

TOWN OF
TATUM
ORDINANCE
NO. 003-2122

AN ORDINANCE ADOPTING CHAPTER 1 OF THE TATUM MUNICIPAL
CODE FOR THE POSSESSION, CULTIVATION, MANUFACTURE AND SALE OF
CANNABIS

WHEREAS, during the 2021 First Special Session of the 55th Legislature, the New Mexico Legislature adopted House Bill (H.B.) 2, now codified as the Cannabis Regulation Act (NMSA 1978, §§ 26-2C-1 through 26-2C-42), which established a comprehensive regulatory framework for possession, cultivation, manufacture, and sale of cannabis and cannabis-derived products; and

WHEREAS, on August 24, 2021, the New Mexico Regulation & Licensing Department, Cannabis Control Division published rules “to ensure the safe production, testing, sale, and consumption of commercial and medical cannabis”; and

WHEREAS, the Cannabis Regulation Act provides that local government may adopt time, place, and manner rules that comply with the Cannabis Regulation Act, the Dee Johnson Clean Indoor Air Act and reasonably limit density of licenses, permissible consumption areas, and operating hours; and

WHEREAS, the Town of Tatum chooses to exercise the authority granted to it by the Cannabis Regulation Act to control and restrict the cultivation, manufacture and sale of cannabis and cannabis-derived products which shall be consistent with the provisions of the Cannabis Regulation Act and the Dee Johnson Clean Indoor Air Act.

NOW THEREFORE, BE IT ORDAINED BY THE GOVERNING BODY OF THE TOWN OF TATUM, NEW MEXICO, that Chapter 5.06, is hereby adopted as more specifically described as follows:

POSSESSION, CULTIVATION, MANUFACTURE AND SALE OF CANNABIS

Title and purpose.

This chapter may be cited as the “Cannabis Regulation Ordinance.” This Cannabis Regulation Ordinance is set forth to help ensure the safe production, testing, sale, and consumption of commercial and medical cannabis following appropriate time, place, and manner rules for the cultivation, manufacture, and sale of cannabis and cannabis-derived products.

Definitions.

Unless otherwise defined below, terms used in the Cannabis Regulation Ordinance shall have the same meanings as set forth in the Cannabis Regulation Act (NMSA 1978, Section 26-2C-1, et seq.) and the Lynn and Erin Compassionate Use Act. The following terms shall have the meanings respectively ascribed to them by this subsection:

“Applicant” means any person who is seeking to become licensed pursuant to the Cannabis Regulation Act, the Lynn and Erin Compassionate Use Act, or rules adopted by the New Mexico Regulation and Licensing Department and who is seeking to establish a cannabis establishment within the municipal boundaries of Tatum, New Mexico.

"Cannabis" means all parts of the plant genus Cannabis containing 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:

1. 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
2. the weight of any other ingredient combined with cannabis to prepare topical or oral administrations, food, drink or another product.

“Cannabis consumption area” means an area where cannabis products may be served and consumed.

"Cannabis establishment" means:

1. a cannabis testing laboratory;
2. a cannabis manufacturer;
3. a cannabis producer;
4. a cannabis retailer;
5. a cannabis research laboratory;

6. a vertically integrated cannabis establishment;
7. a cannabis producer microbusiness; or
8. an integrated cannabis microbusiness.

"Cannabis extract" means 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 manufacturer" means a person that:

1. manufactures cannabis products;
2. packages cannabis products; and
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 producer" means a person that:

1. cultivates cannabis plants;
2. has unprocessed cannabis products tested by a cannabis testing laboratory;
3. transports unprocessed cannabis products only to other cannabis establishments; or
4. sells cannabis products wholesale.

"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.

"Cannabis product" means a product that contains cannabis or cannabis extract, including edible or topical products that may also contain other ingredients.

"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.

"Cannabis retailer" means a person that sells cannabis products to qualified patients, primary caregivers or reciprocal participants or directly to consumers.

"Cannabis testing laboratory" means a person that samples, collects and tests cannabis products and transports cannabis products for the purpose of testing.

"Cannabis waste" means all parts of the genus Cannabis which may or may not contain 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 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 which has been designated as no longer usable cannabis.

"Commercial cannabis activity" means the cultivation, production, possession, manufacture, storage, testing, researching, labeling, transportation, couriering, purchase for resale, and sale or consignment of cannabis products and does not include activities related only to the medical cannabis program.

"Consumer" means 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.

"Cultivation" means any activity involving the planting, growing, harvesting, drying, curing, grading or trimming of cannabis.

"Department" means the regulation and licensing department of the State of New Mexico.

"Director" means the executive director of the cannabis control division.

"Division" means the cannabis control division of the department.

"Facility" means a building, space or grounds licensed for the production, possession, testing, manufacturing or distribution of cannabis, cannabis extracts or cannabis products.

"Integrated cannabis microbusiness" means a person that is authorized to conduct one or more of the following:

1. 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;
2. manufacture of cannabis products at a single licensed premises;
3. sales and transportation of only cannabis products produced or manufactured by that person;
4. operation of only one retail establishment; and
5. couriering of cannabis products to qualified patients, primary caregivers or reciprocal participants or directly to customers.

"Law enforcement" means the TATUM Police Department, the divisions of the TATUM Police Department, and the individual officers and enforcement personnel of the TATUM Police Department.

"Licensed premises" means a location that is licensed pursuant to the Cannabis Regulation Act and includes:

1. all enclosed public and private areas at the location that are used in the business and includes offices, kitchens, restrooms and storerooms;
2. all areas outside of a building specifically included in the license for the production, manufacturing, wholesale or retail sale of cannabis products; and
3. with respect to a location 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.

"Licensee" means any person who holds a license issued by the division pursuant to the Cannabis Regulation Act, the Lynn and Erin Compassionate Use Act, or division rules.

"Limited-access area" means an indoor or outdoor area on the premises of a licensed cannabis establishment where cannabis products are cultivated, stored or held, weighed, packaged, manufactured, disposed or wasted, all point-of-sale (POS) areas, and any room or area storing a digital video surveillance system storage device.

"Manufacture" means to compound, blend, extract, infuse, package or otherwise prepare a cannabis product.

"Person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, or any other legal or commercial entity.

"Produce" means to engage in any activity related to the planting or cultivation of cannabis.

"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.

"Retail establishment" means a location at which cannabis products are sold to qualified patients, primary caregivers and reciprocal participants and directly to consumers.

"Security alarm system" means any device or series of devices capable of alerting law enforcement, including, but not limited to, a signal system interconnected with a radio frequency method such as cellular, private radio signals, or other mechanical or electronic device used to detect or report an emergency or unauthorized intrusion.

"Vertically integrated cannabis establishment" means a person that is authorized to act as any of the following:

1. A cannabis courier;

2. A cannabis manufacturer;
3. A cannabis producer; and
4. A cannabis retailer.

“Waste” or “wastage” means the process of rendering cannabis or cannabis products unusable and unrecognizable, including the destruction of cannabis or cannabis products.

Enforcement of federal law.

The activities described in the Cannabis Regulation Act, the Lynn and Erin Compassionate Use Act, the rules and regulations authorized by the division, and this Cannabis Regulation Ordinance may be considered a violation of federal law. Persons cultivating, manufacturing, collecting samples of, testing, selling, purchasing or otherwise receiving cannabis or cannabis products may be subject to federal prosecution and penalties for what may otherwise be considered authorized conduct in the State of New Mexico, and compliance with the rule does not exempt licensees, their employees or customers from possible federal prosecution. The Town of Tatum is not responsible or liable for the actions of licensed cannabis establishments under the Cannabis Regulation Act, the Lynn and Erin Compassionate use Act, or the rules and regulations authorized by the division. It should be expressly understood that 21 U.S.C. § 841(a) likely prohibits law enforcement, including any jail staff, from returning any controlled substance back to an alleged offender once the same is placed in the possession of law enforcement, including any jail staff, for any reason.

Use or possession – restrictions.

- A. It shall be a violation of the Cannabis Regulation Ordinance 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 section is guilty of a misdemeanor and shall be sentenced pursuant to the provisions of NMSA 1978, Section 31-19-1.
- B. It shall be a violation of the Cannabis Regulation Ordinance to consume a cannabis product in any public place except on private property or in a licensed cannabis consumption area. A person who violates this subsection shall be subject to a penalty assessment of five hundred dollars (\$500.00) 1st Offense, one thousand dollars (\$1,000) 2nd Offense, and one thousand five hundred (\$1,500) 3rd Offense, pursuant to NMSA 1978, Section 31-19A-1.

Cannabis establishments and licensees – restrictions.

- A. To protect the health, safety, and welfare of the community, only 3 cannabis retail establishments and 3 brick and mortar, standalone indoor grow facilities shall be

permitted.

- B. To protect the health, safety and welfare of the community, cannabis outdoor, hoop house or temporary structures will not be permitted within city limits. Any cannabis establishment is required to be a brick & mortar or a standalone building. Cannabis establishment must possess a heating, cooling and ventilation system, that is sufficient to abate odor and prevent odor from escaping the establishment.
- C. To protect the health, safety and welfare of the community, cannabis establishments shall not be permitted within 300 feet of all school property and all daycare center property.
- D. To protect the health, safety and welfare of the community, cannabis consumption areas shall not be permitted within 300 feet of all daycare center property and all school property.
- E. Cannabis establishments shall be allowed to operate daily only between the hours of 8:00 a.m. and 9 p.m. MDT.
- F. Cannabis establishments shall prohibit the consumption of cannabis or cannabis products on or within the licensed premises unless a cannabis consumption area has been approved by the Town of Tatum.
- G. Cannabis establishments shall not engage in the sale of alcoholic beverages.
- H. Cannabis establishments shall not begin licensed cannabis activity in Tatum, New Mexico, under a provisional license.
- I. Cannabis establishments shall not conduct cannabis establishment operations outside of the licensed premises boundaries as approved by the Town of Tatum.
- J. Cannabis establishments shall display a current valid Town of Tatum issued license in a conspicuous place on the licensed premises and said license must be made available upon request by relevant Town of Tatum personnel. If the licensed premises is open to the public, the cannabis establishment shall display the current valid division-issued license in an area within plain sight of the public.
- K. Cannabis establishments and licensees shall comply with all adopted Town of Tatum ordinances including, but not limited to, ordinances governing food and product safety, environmental impacts, natural resource protection, construction and building codes, operation of cannabis establishments, building and fire codes, water use and water quality, water supply and restrictions, hazardous materials, waste including solid waste, and business and professional licensing.
- L. Licensees shall notify law enforcement of any attempted theft, theft, assault of employees or patrons, robbery or attempted robbery, break-in, or security breach that

occurs on the licensed premises, no later than 24 hours after the licensee first became aware of the event. License shall submit a request to the Town under the Inspection of Public Records Act (NMSA 1978, 14-2-1, et seq.), in order to access any law enforcement records.

M. Licensees must notify the City Clerk's Office and have approval from the City Council before any one of the following occurs:

1. ownership of the licensed premises changes;
2. location of the licensed premises change;
3. the discontinuance of operation at a licensed premises; or
4. suspension or revocation of the license by the division.

N. Licensees must provide a physical mailing address and an email address upon application for a business registration with the City Clerk's Office. General correspondence from the Town of Tatum will be sent to the licensee's email address of record. Licensees must inform the Town of Tatum in writing of any change to their physical mailing address and/or email address within 10 days of the change. A Licensee's failure to notify the Town of Tatum of a change in physical or email address does not relieve the licensee from the obligation of responding to a Town of Tatum communication.

O. Licensees that anticipate permanently ceasing their business operations shall notify the City Clerk's Office no later than 30 days prior to closure. The Cannabis establishment shall post public notice of the anticipated closure at all licensed premises that are accessible to the public at least 14 days prior to the closure. Licensees shall also abide by all rules related to closure of a licensed cannabis establishment as set forth by the Town of Tatum.

P. Licensees shall abide by all applicable state laws and regulations promulgated thereunder, and any specific additional operating procedures or requirements which may be imposed as a condition of approval of the cannabis business permit.

Cannabis establishments – security and limited-access area.

A. All phases where cannabis or cannabis products are cultivated, stored or held, weighed, packaged, manufactured, disposed or wasted, all point-of-sale (POS) areas, and any room or area storing a digital video surveillance system storage device shall take place in a designated limited-access area where cannabis and cannabis products are not visible from a public place without the use of binoculars, aircraft, or other optical aids.

B. All limited-access areas must be securely locked using commercial- grade, nonresidential door locks that meet applicable building and fire codes. All points of entry and exit to the licensed premises and access points to areas where cannabis and cannabis products are stored must also be securely locked using commercial- grade,

nonresidential door locks that meet applicable building and fire codes.

- C. A limited-access area shall only be accessible to a cannabis establishment and its authorized employees, authorized vendors, contractors or other individuals conducting business that requires access to a limited- access area, division staff or authorized designees, state and local law enforcement authorities acting within their lawful jurisdictions, fire departments and emergency medical services acting in the course of their official capacity.
- D. Any gate or perimeter entry point of a cannabis establishment must have lighting sufficient for observers to see, and cameras to record, any activity within 20 feet of the gate or entry; and a motion detection lighting system may be employed to light required areas in low-light conditions.
- E. All external entrances to indoor facilities at the cannabis establishment must be able to be locked and all perimeter doors and windows or indoor facilities must be in good condition and lockable.

Cannabis establishments – construction or alteration of buildings.

- A. Licensees shall ensure that all licensed premises are in compliance with the Construction Industries Licensing Act (NMSA 1978, Section 60-13-1, et seq.) and the LPG and CNG Act (NMSA 1978, Section 70-5-1, et seq.) including associated rules, as well as applicable codes, standards, licensing laws, and fire codes. Licensees shall also ensure that each structure obtains a Certificate of Occupancy from the Town of Tatum prior to occupancy and use of the structure.
- B. Licensee shall comply with all ordinances and regulations adopted by the Town of Tatum related in any way to construction, alterations, demolition, and maintenance of all buildings owned or operated by the licensee in Tatum, New Mexico.

Non -Commercial Cultivation.

- A. Pursuant to the cannabis Regulation Act, an individual may cultivate homegrown cannabis provided the cannabis producer act within the regulations of the Act. The Act limits home cultivation to a maximum of six (6) mature and six (6) immature cannabis plants with a maximum allowance of twelve (12) plants per household. All 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.

Application of fire safety laws.

- A. Licensees shall ensure all licensed premises are compliant with Article 52 of the New Mexico Statutes Annotated and any associated rules, including rules governing: posting of address, exit signs, emergency lighting, egress paths, evaluation plan, electrical wiring and lighting, exits and exit access, doors, egress hardware, aisle width, chemical storage, fire extinguishers, fire alarm, sprinkler system and fire suppression system, firewalls, combustible waste and housekeeping, storage, access from the exterior, and weeds, grass, vines or other growth capable of igniting.

Transportation of Cannabis

The following apply when disposing of wasted cannabis or cannabis plants or transporting cannabis or cannabis products between licensees or licensed premises.

- A. Transportation of cannabis or cannabis products shall only be conducted by persons holding a cannabis establishment license under the Cannabis Regulation Act or designated employees, or contractors, of a licensee.
- B. Prior to transporting any cannabis or cannabis products to another licensee, the licensee shall have a completed transfer or sales invoice or receipt and a chain of custody form, the licensee shall only transport cannabis or cannabis products listed on the invoice or receipt and chain of custody form, and the invoice or receipt and chain of custody form may not be altered or changed once transport begins.
- C. The driver of the vehicle used to transport cannabis or cannabis products must be prepared to show proper identification, including a licensee employee badge, driver's license, vehicle registration and proof of insurance, and the appropriate shipping manifest and chain of custody form to law enforcement when requested.
- D. A shipping manifest and chain of custody form, on forms approved by the division, shall accompany every transport of cannabis products.

Wastage of Cannabis or Cannabis Products.

- A. Licensees that waste cannabis or cannabis products shall do so by rendering the cannabis or cannabis products unusable and unrecognizable prior to removal from a licensed premises. The wastage of cannabis or cannabis products shall be documented, tracked by batch, and recorded in an electronic track and trace system specified by the division. Wastage of cannabis products shall occur only within the licensee's ordinary business hours. Licensees shall dispose of wasted cannabis or cannabis products and shall not attempt to incorporate wasted cannabis or cannabis plants into any product intended for human consumption.
- B. Wastage of cannabis or cannabis plants shall be accomplished by grinding and incorporating the cannabis into other ground material, such as soil, compost material, or leaf and yard waste, so that the resulting mixture is at least fifty percent non-cannabis

material by volume.

- C. Licensees shall not discharge any wasted cannabis or cannabis plants into the Town of Tatum' publicly owned treatment works (POTW) at any time.

Cannabis Producers – restrictions.

Pursuant to the TATUM Municipal Code, the Town of Tatum operates and maintains the public water distribution system in Tatum, New Mexico. It has been a matter of public policy that water conservation is of high importance to the Town of Tatum as the geographical location of Tatum, New Mexico, is situated in an area with no natural surface water. Pursuant to NMSA 1978, Section 26-2C-7(B)(3), the Town of Tatum municipal water supply is not designed to sustain agricultural activity and depletion of the municipal water supply presents a substantial risk to the health, safety and welfare of the residents of Tatum, New Mexico.

- A. Cannabis producers engaged in indoor cultivation of cannabis plants shall connect to the Town of Tatum water service at the cannabis establishment wherein the cultivation activity shall occur.
- B. Upon review of the required cultivation plan, the Town of Tatum may approve or deny a request to connect to the Town of Tatum water service from a Cannabis producer microbusiness, integrated cannabis microbusinesses, and vertically integrated cannabis establishments. Within ten (10) business days after the request, the Town of Tatum governing body shall state in writing the basis of their decision to approve or deny the request.
- C. The written decision of the City Council shall be final.
- D. Cannabis producer microbusinesses, integrated cannabis microbusinesses, and vertically integrated cannabis establishments that connect to the Town of Tatum water service, as set forth herein, shall abide by all requirements. Cannabis producers engaged in the cultivation of cannabis plants shall constitute “commercial consumers” and pay the applicable water and sewer service rates.
- E. Cannabis producer microbusinesses, integrated cannabis microbusinesses, and vertically integrated cannabis establishments that connect to the Town of Tatum water service, as set forth herein, Commercial water rates will apply.
- F. Cannabis producer microbusinesses, integrated cannabis microbusinesses, and vertically integrated cannabis establishments that connect to the Town of Tatum water service, as set forth herein, shall submit, and have approved by the governing body, a cultivation plan as contemplated by 16.8.2.27(B) NMAC.
- G. Cannabis producer microbusinesses, integrated cannabis microbusinesses, and vertically

integrated cannabis establishments that connect to the Town of Tatum water service, as set forth herein, shall submit, and have approved by the Utilities Director, cannabis waste procedures as contemplated by 16.8.2.27(E) NMAC.

- H. It shall be unlawful for any person who is less than twenty-one years of age to intentionally produce cannabis. A person that violates this subsection shall be subject to penalties as outlined in the Cannabis Regulation Act.
- I. It shall be unlawful for any person 21 years of age or older, unless licensed under the Act and permitted as required by Town of Tatum, to intentionally produce cannabis or any cannabis product in excess of those amounts permitted by the Cannabis Regulation Act. A person that violates this subsection shall be subject to penalties as outlined in the Cannabis Regulation Act.

Packaging and labeling.

- A. Pursuant to NMSA 1978, Section 26-2C-16, before the sale or transport via cannabis courier of a cannabis product, cannabis establishments shall label and package the cannabis product as provided in Section 17 of the Cannabis Regulation Act.
- B. Town of Tatum logos and symbols are registered marks and are thus protected by state and federal law. Cannabis establishments shall not utilize the Town of Tatum logos or symbols in packaging, labeling, or promoting their cannabis products, goods, or businesses without written Consent of the City Council.

State law applicable.

Nothing contained in the Town of Tatum Cannabis Regulation Ordinance is intended in any way to nullify or otherwise render unenforceable any of the provisions outlined in the Cannabis Regulation Act (NMSA 1978, §§ 26-2C-1 through 26-2C-42). Any violation of the Cannabis Regulation Act shall be enforceable through the department and division as well as state and local law enforcement, where applicable. Furthermore, a violation of the Cannabis Regulation Act shall subject the violator to any penalties outlined therein.

Violations of the Cannabis Regulation Ordinance.

- A. Pursuant to the TATUM Municipal Code Section 1, the penalty for violation of any municipal cannabis ordinance is a fine of five hundred dollars (\$500.00) or imprisonment for not more than ninety (90) days or both, unless a lesser maximum penalty or a specific penalty is established for a particular offense.
- B. Pursuant to Chapter 1 of the Tatum Municipal Code, the Mayor and City Council or their designee shall have the authority to assess charges, discontinue services, and

place and enforce liens on the property and the tract or parcel of land being serviced.

PASSED, ADOPTED AND APPROVED this ____ day of _____, 2022.

Amy Gutierrez, Mayor

ATTEST:

Arnold Ramirez, City Clerk