

**VILLAGE OF TULAROSA
ORDINANCE NO. 278**

AN ORDINANCE RELATING TO THE REGULATION OF CANNABIS AND CANNABIS ESTABLISHMENTS IN ACCORDANCE WITH THE CANNABIS REGULATION ACT ADOPTING A NEW TITLE IX CHAPTER 97 OF THE TULAROSA CODE OF ORDINANCES; SETTING FORTH DEFINITIONS AND RULES OF CONSTRUCTION; PROHIBITING CANNABIS USE ON PUBLIC PROPERTY, PUBLIC PLACES AND OPEN SPACES; PROVIDING FOR THE LICENSURE OF CANNABIS ESTABLISHMENTS; REGULATING THE LOCATION OF CANNABIS ESTABLISHMENTS; PROHIBITING THE SMOKING OF CANNABIS OR CANNABIS PRODUCTS IN PUBLIC SPACES; PROVIDING FOR ENFORCEMENT AND PENALTIES FOR VIOLATIONS.

NOW, THEREFORE, BE IT ORDAINED BY THE GOVERNING BODY OF THE VILLAGE OF TULAROSA NEW MEXICO, THAT A NEW TITLE IX CHAPTER 97 OF THE TULAROSA CODE OF ORDINANCES IS ADOPTED AS FOLLOWS:

97.01. Scope and Purpose.

The purpose of this Ordinance is to protect and enhance the health, safety and welfare of the community. This Ordinance is enacted to provide for the licensure and reasonable regulation of facilities engaged in the cultivation, production, manufacture, and distribution of cannabis and cannabis products, consistent with the Cannabis Regulation Act, Chapter 2, Law of New Mexico 2021, the Lynn and Erin Compassionate Use Act (Chapter 26, Article 2B, NMSA 1978), and the Dee Johnson Clean Indoor Air Act, Sections 24-16-1 *et seq.*, NMSA 1978. Nothing in this Ordinance is intended nor shall be deemed to promote or condone the cultivation, production, manufacture, transportation, distribution, sale, possession, or use of cannabis or cannabis products in violation of any law, whether federal, state or local.

97.02. Construction.

This Ordinance shall be construed in accordance with the definitions, authority, restrictions, and substantive provisions of the Cannabis Regulation Act and the Dee Johnson Clean Indoor Air Act.

97.03. Definitions.

The following terms as used in this Ordinance shall have the meanings stated, unless a different meaning is clearly required by context:

- A. ***Indoor public place*** has the same meaning as prescribed in the Dee Johnson Clean Indoor Air Act, Section 24-16-3 NMSA 1978.

- B. ***Open space*** means any public park, public sidewalk, public walkway, or public pedestrian thoroughfare.
- C. ***Smoke* or *smoking*** means the act of inhaling from, exhaling from, carrying or holding any lighted or heated cannabis, cannabis product or marijuana, whether natural or synthetic.
- D. ***Consume, consuming, or consumption*** means the act of ingesting, inhaling, or otherwise introducing cannabis, cannabis product or marijuana into the human body.
- E. ***Cannabis establishment*** has the meaning set forth in Section 2.E of the Cannabis Regulation Act.

97.04. Licensure and Cannabis Establishment Permit.

- A. A cannabis establishment, before occupying any premises, shall obtain from the Village a cannabis establishment permit for the specific use requested and a business license. An amended cannabis establishment permit shall be required for any change in use related to the cultivation, production, manufacture, distribution, sale, possession, or use of cannabis or cannabis products on the premises. This cannabis establishment permit shall be in addition to and not in lieu of any and all licenses and permits required for such establishment by the State.
- B. Each applicant seeking a cannabis establishment permit shall submit an application to the Village Clerks office. The application fee for an initial cannabis establishment permit shall be Five hundred dollars (\$500.00), which shall not be refundable. Applicant shall state the number of plants to be cultivated, if any. There shall be an additional permit fee of Five Dollars (\$5.00) per plant
- C. A cannabis establishment permit shall be issued for a period of one (1) calendar year from the date of issuance. A cannabis establishment permit shall be renewable for additional periods of no greater than one (1) year each upon application to the Town Administrator's office no more than 30 days before the expiration date of the permit, and no later than the expiration date. The renewal application shall be accompanied by payment of a renewal fee in the amount of Five hundred dollars (\$500.00). There shall be an additional permit fee of Five Dollars (\$5.00) per plant if the permit includes the cultivation of cannabis plants.
- D. The Village Clerk shall require the following information from each applicant:
 - 1. The name, address, and business organization (if any) of the applicant, the location where the proposed cannabis establishment will be located, and the specific cannabis-related use or uses to be transacted.

2. If the applicant is an individual, the residence address of the applicant and the applicant's birth date and social security number.
 3. If the applicant is a partnership, the names, residence addresses, birth dates and social security numbers of all partners.
 4. If the applicant is a limited liability company, the state of organization, the address of a resident agent in New Mexico sufficient for service of process, the name of the managing member with his or her residence address, birth date and social security number, and the name, residence address, birth date and social security number of each member of the company.
 5. If the applicant is a corporation, the state of incorporation, the address of a resident agent in New Mexico sufficient for service of process, and the name, residence address, birth date, and social security number of each officer or director of the corporation.
 6. Prior to the issuance of a cannabis establishment permit, any limited liability company or corporation shall provide to the Administrator a current certificate of good standing.
 7. The applicant shall provide Federal and State tax identification numbers.
 8. Applicants may not have prior convictions which may be substantially related to the qualifications, functions or duties under the Cannabis Regulation Act". This includes felony convictions involving fraud, embezzlement, deceit or one involving a minor in drug sales but does not include any conviction involving possession or sale of cannabis unless a sale was made to a minor.
- E. The Village Clerk shall issue the requested cannabis establishment permit upon the applicant's compliance with all provisions of this Section, and notice from the Village Planning and Zoning Department that the applicant has complied with all land use requirements for the proposed use.
- F. If any person is found to be engaging in the creation or operation of a cannabis establishment in violation of this Section, the cannabis establishment shall be immediately closed upon order of the Mayor or the Police Chief and shall not be reopened until it has been duly permitted in accordance with all Village ordinances and regulations. If such cannabis establishment was created or operated without any cannabis establishment permit from the Village, or in violation of any other provision of this Section 4, then the fee for any permit or permits necessary to bring the cannabis establishment into compliance shall be double the amount of the fee otherwise applicable under this Section.

97.05. Prohibition of Cannabis Use on Public Property.

- A.
 - 1. The cultivation, production, manufacture, storage, distribution or use of cannabis or cannabis products is prohibited on all property that is owned, occupied, controlled, or operated by the Village of Tularosa, except residential units; provided, however, that this prohibition shall not be construed to prevent the transportation of cannabis or cannabis products along or over public rights of way in accordance with the provision of the Cannabis Regulation Act.
 - 2. It is unlawful for any person to smoke or consume cannabis, cannabis products, or marijuana on any property that is owned, occupied, controlled or operated by the Village of Tularosa or in any open space in the Village of Tularosa, except residential units.
 - 3. Residents and occupants of residential units owned or controlled by the Village of Tularosa, and visitors to such units with the permission of the residents or occupants, shall have the same rights to the possession, smoking, ingestion, and other use of cannabis, cannabis products and marijuana within the units as are permitted in Residential zones of the Village, limited to personal consumption and use in accordance with the Cannabis Regulation Act and the Lynn and Erin Compassionate Use Act.
- B. Any person violating any provision of this Section, upon conviction, shall be guilty of a petty misdemeanor and, upon conviction for a first offense, shall be punishable by a fine of no less than fifty dollars (\$50) and no more than one hundred dollars (\$100) or imprisonment for not greater than fifteen (15) days. Any person engaged in such activity in violation of this section, upon conviction for a second offense, shall be punishable by a fine of no less than one hundred dollars (\$100) and no more than five hundred dollars (\$500), or by imprisonment for up to ninety (90) days, or both.

97.06. Land Use Controls.

- A. The cultivation, manufacture or production of cannabis and cannabis products shall be a use by review in the in commercial and industrial zones defined in this code. The cultivation, manufacture and production of cannabis and cannabis products in excess of the amounts permitted for individual personal use by the Cannabis Regulation Act and the Lynn and Erin Compassionate Use Act is prohibited in all other zones. **No water sourced from the Village may be used for growth or cultivation of cannabis in conjunction with any cannabis establishment, cannabis manufacturer, cannabis producer, cannabis producer microbusiness, commercial cannabis activity, integrated cannabis microbusiness, cannabis research laboratory or vertically integrated cannabis establishment.**
- B. The retail sale, distribution, and consumption, including ingestion and smoking, of cannabis, cannabis products and marijuana within a cannabis establishment shall be a use by review in the in commercial and industrial zones defined in this code subject to the following restrictions:

1. No cannabis establishment shall be permitted within a Residential Zone as defined in the Village Code. Cultivation or possession of cannabis for personal use within a Residential zone as defined in this code shall be limited as provided by state law.
 2. The property upon which the cannabis establishment is located shall be a minimum of three hundred (300) feet from any day care, or school use, including institutions used or occupied by day care programs and educational programs for children, that are in existence when the cannabis establishment is first licensed, the distance being measured directly from property line to property line, without regard to the route of normal traffic.
 3. The property upon which the cannabis establishment is located shall be a minimum of nine hundred (900) feet from any other cannabis establishment that is in existence, operational or permitted by the Village when the new cannabis establishment is first licensed, the distance being measure directly from property line to property line, without regard to the route of normal traffic.
 4. Every cannabis establishment shall be constructed and operated in such manner as to prevent the escape of smoke into any indoor public space, any public property of the Village, and any open space, and to prevent the visible smoking, ingestion or consumption of cannabis from any such public space, public property of the Village, or open space.
 5. Each cannabis establishment shall be allowed signage advertising the establishment, which shall be permitted and erected in accordance with provisions involving regulation of all signs as provided in this code. Buildings in which a cannabis establishment is located shall not be painted in garish colors or patterns in any fashion such that the building would serve as a notice or advertisement of the cannabis establishment therein.
 6. Retail sale, distribution, and consumption of cannabis, cannabis products and marijuana in cannabis establishments shall be limited to those hours during which the sale of alcoholic beverages at licensed liquor establishments for on-premises consumption is permitted under the statutes and regulations of the State of New Mexico.
- C. Cannabis establishments are prohibited in all residential zones of the Village, including planned unit developments. The possession, smoking, ingestion, and other use of cannabis, cannabis products and marijuana in such zones shall be limited to personal consumption and use in accordance with the Cannabis Regulation Act and the Lynn and Erin Compassionate Use Act.

97.07. Repeal of Inconsistent Provisions.

All ordinances and sections or parts of ordinances in conflict with the provisions of this Ordinance are hereby repealed only to the extent of such conflict.

97.08. Severability.

In the event that any clause, sentence, paragraph, section, or other portion of this Ordinance is found by any court of competent jurisdiction to be invalid or unenforceable, such invalidity or unenforceability shall not impair the validity and enforceability of the remainder of this Ordinance, which shall continue with full force and effect. The Governing Body hereby declares that it would have adopted each clause, sentence, paragraph, section, or other portion of this Ordinance independently and separately in the absence of any portion of this Ordinance found to be invalid or unenforceable.

97.09. Effective Date.

This Ordinance shall be effective five days after its passage and publication, in accordance with law.

Notice of the adoption of this ordinance shall be made by title and general subject matter.

PASSED, APPROVED AND ADOPTED THIS 16th DAY OF MARCH, 2022, BY THE GOVERNING BODY OF THE VILLAGE OF TULAROSA, NEW MEXICO.

Village of Tularosa



Margaret Trujillo

Mayor

ATTEST:



Rebekah Bryant, Village Clerk