

Ordinance No. 1089

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ARTESIA, RELATING TO THE REGULATION OF MEDICAL AND RECREATIONAL CANNABIS; ESTABLISHING A PURPOSE; SETTING FORTH DEFINITIONS; PROHIBITING CANNABIS USE OF PUBLIC PROPERTY; RELATING CANNABIS TESTING FACILITIES AND CANNABIS ESTABLISHMENTS; ESTABLISHING REGULATIONS FOR CANNABIS AT AN INDIVIDUAL'S PRIMARY RESIDENCE; AUTHORIZING RETAIL SALES OF CANNABIS AND CANNABIS PRODUCTS; SETTING FORTH VIOLATIONS; AND PROVIDING FOR ENFORCEMENT AND PENALTIES.

WHEREAS, within the Cannabis Regulation Act, codified as NMSA 1978, § 26-2C-1 et seq., the New Mexico Legislature established a comprehensive regulatory framework for the possession, cultivation, manufacture and sale of cannabis and cannabis-derived products; and

WHEREAS, the Cannabis Regulation Act provides that local jurisdictions may adopt time, place, and manner rules that do not conflict with the Cannabis Regulation Act or the Dee Johnson Clean Indoor Air Act, including rules that reasonably limit density of licenses and operating times consistent with neighborhood uses; and

WHEREAS, the City Council wishes to enact such controls and restrictions on the possession, use, cultivation, manufacture and sales of cannabis and cannabis-derived products, consistent with the provisions of the Cannabis Regulation Act, necessary and proper to protect and promote the health, safety, and welfare of the citizens of Artesia, New Mexico; and

WHEREAS, the City Council intends with this ordinance to establish a general framework for regulation and anticipates adopting additional provisions in the future to provide a comprehensive approach to cannabis and related activities within the City.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL AS THE GOVERNING BODY OF THE CITY OF ARTESIA, NEW MEXICO, that:

SECTION 1. Title 5, Chapter 1, Article D, Section 6 (MARIJUANA POSSESSION) of the Artesia City Code is repealed in its entirety.

SECTION 2. The Artesia City Code is hereby amended to include the following Title 4 Chapter 7 relating to the regulation of cannabis:

CHAPTER 7

CANNABIS

4-7-1: **TITLE:** This chapter shall be known as the "City of Artesia Comprehensive Cannabis Ordinance" except as referred to and cited herein, where it shall be known as the "Cannabis Ordinance" or "CCO".

4-7-2: **PURPOSE AND INTENT:** It is the purpose and intent of this chapter to regulate the possession, cultivation, including micro, small, medium, and large-scale processes; manufacturing; processing; distribution; retail sales; on-site consumption and specialized events for the consumption of medical and recreational cannabis within the City of Artesia, as provided for by the New Mexico Cannabis Regulation

Act, NMSA 1978, § 26-2C-1 *et seq.*, (the “Cannabis Regulation Act” or the “Act”). The provisions of this chapter are in addition to any other permits, licenses and approvals which may be required to conduct business generally in the city, and are in addition to any permits, licenses and approvals required under state, county, or other law. The regulations and prohibitions in this chapter are enacted to ensure the health, safety and welfare of residents and visitors within the City of Artesia. Nothing in this chapter shall be construed to allow persons to engage in conduct that endangers others or causes a public nuisance, or allow any activity relating to the cultivation, manufacturing, testing, or distribution of cannabis that is otherwise illegal under New Mexico state law. Nothing herein shall be construed to permit or authorize any possession, use, cultivation, manufacture, processing, distribution, retail sale, and/or consumption of cannabis beyond the provisions of the Cannabis Regulation Act or the Lynn and Erin Compassionate Use Act, nor as affecting or intended to affect or modify federal law relating to cannabis.

4-7-3: **DEFINITIONS:** Those definitions provided for in the Cannabis Regulation Act, codified as NMSA 1978, § 26-2C-1 *et seq.*, are hereby incorporated by reference and shall have the same meaning when used in this chapter as provided for in the Act, unless otherwise specified. Additional definitions have been provided to provide clarity and consistency with City of Artesia codes and ordinances already in effect, or to differentiate from the State of New Mexico Cannabis Regulation Act.

ADVERTISEMENT: A statement or a depiction that is intended to induce the purchase of cannabis products and that is displayed in printed material or on a sign or other outdoor display or presented in a radio, television, or other media broadcast or in digital media. Advertisement does not include:

- A. A sign or outdoor display or other statement permanently affixed to a licensed premises that is intended to induce the sale of a cannabis product produced or sold on the premises;
- B. A label affixed to a cannabis product or the covering, wrapper, or container of a cannabis product; or
- C. An editorial or other material printed in a publication when the publication of the editorial or material was not paid for by a licensee and was not intended to promote the sale of cannabis products by a particular brand or company.

CANNABIS: 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:

- 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.

CANNABIS
CONSUMPTION
AREA:

An area where cannabis products may be served and consumed.

CANNABIS
CONSUMPTION
FACILITY:

A facility where cannabis is legally consumed within the facility's boundaries, and includes cannabis consumption lounges, bars, clubs, and restaurants with cannabis-infused edible items.

CANNABIS COURIER:

A person that transports cannabis products to qualified patients, primary caregivers, or reciprocal participants or directly to consumers.

CANNABIS DELIVERY
SERVICE:

The transfer of cannabis and/or cannabis products from a licensed cannabis-related business to consumers over the age of 21.

CANNABIS
DISTRIBUTOR:

A cannabis operator who operates a location or a facility where a person conducts the business of procuring cannabis from permitted cannabis cultivation sites or cannabis manufacturers for sale to permitted cannabis dispensaries, and the inspection, quality assurance, batch testing, storage, labeling, packaging, and other processes prior to transport to permitted cannabis dispensaries.

CANNABIS
ESTABLISHMENT:

Means and includes any of the following:

- A. A cannabis testing laboratory;
- B. A cannabis research laboratory;
- C. A cannabis cultivator;
- D. A cannabis manufacturer;
- E. A cannabis producer;
- F. A cannabis retailer (i.e., dispensary);
- G. An on-site cannabis consumption lounge or club;
- H. A vertically integrated cannabis establishment;

- I. A cannabis producer microbusiness; or
- J. An integrated cannabis microbusiness.

CANNABIS EXCISE TAX: A tax that is imposed on cannabis, which entails both excise taxes enacted by the state as well as excise taxes voted on in a municipality.

CANNABIS EXTRACT: A product obtained by separating resins, tetrahydrocannabinols, or other substances from cannabis by extraction methods approved by the division; and does not include the weight of any other ingredient combined with cannabis extract to prepare topical or oral administrations, food, drink, or another product.

CANNABIS FLOWERS: Only the flowers of a cannabis plant.

CANNABIS

MANUFACTURER:

A person that:

- A. Manufactures cannabis products;
- B. Packages cannabis products;
- C. Has cannabis products tested by a cannabis testing laboratory; or
- D. Purchases, acquires, sells or transports wholesale cannabis products to other cannabis establishments.

CANNABIS PRODUCER: A person that:

- A. Cultivates cannabis plants;
- B. Has unprocessed cannabis products tested by a cannabis testing laboratory;
- C. Transports unprocessed cannabis products only to other cannabis establishments; or
- D. Sells cannabis products wholesale.

CANNABIS PRODUCER

MICROBUSINESS:

A cannabis producer at a single licensed premises that possesses no more than two hundred total mature cannabis plants at any one time.

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

CANNABIS RELATED

BUSINESS:	A facility that is involved in the cultivation, including micro, small, medium, and large-scale processes; manufacturing; processing; distribution; retail sales; on-site consumption and specialized events for the consumption of medical and recreational cannabis and cannabis-infused products.
CANNABIS RESEARCH LABORATORY:	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.
CANNABIS RETAILER:	A person that sells cannabis products to qualified patients, primary caregivers, or reciprocal participants or directly to consumers.
CANNABIS SERVER PERMIT:	An authorization that allows a person to directly offer, sell or serve cannabis or cannabis products as part of commercial cannabis activity in a cannabis consumption area.
CANNABIS SERVER PERMIT EDUCATION PROVIDER:	A person that provides cannabis server education courses and examinations.
CANNABIS TESTING LABORATORY:	A person that samples, collects, and tests cannabis products and transports cannabis products for the purpose of testing.
CANNABIS TRAINING AND EDUCATION PROGRAM:	A practical or academic curriculum offered by a New Mexico public post-secondary educational institution designed to prepare students for participation in the cannabis industry.
CERTIFICATE OF OCCUPANCY:	A certificate issued to the property owner by the building official or other designated city official, evidencing the fact that the requirements of applicable codes and ordinances have been met.
COMMERCIAL CANNABIS ACTIVITY:	The cultivation, production, possession, manufacture, storage, testing, researching, labeling, transportation, couriering, purchase for resale, sale, or consignment of cannabis products; and 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.
CONSUMER:	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.

CONTAMINANT: Pesticides and other foreign material, such as hair, insects, or other similar adulterants, in harvested cannabis.

CONTROLLING PERSON: A person that controls a financial or voting interest of ten percent or more of, or an officer or board member of, a cannabis establishment; and does not include a bank or licensed lending institution.

CULTIVATION: Any activity involving the planting, growing, harvesting, drying, curing, grading, or trimming of cannabis.

DEPARTMENT: The regulation and licensing department of the State of New Mexico.

DIRECTOR: The director of the cannabis control division.

DISTRIBUTION: The procurement, sale and transport of cannabis or cannabis products between cannabis businesses.

DIVISION: The cannabis control division of the department.

DRY WEIGHT BASIS: When used in the context of regulation of commercial cannabis activity, a process by which delta-9-tetrahydrocannabinol concentration is measured relative to the aggregate weight of all parts of the plant genus cannabis, whether growing or not, including the leaves of the plant, the flowers and buds of the plant, the seeds of the plant, the resin of the plant and the stalks of the plant at the point of harvest by a licensee and with no moisture added to the harvested plant.

ESTABLISHMENT: A cannabis producer microbusiness; or an integrated cannabis microbusiness.

FACILITY: A building, space or grounds licensed for the production, possession, testing, manufacturing or distribution of cannabis, cannabis extracts or cannabis products.

FINANCIAL CONSIDERATION: Value that is given or received, directly or indirectly, through sales, barter, trade, fees, charges, dues, contributions, or donations.

HOMEGROWN OR HOMEMADE: Grown or made for purposes that are not dependent or conditioned upon the provision or receipt of financial consideration.

HOUSEHOLD: A housing unit and includes any place in or around the housing unit at which an occupant of the housing unit produces, manufactures, keeps, or stores homegrown cannabis or homemade cannabis products.

IMMATURE CANNABIS PLANT: A cannabis plant that has no observable flowers or buds.

INDUSTRY STANDARDS: The prevailing customary standards of business practice in the cannabis industry in jurisdictions within the United States.

INTEGRATED CANNABIS

- MICROBUSINESS:** A person that is authorized to conduct one or more of the following:
- A. 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;
 - B. Manufacture of cannabis products at a single licensed premises;
 - C. Sales and transportation of only cannabis products produced or manufactured by that person;
 - D. Operation of only one retail establishment; and
 - E. Couriering of cannabis products to qualified patients, primary caregivers, or reciprocal participants or directly to consumers.

- LICENSED PREMISES:** A location that includes:
- A. All enclosed public and private areas at the location that are used in the business and includes offices, kitchens, restrooms and storerooms;
 - B. 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
 - C. 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.

LOCAL JURISDICTION: A municipality, home rule municipality, or county.

MANUFACTURE: To compound, blend, extract, infuse, package, or otherwise prepare a cannabis product.

MATURE CANNABIS PLANT: A cannabis plant that has flowered and has buds that are observable by unaided visual examination.

MEDICAL CANNABIS: Cannabis products used by a qualified patient or reciprocal participant in accordance with the Lynn and Erin Compassionate Use Act.

MEDICAL CANNABIS PROGRAM: The program created pursuant to the Lynn and Erin Compassionate Use Act.

MEDICAL CANNABIS

REGISTRY: The system by which the department of health approves or denies applications and issues and renews registry identification cards for qualified patients.

PRIMARY CAREGIVER: A resident of New Mexico who is at least eighteen years of age and who is responsible for managing the well-being of a qualified patient with respect to the medical use of cannabis pursuant to the Lynn and Erin Compassionate Use Act.

PUBLIC PLACE: 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.

QUALIFIED PATIENT: A resident of New Mexico who holds a registry identification card pursuant to the Lynn and Erin Compassionate Use Act.

RECIPROCAL PATIENT: A person who is not a resident of New Mexico and who holds proof of enrollment by a governmental regulatory authority to participate in the medical cannabis program of another state of the United States, the District of Columbia or a territory or commonwealth of the United States in which the person resides or a person who holds proof of enrollment by a governmental regulatory authority of a New Mexico Indian nation, tribe or pueblo to participate in its medical cannabis program.

RETAIL

ESTABLISHMENT: A location at which cannabis products are sold to qualified patients, primary caregivers, and reciprocal participants and directly to consumers.

SPECIAL USE: A use in which a permit must be secured and conditions must be observed to help alleviate potential negative impacts to the area surrounding the site where the use is sought.

SUPERINTENDENT: The superintendent of regulation and licensing.

TRAFFIC: As used in this chapter, the distribution, sale, barter or giving away of cannabis products; or possession with intent to distribute, sell, barter or give away cannabis products.

UNPROCESSED: Unaltered from an original, raw, or natural state.

**VERTICALLY
INTEGRATED CANNABIS**

ESTABLISHMENT: A person that is authorized to act as any of the following:

- A. A cannabis courier;

- B. A cannabis manufacturer;
- C. A cannabis producer; and
- D. A cannabis retailer.

4-7-4: APPLICATION OF THE COMPREHENSIVE CANNABIS ORDINANCE:

- A. All properties within the city limits, whether intended for use for the cultivation, manufacturing, processing, distribution, retail sales, on-site consumption, or specialized events, except that property exempted by law, are governed by the Cannabis Ordinance.
- B. No building or land shall be used, occupied, erected, moved, or altered, for the purposes of cannabis cultivation, manufacturing, processing, distribution, retail sales, on-site consumption, or specialized events unless it complies with the regulations contained within the CCO and specified for the zoning district in which it is located.
- C. Except for the penalties cited in 4-7-8 (PERSONAL POSSESSION AND USE) and 4-7-9 (NON-COMMERCIAL CULTIVATION), all other violations of any other provisions of this chapter are subject to the penalties cited in the City Code.

4-7-5: **FEES:** Application, review, and permit fees are established by the city council pursuant to an approved fee schedule. Such fees may be revised from time to time by a separate resolution by the city council.

4-7-6: **RESERVED**

4-7-7: **RESERVED**

4-7-8: PERSONAL POSSESSION AND USE:

- A. Pursuant to the requirements of the Cannabis Regulation Act (NMSA 1978, § 26-2C-1 *et seq.*), Adults 21 years of age and older may possess a maximum of two ounces of cannabis, a maximum of 16 grams of concentrated cannabis infused products, and a maximum of 800 milligrams of edible cannabis in public places within the City of Artesia. The usage of cannabis and cannabis products is permitted by right at an individual’s dwelling as long as the activity does not endanger others or cause a public nuisance.
- B. It shall be unlawful for any person to smoke, vape, or ingest cannabis products in any public place. A person who violates this subsection shall be subject to a civil penalty of fifty dollars (\$50.00). However, a person less than 18 years of age, the family of a person less than 18 years of age, or a person legally obligated to care for and support a person less than 18 years of age who is subject to the fines pursuant to this subsection shall not be required to pay any fees or fines pursuant to the Cannabis Regulation Act.
- C. Unless otherwise allowed in the Cannabis Regulation Act or the Lynn and Erin Compassionate Use Act, it shall be unlawful:

1. To possess or intentionally distribute any amount of a cannabis product on the premises of a school or daycare center unless the person is a qualified patient, a primary caregiver, or a reciprocal participant; provided that this section shall not apply to a person who possesses a cannabis product for authorized purposes on the premises of a licensed cannabis training and education program. A person who violates this subsection is guilty of a misdemeanor.

2. For any person under 21 years of age to possess, consume, or obtain cannabis. A person who violates this subsection is guilty of a civil violation and shall be subject to attendance at a four-hour evidence-based drug education and legal rights program at no cost to the person, or four-hours of community service.

3. For any individual 21 years of age or older to possess in any public place cannabis or any cannabis product in excess of those amounts permitted by the Cannabis Regulation Act. A person who violates this subsection with respect to more than two ounces but not more than eight ounces of cannabis, more than 16 grams but not more than 64 grams of cannabis extract, or more than 800 milligrams but not more than 3,200 milligrams of edible cannabis is guilty of a misdemeanor; or with respect to more than eight ounces of cannabis, more than 64 grams of cannabis extract, or more than 3,200 milligrams of edible cannabis is guilty of a fourth degree felony.

4-7-9: NON-COMMERCIAL CULTIVATION:

- A. Pursuant to the Cannabis Regulation Act, an individual may cultivate homegrown cannabis provided that the cannabis producer acts within the regulations of the Act. The Act limits home cultivation to a maximum of six mature and six immature cannabis plants with a maximum allowance of 12 plants per household. All cannabis cultivation shall be conducted only in the interior of an enclosed structure, facility, building, or greenhouse, within the City of Artesia. All non-commercial cannabis cultivation operations, including all cannabis plants, at any stage of growth, harvest, or processing, shall not be visible from the exterior of any structure, facility, building, or greenhouse, within the city limits. All cultivation operations must take place indoors, within a permanent structure that is enclosed on all sides. Outdoor cultivation is prohibited within city limits. Portable greenhouses, hoop houses, and/or non-permanent enclosures shall not be used for cannabis cultivation unless they are placed inside a permanent structure that is enclosed on all sides. Construction or installation of any type of accessory structure, including any greenhouse for at-home cannabis cultivation, requires a permit from the City of Artesia's community development department.
- B. It shall be unlawful for any person who is less than twenty-one years of age to intentionally produce cannabis. A person who is less than 18 years of age who violates this subsection is guilty of a civil violation and shall be subject to attendance at a four-hour evidence-based drug education and legal rights program at no cost to the minor, or four hours of community service. A person who is 18 years of age or older but less than 21 years of age who violates this subsection with respect to producing up to six mature or immature cannabis plants shall be issued a penalty assessment and is subject to a fine of fifty dollars (\$50.00); or with respect to producing more than six mature or immature cannabis plants and up to 12 mature or immature cannabis plants is guilty of a misdemeanor; or with respect to more than 12 mature or immature cannabis plants is guilty of a fourth degree felony.

- C. It shall be unlawful for any person 21 years of age or older, unless licensed under the Cannabis Regulation Act and permitted as required by this chapter, to intentionally produce cannabis or any cannabis product in excess of those amounts permitted by the Cannabis Regulation Act. A person who violates this subsection with respect to producing more than six mature or six immature and up to 12 mature or immature cannabis plants shall be issued a penalty assessment and is subject to a fine of fifty dollars (\$50.00). A person who violates this subsection with respect to producing more than 12 mature or immature cannabis plants is guilty of a fourth degree felony.

4-7-10: **RESERVED**

4-7-11: **ZONING AND DEVELOPMENT REQUIREMENTS:**

- A. To protect the health, safety and welfare of the City of Artesia’s residents and visitors while simultaneously allowing accessibility for cannabis sales, all cannabis retail establishments (including medical and recreational cannabis, and cannabis-infused products) shall be located in a “C” Business district or an “M-1” Light industrial district. The C district is the most geographically prominent commercial district in the City of Artesia and is located throughout the city along collector and arterial streets. The uses permitted in the C district are also permitted in the M-1 district. Further restrictions on the locations of cannabis retail establishments are specified in 4-7-15 (PROHIBITED DISTRICTS) and 4-7-16 (PROHIBITED LOCATIONS AND ACTIVITIES) of this chapter. Additionally, cannabis retail establishments require a special use permit. Along with the requirements of 9-5-1 of the City Code (SPECIAL USE PERMIT PROCEDURE), the requirements for a cannabis-related special use permit are outlined in 4-7-17 (SPECIAL USE PERMIT REQUIREMENTS) of this chapter.
- B. To further protect the health, safety and welfare of the City of Artesia’s residents and visitors while simultaneously allowing accessibility for cannabis cultivation, manufacturing, processing, distribution, testing, and researching, as well as to provide additional opportunities for cannabis sales (including medical and recreational cannabis, and cannabis-infused products), all cannabis cultivation, manufacturing, processing, distribution, testing, and researching shall be located in an “M-1” Light industrial district. The M-1 district is the most geographically prominent industrial district in the City of Artesia. Further restrictions on the locations of cannabis cultivation, manufacturing, processing, distribution, testing, and researching are specified in 4-7-15 (PROHIBITED DISTRICTS) and 4-7-16 (PROHIBITED LOCATIONS AND ACTIVITIES) of this chapter. Additionally, cannabis retail establishments, cultivation, manufacturing, processing, distribution, testing, and researching require a special use permit. Along with the requirements of 9-5-1 of the City Code (SPECIAL USE PERMIT PROCEDURE), the requirements for a cannabis-related special use permit are outlined in 4-7-17 (SPECIAL USE PERMIT REQUIREMENTS) of this chapter.

4-7-12: **PROHIBITED DISTRICTS:** To protect the health, safety and welfare of the City of Artesia’s residents and visitors, all cannabis retail establishments, cultivation, manufacturing, processing, and distribution, shall be prohibited within the city’s established special districts and locations as follows:

- A. Artesia Arts and Cultural District: The Artesia Arts and Cultural District is generally bounded by Texas Avenue on the north, Richardson Avenue on the south, 1st Street on the east, and 7th Street on the west. The city and community leaders are careful to consider potential impacts to

the Artesia Arts and Cultural District and strive to honor the community's past efforts to preserve its historic character, as well as acknowledge how its character contributes to the economic and cultural welfare of the city. Additionally, many of Artesia's major landmarks and murals which draw much of the city's tourism are located in the Artesia Arts and Cultural District. Boundaries of the Artesia Arts and Cultural District are subject to change; therefore, it is the responsibility of the applicant for a cannabis regulatory permit to verify the site location for a proposed cannabis establishment prior to applying for a regulatory permit.

4-7-13: PROHIBITED LOCATIONS AND ACTIVITIES:

- A. To protect the health, safety, and welfare of the community's most vulnerable populations, particularly children, seniors, and individuals who struggle with neurochemical dependencies, no cannabis-related businesses shall be permitted:
 - 1. Within 300 feet of all schools, daycare centers, parks, churches, recreation facilities, federal training facilities, senior care facilities, retirement facilities and medical facilities (including but not limited to outpatient facilities, hospitals, and urgent care facilities). Cannabis-related businesses shall not be permitted within 300 feet of any mental health centers, addiction centers, or rehabilitation facilities (both medical and non-medical facilities).
 - 2. Within 300 feet of any residential dwelling unit, including manufactured homes, mobile homes, and recreational vehicles within a recreational vehicle park or recreational vehicle subdivision, as measured from the nearest outside wall of the cannabis-related business to the nearest outside wall of the dwelling unit.
- B. Cannabis-related businesses must maintain a reasonable separation distance of at least one-quarter (1/4) mile (1,320 feet) from one cannabis-related business to another as measured from the nearest outside wall to outside wall of the buildings.
- C. Cannabis-related retail establishments are limited to the hours of operation from 8:00AM through 8:00PM.
- D. Cannabis consumption areas and facilities and cannabis-related special events are prohibited within the City of Artesia.
- E. Unless otherwise provided in the Cannabis Regulation Act or the Lynn and Erin Compassionate Use Act, it is unlawful for a person without a license to intentionally traffic cannabis products. A person under 18 years of age who violates this subsection shall be subject to attendance at a four-hour evidence-based drug education and legal rights program at no cost to the person, or four hours of community service. Except as otherwise provided in the Cannabis Regulation Act, a person 18 years of age or older who violates this subsection is guilty of a misdemeanor; a person 18 years of age or older who violates this subsection with respect to conducting unlicensed cannabis product sales from a building, room or other area open to the public in a manner that would lead a reasonable person to believe that the area is a cannabis establishment licensed pursuant to the Cannabis Regulation Act is guilty of a fourth degree felony.
- F. It is unlawful for a person to manufacture cannabis extract without a license issued pursuant to the Cannabis Regulation Act unless the person produces and manufactures cannabis extract

from homegrown cannabis using nonvolatile solvents, alcohol or carbon dioxide, or no solvents. The use of any other solvent or process is expressly prohibited unless it is approved by the Cannabis Control Division of the Regulation and Licensing Department of the State of New Mexico. A person who violates this subsection is guilty of a fourth degree felony.

4-7-14: SPECIAL USE PERMIT REQUIREMENTS:

- A. Special use permit (SUP): A special use permit allows property owners to utilize their properties for uses not listed as being permitted or allowable by right under the site’s current zoning district designation. To receive a required SUP for a cannabis-related business activity listed in 4-7-11, applicants must adhere to the City of Artesia’s requirements listed below. SUPs for cannabis-related businesses correspond to the facility’s location. These permits are applicable at the designated site of the cannabis-related business and cannot be transferred if the business chooses to change locations within the City of Artesia. SUPs for all cannabis-related businesses or establishments may not be transferred, sold, assigned, or bequeathed expressly or by operation of law. Any attempt to directly or indirectly transfer a cannabis business SUP shall be unlawful and void and shall automatically revoke the permit.

- B. Land development and construction regulatory permits: In addition to receiving a city business license and any required state license for cannabis-related businesses, regulatory permits are required for the development of cannabis-related businesses and shall correspond to the facility’s location. These permits are applicable at the designated site of the cannabis-related business and cannot be transferred if the business chooses to change locations within the City of Artesia. These regulatory permits contain specific requirements and conditions of approval which may include, but are not limited to:
 - 1. A demolition permit;
 - 2. A clearing and grading permit;
 - 3. A site development permit;
 - 4. A building permit;
 - 5. Electrical, plumbing, and HVAC permits;
 - 6. A street encroachment permit; and
 - 7. A sign permit.

- C. Site plan: All cannabis-related businesses shall submit a scaled site plan that includes, but is not limited to, property lines, setbacks, existing conditions (buildings/structures, fences/walls, signs, etc.), proposed conditions (buildings/structures, fences/walls, signs, etc.), parking plans, and adjacent easements, to the community development department.

- D. Floor plan: All cannabis-related businesses shall submit a scaled floor plan that shows how each part of each building will be utilized (customer access areas, offices, employee access only areas, secured product storage areas, other storage areas, restrooms, cultivation areas, manufacturing and processing areas, testing and research areas, equipment areas, loading areas, etc.), to the community development department.

- E. Site security plan: The City of Artesia requires all cannabis-related businesses provide a detailed assessment regarding the facility’s existing or planned security measures, unique considerations

for the facility, and the facility's corresponding level of risk to ensure the protection of the facility and the surrounding community from potential criminal activity, such as theft.

- F. Operational plan: All cannabis-related businesses shall submit an operational plan, including the business's objectives, goals, procedures, and timelines for a one-year period. Type of equipment, chemicals and other materials proposed to be used shall be listed in the operational plan.
- G. Green waste disposal plan: A green waste disposal plan is required for all cannabis-related businesses that will require the disposal of cannabis trimmings, cuts, and green waste to ensure cannabis products are properly disposed and do not contribute to the deterioration of the environment from materializing in landfills.
- H. Air quality control plan: All cannabis-related businesses shall submit an air quality control plan to ensure the cannabis facility does not yield decreased air and environmental quality.
- I. Odor control plan: The cannabis plant has been known to emit noxious odors which are subject to abatement through Title 5, Chapter 1, Article F (NUISANCES) of the City Code. In congruence with City Code, the chief of police and the code enforcement officer are authorized to abate any nuisance existing within the city. In addition to an air quality control plan, all cannabis-related businesses shall be required to submit an odor control plan to ensure cannabis facilities do not yield negative externalities to the surrounding community with cannabis odors.
- J. Water reclamation plan: All cannabis-related businesses that handle water contaminated by cannabis and cannabis products shall submit a water reclamation plan to ensure water within the City of Artesia is not contaminated.
- K. Effluent disposal area plan: All cannabis-related businesses that dispose of water used on cannabis flowers and cannabis products shall submit an effluent disposal area plan showing the locations of existing or proposed wastewater management systems and effluent disposal areas, the locations of any contamination, and the location and dimensions of all effluent lines, effluent disposal methods, water pipes and drainage lines.

4-7-15: **COMPLIANCE WITH LAWS:** It is the responsibility of the owners and operators of the cannabis-related business to ensure that it is always operating in a manner compliant with all applicable state and local laws, and any regulations promulgated thereunder, and any specific additional operating procedures or requirements which may be imposed as conditions of approval of the cannabis business permit. Nothing in this chapter shall be construed as authorizing any actions which violate federal, state, or local law with respect to the operation of a cannabis business.

4-7-16: **PRODUCTION AND MANUFACTURING COMPLIANCE:** All cannabis manufacturing and production shall be conducted only in the interior of enclosed structures, facilities, and buildings within the City of Artesia's M-1 district. All manufacturing and production shall take place indoors, within a permanent structure that is enclosed on all sides. Outdoor manufacturing and production are prohibited within the city limits.

4-7-17: **RESERVED**

4-7-18: **RESERVED**

4-7-19: **NONCONFORMING USES:**

A. Purpose: The purpose of this article is to provide for the regulation of nonconforming cannabis establishments and to specify those circumstances under which these establishments shall be allowed to continue to operate as legal nonconforming uses. Title 9, Chapter 6 of the City Code (NONCONFORMING USES) also addresses nonconforming uses and applies to cannabis establishments. Where there is a discrepancy between this article and Title 9, Chapter 6 of the City Code, the more restrictive regulations apply.

B. Authority to continue:

1. Any previously permitted cannabis establishment and/or cannabis related use, including medical dispensaries and retail cannabis establishments, that existed lawfully, prior to the effective date of this chapter, may continue to operate as that same use, as it did prior to becoming nonconforming, subject to the rules, regulations, and restrictions listed below.

2. Notwithstanding the above paragraph, no nonconforming medical dispensary shall be permitted to engage in retail recreational sales unless the dispensary complies with the requirements of this chapter, including the requirements to obtain a zone change, SUP, city regulatory permit, and all other applicable permits hereunder.

C. Restrictions: Any nonconforming cannabis establishment or use existing as of the effective date of this chapter that does not conform to the regulations of the zoning district(s) established by this chapter, shall be subject to the following:

1. Repairs and alterations. Ordinary cosmetic repairs may be made to a building or structure devoted to or designed for a cannabis establishment or use not permitted in the zoning district in which it is located. No structural repairs or alterations shall be made in or to such building or structure, except those required by law, or except to alter the design and use of the building or structure to conform to the permitted use regulations of the zoning district in which it is located.

2. Additions and enlargements. A building or structure devoted to or designed for a cannabis establishment or use not permitted in the zoning district in which it is located shall not have additions or enlargements made to it in any way other than to bring such building or structure into compliance with the permitted use(s) of the zoning district in which it is located.

3. Restoration as a result of damages. A building or structure devoted to or designed for a cannabis establishment or use not permitted in the zoning district in which it is located that is damaged or destroyed by any means, and where the cost of the repairs exceeds 50% or more of its replacement value, shall not be restored except if such restoration results in a building, structure, or sign devoted to or designed for a use that conforms to the regulations of the zoning district in which it is located.

4. Discontinuance of a nonconforming use. In the event that a nonconforming use of a building, structure, premises, sign, or parts thereof is discontinued for any reason for a period of six months or longer, and such nonconforming use is changed to or replaced by a use conforming to

the zoning district in which it is located, such building, structure, premises, sign, or parts thereof shall not thereafter be used or occupied by a nonconforming use, even though the building, structure, sign, premises, or parts thereof may have been originally constructed for the prior nonconforming use.

5. Vacant nonconforming use. In the event the building, structure, sign, or premises of a nonconforming use have sat vacant for a period of six months or longer, any use brought into said building, structure or premises shall be a use conforming to the regulations of the zoning district in which it is located, and all requirements of the zoning ordinance shall be met before the new permitted use is allowed to operate, including the most current requirements for parking, landscaping, and general zoning and building guidelines as set forth in this and other ordinances.

4-7-20: PREVIOUSLY APPROVED; NON-OPERATIONAL USES:

A. In the event that an application for a medical cannabis establishment (cultivation, processing, manufacturing, distribution, retail sales, etc.) has been approved, and has received a zoning verification letter from the City of Artesia, but has not received a certificate of occupancy (C of O) from the City of Artesia, nor obtained a regulatory permit from the State of New Mexico, such use shall be subject to the following requirements:

1. Cannabis establishments with active building permits are granted a maximum of 6 months from the date of approval of this ordinance to complete construction and obtain a C of O.

2. Prior to issuance of the C of O, the applicant of the previously approved cannabis establishment shall apply for a city regulatory permit and provide all required application materials and pay all required fees.

3. Upon issuance of the C of O, the applicant shall apply for and receive a State of New Mexico regulatory permit.

4. Failure to receive a regulatory permit from the State of New Mexico within six months shall result in revocation of all local permits and approvals, including the C of O for the cannabis establishment.

B. In the event that an application for a medical cannabis establishment (cultivation, processing, manufacturing, distribution, retail sales, etc.) has been approved, and has received a zoning verification letter from the City of Artesia, but has not yet obtained a building permit, or the previously issued building permit has expired without receiving a certificate of occupancy (C of O) from the City of Artesia, the application for such use shall be considered abandoned and the applicant for the cannabis establishment shall be required to reapply for all permits subject to the provisions of this chapter.

4-7-21: RESERVED

SECTION 3. This ordinance is enacted for the purpose of establishing and carrying into effect the powers, duties and privileges conferred upon the City of Artesia in, under and by Act of the New Mexico Statutes Annotated, 1978 together with acts mandatory thereof and supplementary thereto.

SECTION 4. It is not intended by this ordinance to interfere with, repeal, or annul any ordinance, rules, regulations, or permits previously adopted or issued, which is not in conflict with any of the provisions of this ordinance, or which shall be adopted or issued pursuant to law relating to the use of buildings or premises, and is not in conflict with this ordinance. Nor is it intended to interfere with or repeal, or annul any easements, covenants, or other agreements, except that in the event of a conflict, this ordinance shall control.

SECTION 5. If any paragraph, clause, or provision of this ordinance for any reason shall be held to be invalid or unenforceable, the invalidity or unenforceability of such article, section, paragraph, clause, or provision shall not affect any other part of this ordinance.

SECTION 6. This ordinance shall be effective after five (5) days following its publication as required by law.

PASSED, ADOPTED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF ARTESIA, NEW MEXICO, this 14th day of September 2021.

CITY OF ARTESIA, NEW MEXICO

Raye Miller, Mayor

ATTEST:

Aubrey Hobson, Clerk Treasurer