

GRANT COUNTY
ORDINANCE NO. O-21-04
AN ORDINANCE ESTABLISHING LOCAL CANNABIS ZONING REGULATIONS

WHEREAS, the New Mexico Legislature passed the Cannabis Regulation Act (2021 N.M. HB 2) (“Act”), which went into effect on June 29, 2021;

WHEREAS, the Act has authorized a variety of uses related to the medical cannabis program and newly enacted recreational commerce which has the potential to greatly expand the legal cannabis market;

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;

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

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 empowers Grant County to adopt time, place and manner rules relating to cannabis use and operations so long as they are not inconsistent with the Act and the Dee Johnson Clean Indoor Air Act.

NOW THEREFORE, BE IT ORDAINED by the Governing Body of Grant County:

1. Definitions

- a.** “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, 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.
- b.** “Cannabis consumption area” means an area, licensed by the New Mexico Cannabis Control Division, where cannabis products may be served and consumed;

- c. “Cannabis courier” means a person who transports cannabis products to qualified patients, primary caregivers or reciprocal participants or directly to consumers.
- d. “Cannabis establishment” means:
 - i. a cannabis testing laboratory;
 - ii. a cannabis manufacturer;
 - iii. a cannabis producer;
 - iv. a cannabis retailer;
 - v. a cannabis research laboratory;
 - vi. a vertically integrated cannabis establishment;
 - vii. a cannabis producer microbusiness; or
 - viii. an integrated cannabis microbusiness
- e. “Cannabis manufacturer” means a person who:
 - i. manufactures cannabis products;
 - ii. packages cannabis products;
 - iii. has cannabis products tested by a cannabis testing laboratory; or
 - iv. purchases, acquires, sells or transports wholesale cannabis products to other cannabis establishments
- f. “Cannabis producer” means a person who:
 - 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.
- g. “Cannabis product” means a product that is or that contains cannabis or cannabis extract, including edible or topical products that may also contain other ingredients.
- h. “Cannabis research laboratory” means a facility that produces or possesses cannabis products and all parts of the plant genus Cannabis for the purpose of studying cannabis cultivation, characteristics or uses.
- i. “Cannabis retailer” means a person who sells cannabis products to qualified patients, primary caregivers or reciprocal participants or directly to consumers.
- j. “Cannabis testing laboratory” means a person who samples, collects and tests cannabis products and transports cannabis products for the purpose of testing.
- k. “Daycare” means a facility licensed by the State of New Mexico to provide care, services, and supervision to children for fewer than 24-hours a day.

- 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.
- i. “Integrated cannabis microbusiness” means a person who 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.
 - i. “School” means 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 a charter school. Homeschools are regular formal education to children at home or other non-public schools facilities are excluded from the definition of school.
 - i. “Vertically integrated cannabis establishment” means a person who 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.
 - i. “Transects” in the County are depicted in the map attached hereto, and refer to the division of land for use and development purposes under the 2017 Comprehensive Plan as follows:
 - i. Urban: Urban transects include Silver City and other incorporated communities. Lot sizes in urban transects are small block and include mixed land uses and occasionally multi-story buildings. Urban areas usually feature a grid roadway system or a clear hierarchy of roads. Public services are likely to be available.
 - ii. Village: Village transects include distinct but small communities, usually unincorporated, that are recognized as a Census Designated Place. Villages include small-to-medium lots and block size areas and tend to be mostly residential with some locally-owned businesses. Some public services are available.
 - iii. Transitional: Transitional transects are less densely populated areas and located on the edges of urban zones and villages. Transition communities often develop as small housing clusters sometimes near major industrial

areas such as mines. Lot sizes are larger and the roadway network is less dense than urban and village zones. Few public services are available.

- iv. Rural: Rural transects are largely agricultural and often adjacent to natural areas. Individual residential and commercial sites are located together.
- v. Natural: Natural transects include open spaces and undeveloped areas that have been unaltered by humans in a major way. Natural areas are usually federally owned without any services or improvements.

2. Cannabis Zoning.

a. Commercial Zoning.

- i. Cannabis Manufacturers. Facilities and operations where cannabis is manufactured outdoors may only operate in transitional and rural transects. Facilities and operations where cannabis is exclusively manufactured indoors may only operate in village, transitional, and rural transects.
- ii. Outdoor Cannabis Producers. Facilities engaged in outdoor cannabis production may only operate in rural transects within the County.
- iii. Cannabis Producers and Producer Microbusinesses. Cannabis producers and cannabis microbusiness facilities engaged in exclusively indoor operations may only operate in transitional and rural transects within the county.
- iv. Cannabis Retailers. Cannabis retail facilities may only operate in urban, village, transitional, and rural transects.

b. Indoor Cannabis Production and Manufacturing Odors. Cannabis producers and manufacturers that cultivate or manufacture cannabis plants indoors must minimize odorous matter and toxic or noxious matter through the use of techniques mandated by the New Mexico Cannabis Control Division. Should the New Mexico Cannabis Control Division not regulate indoor cannabis odors, cannabis, producers and manufacturers shall adhere to industry standard techniques such as activated carbon filtration and regular maintenance of HVAC systems to minimize odors.

c. Retailer Odor Control. Cannabis retail establishments located in buildings shared with other business operations must minimize the infiltration of the odor of cannabis beyond the confines of the cannabis retail establishment per techniques mandated by the New Mexico Cannabis Control Division. Should the New Mexico Cannabis Control Division not regulate indoor cannabis odors applicable to cannabis retailers, cannabis retailers must adhere to industry standard techniques and regularly maintain all facility HVAC systems.

d. Cannabis Production Odors. In addition to Section 2(b), cannabis producers and manufacturers that cultivate or manufacture cannabis plants must minimize odor production according to industry standard techniques.

3. Cannabis Consumption Areas.

- a.** The smoking of cannabis on non-residential property is prohibited within County limits except in cannabis consumption areas.
- b.** A cannabis consumption area may be located inside any cannabis establishment building; provided, however, that smoking of cannabis products in such consumption areas is only allowed if the cannabis consumption area occupies a standalone building from which smoke does not infiltrate other indoor workplaces or other indoor public places where smoking is otherwise prohibited pursuant to the Dee Johnson Clean Indoor Air Act, NMSA 1978, Chapter 24, Article 16.
- c.** Unless licensed pursuant to the Lynn and Erin Compassionate Use Act, cannabis consumption areas shall be restricted to persons twenty-one years of age and older.

4. Minimum Distances from Schools and Daycare Centers.

- a.** No cannabis establishment or cannabis consumption area may be located within 300 feet of a school or daycare in existence at the time the cannabis establishment or cannabis consumption area became licensed by the New Mexico Cannabis Control Division.
- b.** For purposes of this section, all measurement for determining the location of a cannabis establishment or cannabis consumption area, in relation to schools or daycare centers shall be the shortest direct line between the actual limits of the real property of the school or daycare center and the actual limits of the real property of the proposed cannabis establishment or cannabis consumption area.
- c.** Any cannabis or cannabis consumption area legally existing within the County, by virtue of a license issued by the New Mexico Cannabis Control Division or through the New Mexico Lynn and Erin Compassionate Use Act and substantial investment having been made prior to the effective date of this Ordinance shall not be required to comply with these minimum distance requirements.

5. Hours of Operation.

- a.** Cannabis products may only be served and consumed within cannabis consumption areas between the hours of 7:00 a.m. and 12:00 a.m. Monday through Sunday.
- b.** Cannabis retailers, including vertically integrated cannabis establishments and integrated cannabis microbusinesses involved in retail, may only sell cannabis products between the hours of 7:00 a.m. and 12:00 a.m. Monday through Sunday.

6. **Personal Use Cultivation and Production.** Cannabis cultivation and production for personal use in quantities and as permitted by the Cannabis Regulation Act and Lynn and Erin Compassionate Use Act is allowed anywhere in the County, subject to the following conditions imposed to minimize access to minors to cannabis:
 - a. Any person cultivating or producing cannabis must take reasonable precautions to prevent the theft of any cannabis or cannabis products;
 - b. Any person cultivating or producing cannabis for personal use within a village transection must conduct such activities inside an enclosed and locked dwelling unit or an appropriate accessory structure.
7. **Taxation.** All County ordinances related to the taxation of businesses, establishments, and sales are hereby revoked to the extent that they conflict with the Cannabis Regulation Act and Lynn and Erin Compassionate Use Act.
8. **Business Registration.** All County businesses operating for a profit with a main office or branch within County limits must pay a business registration fee pursuant to County Ordinance Section 87-3-11(5) and adhere to all applicable application and renewal obligations provided in Section 87-3-11.
9. **Enforcement.** The provisions of this Ordinance shall be enforced by the County's Code Enforcement Officer or a law enforcement officer tasked with enforcing the County's Code.
10. **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 \$300 or thirty (30) days in jail or both. Each day during the time in which a violation occurs shall be deemed a separate violation. Nothing herein shall prevent the County from seeking injunctive relief, if appropriate.
11. **Authority.** This Ordinance shall become effective immediately pursuant to the statutory authority provided to the Grant County Board of Commissioners' authority to take emergency action to protect against the immediate danger to the public health, safety and welfare of the county or to ordinances pursuant to NMSA 1978, Section 4-37-7(C) (2003). *See NMSA 1978, § 4-37-1- to – 4-37- 13 (1981).*
12. **Repealer.** All County Ordinances or Resolutions inconsistent with this Ordinance are hereby repealed.

PASSED, APPROVED, AND ADOPTED by the Governing Body of Grant County, New Mexico, this _____ day of _____, 2021.

**BOARD OF COUNTY COMMISSIONERS
GRANT COUNTY, NEW MEXICO:**

[SEAL]

Chris Ponce, District 1

Javier Salas, District 2

Alicia Edwards, District 3

Gerald W. Billings, Jr., District 4

Harry Browne, District 5

Marisa Castrillo, County Clerk

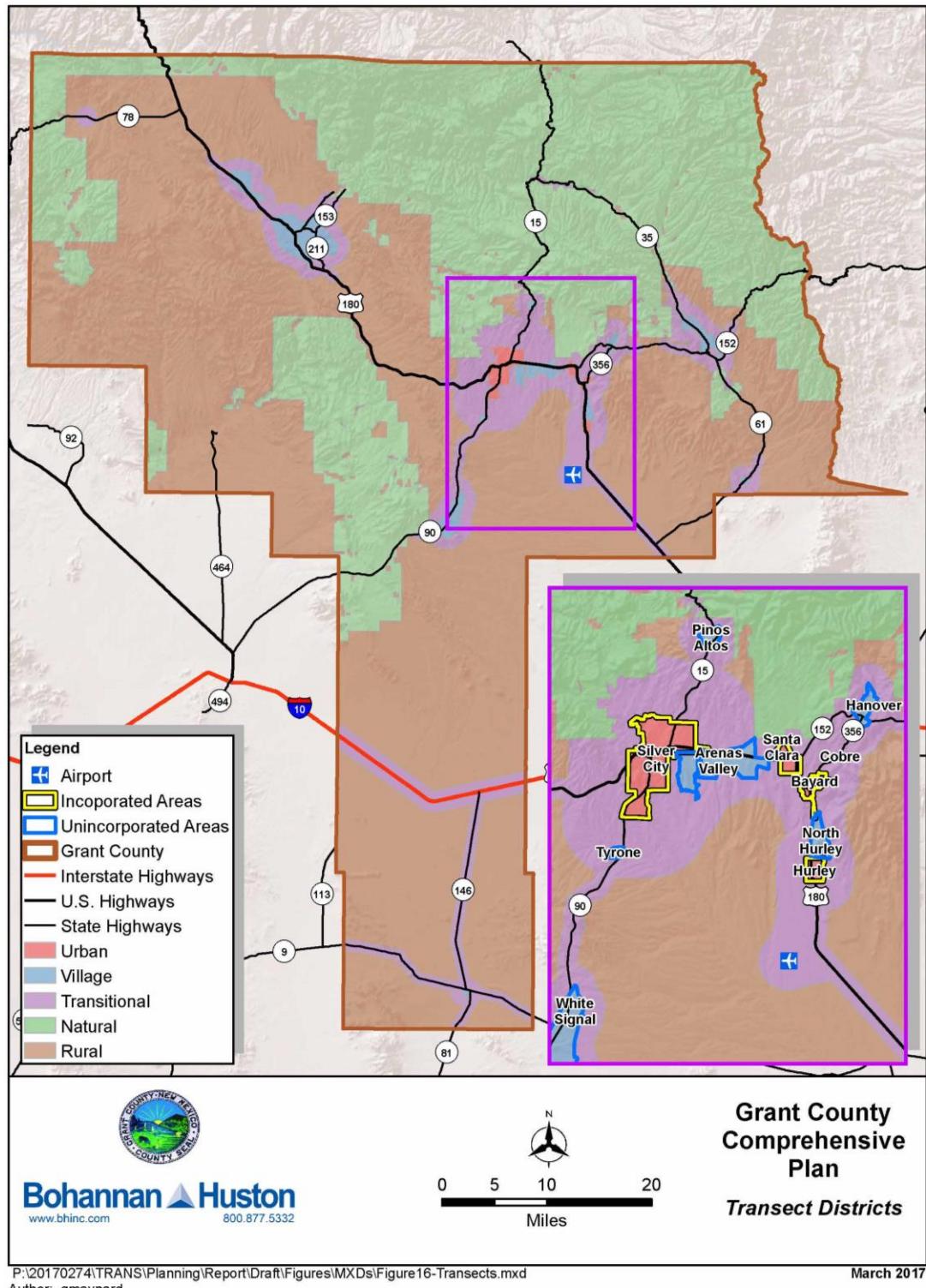


FIGURE 11 - MAP OF GRANT COUNTY TRANSECT DISTRICTS