

ORDINANCE NO. 1636

AN ORDINANCE CREATING CHAPTER 34 IN THE ALAMOGORDO CODE OF ORDINANCES CONCERNING MARIJUANA

WHEREAS, the New Mexico Legislature Legalized Marijuana through the Cannabis Regulation Act during the 2021 Special Session;

WHEREAS, the City Commission of the City of Alamogordo wishes to make such reasonable regulations concerning proximity of businesses selling cannabis to schools; and

WHEREAS, the City Commission of the City of Alamogordo wishes to make such reasonable regulations concerning where cannabis can be used within City limits in order to protect the public's health safety and welfare;

THEREFORE, BE IT ORDAINED by the City Commission of the City of Alamogordo that a new Chapter be added to the *Code of Ordinances* as follows:

CHAPTER 34

ARTICLE 34-01. MARIJUANA

34-01-010. Definitions.

The words and phrases below, wherever used in this article, shall be construed as defined in this section unless, clearly from the context, a different meaning is intended. Words used in the present tense include the future tense, words in the plural number include the singular number, and words in the singular number include the plural number.

- A. "Consume," "Consuming," and "Consumption" mean the act of ingesting, inhaling or otherwise introducing marijuana into the human body.
- B. "Consumer" means an individual who is at least twenty-one years of age and who purchases marijuana or marijuana products.
- C. "Cultivate" and "Cultivation" mean to propagate, breed, grow, prepare and package marijuana.
- D. "Department" means the State of New Mexico Department of Health Services or its successor agency.
- E. "Manufacture" and "Manufacturing" means to compound, blend, extract, infuse or otherwise make or prepare a marijuana product.
- F. "Marijuana"

1. Means all parts of the plant of the genus cannabis, whether growing or not, as well as the seeds from the plant, the resin extracted from any part of the plant, and every compound, manufacture, salt, derivative, mixture or preparation of the plant or its seeds or resin.
 2. Includes cannabis as defined in N.M.R.S. §26-2B-4, §26-2B-53. Does not include industrial hemp, the fiber produced from the stalks of the plant of the genus cannabis, oil or cake made from the seeds of the plant, sterilized seeds of the marijuana to prepare topical or oral administrations, food, drink or other products.
- G. "Marijuana Establishment" means an entity licensed by the Department to operate all of the following:
1. A single retail location at which the licensee may sell marijuana and marijuana products to consumers, cultivate marijuana and manufacture marijuana products.
 2. A single off-site cultivation location at which the licensee may cultivate marijuana, process marijuana and manufacture marijuana products, but from which marijuana and marijuana products may not be transferred or sold to consumers.
 3. A single off-site location at which the licensee may manufacture marijuana and marijuana products and package and store marijuana and marijuana products, but from which marijuana and marijuana products may not be transferred or sold to consumers.
- H. "Marijuana Products" means marijuana concentrate and products that are composed of marijuana and other ingredients and that are intended for use or consumption, including edible products, ointments, and tinctures.
- I. "Marijuana Testing Facility" means the Department or another entity that is licensed by the Department to analyze the potency of marijuana and test marijuana for harmful contaminants.
- J. "Open Space" means a public park, public sidewalk, public walkway or public pedestrian thoroughfare.
- K. "Person" means an individual, partnership, corporation, association, or any other entity of whatever kind or nature.
- L. "Process" and "Processing" means to harvest, dry, cure, trim or separate parts of the marijuana plant.
- M. "Public Place" has the same meaning prescribed in the Dee Johnson Clean Indoor Air Act, N.M.R.S. §24-16-3.
- N. "Smoke" means to inhale, exhale, burn, carry or possess any lighted marijuana or lighted marijuana products, whether natural or synthetic.

34-01-020. Building, Operating, and Zoning requirements.

- A. No marijuana shall be sold or delivered by any marijuana dispenser, retailer, or grower except in areas, buildings and/or rooms open to the general public. No closed or curtained booths shall be permitted in any establishment or public place licensed under this chapter.
- B. No person under 21 years of age may enter an establishment where the sale, cultivation or consumption of marijuana may occur.
- C. No license shall be issued by the City for the sale or distribution of marijuana, marijuana products, or a marijuana testing facility that is within three hundred (300) feet of any church or school. Businesses operating in violation of this before September 1, 2021 will be granted an exception to this rule.
 - a. A license may be granted for a proposed licensed premises if the owner or lessee has, prior to establishment of a church or school located within three hundred feet of the proposed licensed premises, applied for, been granted and maintained a valid building permit for the construction or renovation of the proposed licensed premises and has filed on a form prescribed by the Clerk a notice of intention to apply for transfer of a license to the proposed licensed premises. For the purposes of this section, all measurements taken in order to determine the location of licensed premises in relation to churches or schools shall BE THE STRAIGHT LINE DISTANCE FROM THE PROPERTY LINE OF THE LICENSED PREMISES TO THE PROPERTY LINE OF THE CHURCH OR SCHOOL. This provision shall not apply to any church that has been designated as an historical site by the cultural properties review committee and which does not have a regular congregation.
- D. All marijuana establishments licensed to sell at retail marijuana products or to allow consumption of marijuana on their premises must follow the hours prescribed for alcohol sales and consumption in the Liquor Control Act.

34-01-050. Marijuana consumption in public places.

- A. The use, sale, cultivation, manufacture, production, storage or distribution of marijuana or marijuana products is prohibited on property that is occupied, owned, controlled, or operated by the City of Alamogordo.
- B. It is unlawful for an individual to smoke marijuana or to consume marijuana products on property that is occupied, owned, controlled or operated by the City of Alamogordo.
- C. It shall be unlawful for anyone to smoke or to consume any marijuana of any kind, whether lawfully purchased or not, in any public place or in any street or in any government building, whether state or federal, or in any other public place except establishments having a license to dispense marijuana.
- D. It its unlawful for an individual to smoke marijuana or consume marijuana products in any open space in the City of Alamogordo.

34-01-060. Selling of marijuana in public places.

- (a) Selling of marijuana in public places consists of selling, serving, furnishing or permitting the smoking or consumption of marijuana in any public place or private club, or key club, whether operated for profit or not, except establishments having a license to dispense marijuana by the owner, operator, lessee or proprietor thereof.
- (b) For purposes of this chapter, "public place" shall mean: an area, whether enclosed or open, held out for use by the public and to which the public is invited, or in which the public is permitted, whether owned or operated by public or private interests.

34-01-080. Lighting required.

All persons holding licenses for the sale of marijuana as retailers or dispensers shall keep all parts of the lots on which the licensed premises are situated, and the streets or alleys immediately adjacent to such places or buildings, well lighted during the hours when marijuana is being sold or served on such premises.

ARTICLE 34-02. MARIJUANA DISPENSERS LICENSE

34-02-010. Required.

The sale and possession for the purpose of selling, and the offering for sale of marijuana is hereby prohibited except by persons duly licensed within the area and upon the conditions specified in this chapter and other applicable provisions of this Code.

34-02-020. Application.

Applications for a license to sell marijuana within the city shall be made to the clerk on a form prescribed by the clerk. Each application shall include a copy of the application to the state department of cannabis control and shall be accompanied by a fee of fifty dollars (\$50.00) to cover the expense of investigations. Upon receipt of the application, the clerk shall determine if preliminary approval of the issuance or transfer of the license has been made pursuant to the Cannabis Control Act. Upon determining that such preliminary approval has been made, the clerk shall set the application for hearing. An investigation shall be made of the applicant, the matters stated in the application, and for compliance by the applicant and the proposed location of the licensed premises for compliance with all applicable codes.

34-02-030. License Fee.

The fee for licenses to sell marijuana is as follows:

Retailer's/Dispensers license, per annum:	\$250.00
Growers license, per annum:	\$250.00

All licenses shall be issued for the period July 1 to the following June 30. The license fee shall not be refunded or prorated. The above does not business registration fees.

34-02-040. Revocation.

The city commission may, by a majority vote of all members elected, revoke any and all licenses for the sale of marijuana for the violation of any of the provisions of this chapter, after a public hearing and upon five (5) days' notice thereof.

ARTICLE 34-03. VIOLATIONS

34-03-010. Penalties.

Violation of any of the sections in this chapter shall be a misdemeanor punishable by up to five hundred dollars (\$500.00) per day and up to six (6) months in jail per day of each violation.

PASSED, APPROVED AND ADOPTED this _____ day of _____, 2021.

CITY OF ALAMOGORDO, NEW MEXICO
a New Mexico municipal corporation

By: _____
Richard A. Boss, Mayor

ATTEST:

Rachel Hughs, City Clerk

APPROVED AS TO FORM:

Petria Bengoechea, City Attorney