulations, including those uses subject to a special use permit.~~
- i) ~~In the case of a cannabis establishment that is manufacturing Classes III and Class IV, producing, or cultivating, and even where combined with a retail~~

~~cannabis establishment, the applicant shows~~All applicants must demonstrate adequate water resources and applicable permits, as approved by the Town, or as required under the laws of the State of New Mexico.

j) The applicant must demonstrate that the location of the proposed licensed premises is no less than ~~five three~~ hundred (300) feet from any other licensed cannabis establishment. Measurements shall be made from any wall of the two (2) proposed or existing licensed premises. Nothing herein prohibits multiple licenses from operating from a single premise.

Commented [CSH3]: Agreed to keep this at work session 10.25.2021 Changed at worksession 11.8.2021

k) ~~If applying for a consumption license, the applicant must demonstrate that the cannabis consumption area is more than 300 feet off from a Residential zone district.~~

~~k)l) Alcohol consumption in a cannabis consumption area is prohibited as per State Law.~~

l)m) The applicant must demonstrate that the proposed licensed premises are not located within three hundred (300) feet of any school or daycare facility. The distances referred to in this paragraph are to be computed by direct measurement from the nearest property line of the land used for a school or campus, to the nearest portion of the lot that is the situs of the building that is proposed for a licensed premises.

~~m)n) The applicant agrees to only sell cannabis products and receive deliveries~~Hours of operation shall be limited to the ~~between~~hours between the hours of 8:00 a.m. and 12:00 a.m. Monday through Saturday and 12:00 p.m. to 12:00 a.m. on Sundays. ~~Deliveries shall be limited to can only be between the hours between of 8:00 a.m. and 6:00 p.m.~~

Commented [CH4]: Similar to Liquor Serving Hours

Commented [CSH5]: Mr. Jimmy Nevarez suggested changing this from 10 am to 9 pm Monday through Sunday.

n)o) The applicant for a Town cannabis business License, principals, registered manager, and employees must meet all requirements under New Mexico State law.

Commented [CSH6]: Agreed upon at 10.25.2021 work session

o)p) The applicant, principals, registered manager, and employees must be at least twenty-one (21) years of age.

— The applicant, principals, registered manager, and employees all hold valid occupational licenses and registrations as required by the State of New Mexico, including all applicable cannabis licenses.

3)5) Allowable land use zoning:

- a)a. Historic Residential (HR) Zone (MTC 18.35) and Single Family Residential (R-1) zone (MTC 18.30): Private property consumption, and cultivation of up to 6 mature and 6 immature plants per household.
- b)b. Single Family Residential (R-1) Zone (MTC 18.30) (If ancillary to the single-family home): Cannabis Producer Microbusiness.
- c)c. Residential Agricultural (RA) Zone (MTC 18.25) and Rural Farm (RF) zone (MTC 18.20): allows for cultivation, Cannabis testing Laboratory, Cannabis producer, Cannabis testing laboratory, vertically integrated cannabis establishment, Cannabis training and education.
- d. General Commercial (C) Zone (MTC 18.45) and Historic Commercial (HC) Zones (MTC 18.35): Cannabis retail. Cannabis manufacturer ~~– Safe and secure extraction~~Class I and Class II only allowed in this zone. Cannabis Consumption area with a special use permit only.
- e)e. Special Use Permits may be applied for as described in Mesilla Town Code 18.85 Variances and Special Use Permits.

~~Cannabis Consumption area with a special use permit only.~~

4)6) Specific Requirements Regarding the Premises.

- a)a. The proposed licensed premises ~~are must be located within~~ in a fixed, permanent, non-portable building and ~~are not located in~~shall not be within a movable or mobile structure or in a vehicle, nor is it operated as a home occupation under Town regulations.
- b)b. The size of the premises is compatible and compliant with the applicable zoning district limitations regarding square footage for that zone.
- c)c. The applicant must have sole legal control of the proposed licensed premises at the time the application is submitted, under a lease that is presently in effect or through present ownership of the proposed licensed premises as shown by a deed or other instrument of record. The applicant must show proof that the lessor has agreed to use of the premises as a cannabis establishment.
- d)d. All storage, dispensing, manufacture, production, and cultivation activities shall be conducted indoors in a building meeting the requirements of Subsection (a).
- e)e. ~~Plants, products, accessories, and associated paraphernalia shall not be visible from a public sidewalk or right-of-way~~Cannabis and cannabis products shall not be visible from a public place and shall instead be placed within a designated limited access area.
- f)f. Sign regulations ~~are~~and governed by the zone of which the license shall be issued.

~~g.~~ The proposed licensed premises have a ~~suitable designated~~ limited access area where the cultivation, display, storage, processing, weighing, handling, and packaging of cannabis and cannabis infused products occurs, which is posted “employees only,” and is separated from the areas accessible to the public by a wall, counter, or some other substantial barrier designed to keep the public from entering the area.

~~h.~~ The applicant has submitted a security plan for the proposed licensed premises, which has been inspected and approved by the Town’s ~~Marshal Department or Building designated~~ ~~Official~~, and showing at least the following minimum-security measures:

- i. All doors, windows and other points of entry have secured and functioning locks.
- ii. A locking safe or enclosed secured storage located inside the proposed licensed premises in which any cannabis and cannabis infused products will be secured when the licensed premises are not open to the public.
- iii. If the licensed premises are connected by any passage or entryway to any other premises, there is a door between the two (2) premises that can be locked from the licensee side and cannot be opened from the other side.
- iv. A professionally monitored ~~burglar~~ alarm system that detects unauthorized entry of all doors, windows, and other points of entry to the proposed licensed premises; and
- v. Windows ~~or security camera’s~~ facing the adjacent grounds and lighting of the adjacent grounds sufficient to ensure that customers entering and leaving the licensed premises, entering, and exiting parked cars on the adjacent grounds, and walking across the adjacent grounds can be observed by employees from inside the licensed premises.
- vi. All licensing requirements established by the State of New Mexico must be satisfied.

~~i)a.~~ The proposed licensed premises and adjacent grounds comply with all zoning, health, building, plumbing, mechanical, fire, and other codes, statutes, and ordinances, as shown by completed inspections and approvals from the ~~Town’s Building Official and Town’s Fire Marshal designated official~~.

~~j.)~~ ~~There is sufficient parking available on the proposed adjacent grounds given the size of the licensed premises and the number of employees and customers that can reasonably be expected to be present at any given time, pursuant to applicable provisions of the Town of Mesilla. All businesses operating within the Town~~

boundaries shall comply with Mesilla Town Code 18.60.170 Parking Requirements and Fees.

- k)b) The proposed licensed premises and adjacent grounds of the licensed premises will be operated in a manner that does not cause any substantial harm to public health, safety, and welfare.
- h)c) The proposed licensed premises are equipped with a ventilation system with carbon filters sufficient in type and capacity to eliminate or significantly reduce cannabis odors emanating from the interior to the exterior discernible by a reasonable person, including to any public property or right-of-way within the Town. The ventilation system must be inspected and approved by the Town ~~Building Official's designated official.~~ Refer back to (I) Mechanical Code compliance.
- m)d) The proposed licensed premises are located in a building that does not share any doors, windows, air passages, vents, ducts or any heating, ventilation, air conditioning, or air handling equipment or structures with any other building or premises whatsoever.
- n)e) Walls, barriers, locks, signs, and other means are in place to prevent the public from entering the area of the proposed licensed premises utilized for cultivation or production and manufacturing. The Town provides an exception for the perimeter fencing/wall requirements if the fencing materials are required by State Law for the production, manufacturing and cultivation of cannabis in the following zones: Rural Farm (RF) Zone (MTC 18.20) or Residential/Agricultural (RA) Zone (MTC 18.25) or Single-Family Residential (R-1) Zone (MTC 18.30).
- o)f) Customer visits and deliveries are prohibited between the hours of 12:00 a.m. and to 8:00 a.m. for any Cannabis Cultivation Facilities, Cannabis Producers, Cannabis-derived products facilities, located within 300 feet of a Residential zone district.
- p)g) The proposed licensed premises must ensure that the ventilation system, air filtration, building screening requirements, necessary security apparatus and lighting are all compatible with neighboring businesses and adjacent uses.
- q)h) Every licensee and its principals, registered manager, and employees have a continuing duty to ensure that the requirements of this Section continue to be met after the license is issued and at all times that the license remains in effect.
- r)i) The licensee ~~abides shall comply with by~~ all Town ordinances regarding signage, land use and zoning, water service, and wastewater discharge.

Commented [CSH7]: Mr. Jimmy Nevarez suggests changing to 10 p.m.

- ~~s) Commercial on site cannabis consumption is prohibited in all zones until regulations promulgated by the State become effective, in which cases all other Town provisions regarding on site consumption not prohibited by state regulation will be effective.~~
- ~~i. Commercial on site consumption of cannabis is the commercial cannabis activity ingesting of cannabis or cannabis products in a licensed cannabis consumption area. Commercial on site consumption is considered part of Cannabis Relief. Unless license pursuant to the Lynn and Erin compassionate use act, access to the cannabis consumption area is restricted to persons 21 years of age and older.~~
- ~~ii. Commercial on site consumption of cannabis will not be permitted.~~

5)7) Delivery permit restrictions.

The following restrictions shall be placed on cannabis delivery permits:

Only medical or ~~retail-commercial~~ cannabis ~~transporters-couriers who qualify as a social equity applicant as defined in and by the National Cannabis Industry Membership~~ who holds a valid courier license issued by the State of New Mexico and a delivery permit ~~issued by the Town~~ issued may deliver ~~regulated cannabis or cannabis related products~~ to private residences of customers and patients, subject to the provisions the NMRCA and ~~its pertinent regulations and rules~~ all other applicable state and local law and regulations adopted by the Cannabis Control Division of the New Mexico Department of Regulation and Licensing.

6)8) Changes to License.

No licensee shall make any of the following major changes without first obtaining the written approval of the Town:

- a) Any ~~transfer of the license or change in~~ any ownership interest in the ~~licensee entity or licensee~~ licensed cannabis company.
- b) Any change in location of the licensed premises.
- c) Any change in the licensee's principals.
- d) Any change in the structure, walls, doors, windows, ventilation, plumbing, electrical supply, floor plan, footprint, elevation, operation, operational plan, patios, decks, safe or vault, locks, surveillance system, doors, window coverings, or security system at the licensed premises.
- e) ~~Any material changes to the adjacent grounds, including but not limited to lighting, parking, and traffic flow.~~

7)9) Cultivation and Growing for Personal Use.

Individuals may possess, cultivate, and grow cannabis in their residence, including in a residential zoning district, but only for their personal use and subject to the following limitations as established under the New Mexico Cannabis Regulation Act, ~~as amended~~:

- a) An individual must be at least twenty-one (21) years of age.
- b) It is unlawful to grow, cultivate, or process more than the designated number of cannabis plants per person, and per residence set forth in the New Mexico Cannabis Regulation Act, ~~as amended~~, and any other applicable laws or regulations adopted by the State of New Mexico.
- c) ~~A residence shall not emit cannabis odors of any kind~~ Odor mitigation techniques must be used to ensure that cannabis odor does not escape the closed residence.
- d) Any growing or cultivation of cannabis products for personal use shall not be visible to the public.
- e) Any growing, cultivation or production of cannabis or cannabis infused products for personal use shall not be sold or transferred to third parties for future sale.
- f) No cannabis sale, production, distribution, manufacturing or cultivation shall be allowed in the Historic residential zone district, except for personal use and as specifically set forth herein.

~~8)10~~ Establishment of New Fees and renewal fees for all licenses.

~~5) These fees shall be adopted by resolution with automatic annual adjustments by the Board of Trustees, Planning and Building Cannabis application/inspection fee \$500.00~~

~~a.~~

- ~~a) Planning and Building records management fee \$100.00~~
- ~~b) Planning and building site inspection fee \$500.00~~
- ~~c) For Cultivation cottage or nursery initial Planning and Building /inspection fee \$800.00~~
- ~~d) Cannabis Transporter/Courier Permit fee \$250~~
- ~~e) A cannabis waste plan review fee \$50~~

~~9) Renewal annual application fee for all cultivation permit types~~

- ~~a) Planning and Building cannabis application/inspection fee \$500.00~~
- ~~b) Planning and Building records management fee \$100.00~~
- ~~c) Planning and Building site inspection (not charged unless required as part of a change as outlined in Section 8d and 8e).~~

~~10) Renewal annual application fee for all other permit types~~

~~Planning and Building cannabis application/inspection fee \$500.00~~

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~~Planning and Building records Management fee \$100.00~~

~~Town issued Business License \$35.00~~

~~Cannabis Transporter/Courier Permit \$250~~

Licensee shall ensure that all licensed premises are in compliance with Construction Industries Licensing Act and comply with the Occupational Health and Safety Act.

11) Revocation of License.

- a) Any person in violation of a local Town cannabis license as set forth herein is subject to revocation for violations of this Ordinance, other Town ordinances, or New Mexico State or Federal laws.
- b) If the Town finds that there is probable cause that a violation has occurred, it shall immediately investigate the alleged violation.
- c) Upon evidence of a violation, the Town shall notify the licensee in writing of the specific allegations and the date of hearing scheduled for the Town Trustees to consider the revocation or any other appropriate action involving the license.
- d) During the license revocation hearing, the Town Trustees will hear evidence from Town staff and the licensee. Each party will be given an opportunity to be heard, to present witnesses, to cross examine witnesses, and to present evidence and exhibits in support of his or her case. At the conclusion of the hearing, the Town Trustees will make formal findings as to the reasons for revoking the license or allowing it to remain in place with conditions.
- e) If a cannabis license issued under this Ordinance is revoked, the licensee must cease ~~doing business~~~~operation within the Town boundaries~~ immediately, or as ~~otherwise prescribed~~~~directed~~ by the Town.

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

13) 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 ~~up to \$500 and/or up to 90~~ days in jail. Each day during the time in which a violation occurs shall be deemed a separate violation. Nothing herein shall prevent the Town from seeking injunctive relief, if appropriate

SECTION 2. Repealer

All ordinances or resolutions, or part therefore, inconsistent with this ordinance are hereby repealed to the extent only of such inconsistency. This repealer shall not be construed to revive any ordinance or resolution.

SECTION 3. Effective Date

This ordinance shall be in full force and effect, five (5) days after this approval, adoption and publication as provided by law.

PASSED, ADOPTED AND APPROVED this [MONTH] [DAY], [YEAR].

Nora L. Barraza
Mayor
Town of Mesilla

ATTEST:

By: _____
Cynthia Stoehner-Hernandez
Clerk/Treasurer
Town of Mesilla

(seal)

DRAFT

