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OCT 26 2021

CITY OF CARLSBAD

AGENDA BRIEFING MEMORANDUM

Jeff Patterson

COUNCIL MEETING DATE: 10/26/2021

DEPARTMENT: Planning & Regulation	BY: Jeff Patterson, Director	DATE: 10/20/2021
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SUBJECT: An Ordinance regulating the possession, sale, transport, and cultivation of recreational cannabis within the City of Carlsbad.

SYNOPSIS, HISTORY and IMPACT (SAFETY AND WELFARE/FINANCIAL/PERSONNEL/INFRASTRUCTURE/ETC.): During the First Special Session of the 55th New Mexico Legislature, the Legislature adopted House Bill (H.B.) 2, now codified as the Cannabis Regulation Act (NMSA 1978, §§ 26-2C-1 through 26-2C-42), which legalized the recreational use, possession, sale, manufacture, cultivation, and transport of cannabis and cannabis derived products. On August 24, 2021, the New Mexico Regulation and Licensing Department, Cannabis Control Division published rules to regulate and ensure the safe production, testing, sale, and consumption of commercial and medical cannabis. The Cannabis Regulation Act provides that local governments may adopt time, place, and manner rules that comply with the Act, and locally regulate the sale, production, transport, possession, and consumption of cannabis and cannabis derived products.

The City of Carlsbad has chosen to exercise the authority granted by the Cannabis Regulation Act to create and put in place a local ordinance that regulates the time, place, and manner in which cannabis and cannabis derived products may be possessed, sold, manufactured, produced, cultivated, transported, and consumed recreationally within Carlsbad. The City's Planning Department, Legal Department, Clerk's office, Police Department, and Utilities Department have worked together to build a comprehensive ordinance intended to provide a safe and orderly framework for the recreational possession, sale, manufacture, production, cultivation, transport, and consumption of cannabis and cannabis derived products. The result of this effort is Ordinance #2021-__, titled the Carlsbad Cannabis Regulation Ordinance.

DEPARTMENT RECOMMENDATION: If it is the will of the Council, City staff recommends approval and adoption of Ordinance #2021-__, the Carlsbad Cannabis Regulation Ordinance.

BOARD/COMMISSION/COMMITTEE ACTION:

- P&Z
- Museum Board
- Library Board
- Lodgers Tax Board
- San Jose Board
- N. Mesa Board
- Cemetery Board
- Water Board
- _____ Committee
- APPROVED
- DISSAPPROVED

Reviewed by *[Signature]*
City Administrator: _____ **Date:** 10.22.21

ATTACHMENTS: Ordinance #2021-__, the Carlsbad Cannabis Regulation Ordinance

CARLSBAD, NEW MEXICO
CANNABIS REGULATION ORDINANCE
ORDINANCE # 2021-20
AN ORDINANCE AMENDING THE CARLSBAD CODE OF ORDINANCES
TO PROVIDE FOR A NEW CHAPTER 9: CANNABIS

WHEREAS, the Cannabis Regulation Act has authorized a variety of uses related to the legalization of recreational personal and commercial cannabis activities, which legalization has the potential to greatly expand the legal cannabis market; and,

WHEREAS, the City of Carlsbad, in order to promote the overall health and safety of the community, is compelled to create and adopt certain regulations regarding legalized possession, cultivation, sale, and consumption of cannabis; and,

WHEREAS, cannabis is an intoxicating substance, making it appropriate to regulate the times, places, and manner in which cannabis may be cultivated, grown, manufactured, stored, sold, or consumed; and,

WHEREAS, City staff have researched the Cannabis Regulation Act, and have proposed regulations and rules that are meant to safely and securely provide for the possession, cultivation, manufacturing, sale, storing, and consumption of cannabis and cannabis related products; and,

WHEREAS, contained in this ordinance chapter are the rules and regulations proposed by the City of Carlsbad to safely and securely allow for the possession, cultivation, manufacturing, sale, storing, transport, and consumption of cannabis and cannabis related products; and,

WHEREAS, the Carlsbad City Council finds that it will promote the overall health and safety of the community to adopt and enact the provisions contained herein to regulate the possession, cultivation, manufacturing, sale, storing, transport, and consumption of recreational cannabis.

THEREFORE, BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF CARLSBAD, COUNTY OF EDDY, STATE OF NEW MEXICO, that the City of Carlsbad Code of Ordinances is hereby amended to adopt and incorporate Chapter 9 – CANNABIS attached to this ordinance:

INTRODUCED, PASSED, ADOPTED, AND APPROVED this 26th day of October, 2021.



DALE JANWAY, MAYOR



Madeline Morales

CITY CLERK

CHAPTER 9: CANNABIS

ARTICLE 1: GENERAL PROVISIONS

Sec. 9-1. Title

This chapter shall be known as the “City of Carlsbad Cannabis Regulation Ordinance” except as referred to and cited herein, where it shall be known as the “Carlsbad Cannabis Regulation Ordinance” or “CCRO”.

Sec. 9-2. 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 Carlsbad, 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 Cannabis Regulation Act specifically grants local governments the authority to adopt reasonable time, place and manner rules including rules that limit the density of licenses and operating times consistent with neighborhood uses. 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 Carlsbad. 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.

Sec. 9-3. Jurisdiction.

This Code applies to all land, structures and buildings within the incorporated limits of the City of Carlsbad. This Code may not be applicable to federal activities on federally owned lands, where either the federal government has retained from the time of statehood or subsequently obtained the right to legislate in relation to such lands or the State of New Mexico has ceded such jurisdiction to legislate back to the United States on such lands. This Code also, may not be applicable to state activities or development on state-owned lands. However, private activities or development for private purposes on such lands shall be subject to this Code.

Sec. 9-4. Interpretation and Conflict.

The regulations of this Code are held to include the minimum standards necessary to carry out the purposes of this Code. More stringent provisions may be required if it is demonstrated that different standards are necessary to protect the public health, safety and general welfare. This Code

is not intended to interfere with, abrogate or annul any valid ordinance or covenant, easement or other agreement. All structures and uses shall comply with all applicable ordinances, laws, rules, regulations, codes, and policies. Where the provisions of this Code impose greater restrictions, the provisions of this Code shall control.

Sec. 9-5. Compliance with the Cannabis Ordinance of the City of Carlsbad, New Mexico.

A. Conformance

Except as described in Article 5 (Non-conformities), no person may use or occupy any land or structures as it relates to commercial cannabis activity, or authorize or permit the use or occupancy of land or structures under his or her control with the purpose of commercial cannabis production, manufacture, sale, or consumption, except in conformance with all of the applicable provisions of this Code. The burden of proof shall rest with the applicant in all proceedings required by this Code. For purposes of this Section, the "use" or "occupancy" of a structure or land relates to anything and everything that is done to, on, or in a structure and/or land.

B. Prior Approval

No structure shall be occupied, erected, reconstructed, structurally altered, enlarged, moved, used, or designated to be used for commercial cannabis related activities within the City limits other than those permitted by this Code, without securing all permits and licenses required by applicable ordinances, laws, rules, regulations, codes, and policies.

Sec. 9-6. – Sec. 9-10. RESERVED

ARTICLE 2. – DEFINITIONS

Sec. 9-11. DEFINITIONS

A. Advertisement. Means 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; and

Does not include:

1. A sign or outdoor display or other statement permanently affixed to a licensed premises that is intended to induce the sale of cannabis product produced or sold on the premises;
2. A label affixed to a cannabis product or the covering, wrapper or container of a cannabis product; or

3. 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.

B. Cannabis. Means all parts of the plant genus Cannabis containing a delta-9-tetrahydrocannabinol (THC) concentration of more than three-tenths percent (0.3%) 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 resin; and,

Does not include 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 the weight of any other ingredient combined with the cannabis products to prepare topical or oral administrations, food, drink, or another product;

C. Cannabis Consumption Area. Means an area designated for the consumption of cannabis and cannabis related products that meets all of the requirements found within the Cannabis Regulation Act and the Carlsbad Code of Ordinances, Chapter 9. These areas must also fully comply with all provisions of the Carlsbad Code of Ordinances Chapter 32, Article III, Sections 32-76 through 32-87, and the Dee Johnson Clean Indoor Air Act, NMSA 1978, Chapter 24, Article 16.

D. Cannabis Courier. Means a person that transports cannabis products to qualified patients, primary caregivers or reciprocal participants, retailers, or directly to consumers.

E. Cannabis Establishment. Means a cannabis testing laboratory, a cannabis manufacturer, a cannabis producer, a cannabis retailer, a cannabis research laboratory, a vertically integrated cannabis establishment, a cannabis producer microbusiness, or an integrated cannabis microbusiness.

F. Cannabis Extract. Means a product obtained by separating resins, tetrahydrocannabinols or other substances from cannabis by extraction methods approved by the division. Does not include the weight of any other ingredient combined with the cannabis extract to prepare topical or oral administrations, food, drink, or other product.

G. Cannabis Flowers. Means only the flowers of a cannabis plant.

H. Cannabis Manufacturer. Means a person or business that manufactures cannabis products, packages cannabis products, has cannabis products tested by a cannabis testing laboratory, or purchases, acquires, sells, or transports wholesale cannabis products to other cannabis establishments.

I. Cannabis Producer. Means a person that cultivates cannabis plants, has unprocessed cannabis products tested by a cannabis testing laboratory, transports unprocessed

cannabis products only to other cannabis establishments, or sells cannabis products wholesale.

- J. 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.
- K. Cannabis Related Product.** Means any product that is or that contains cannabis or cannabis extract, including edible or topical products that may also contain other ingredients.
- L. Cannabis Research Laboratory.** Means a facility that produces or possesses products for the purpose of cannabis cultivation, characteristics, or uses.
- M. Cannabis Retailer.** Means a person or business that sells cannabis or cannabis products to qualified patients, primary caregivers, and reciprocal participants or directly to consumers.
- N. Cannabis Server Permit.** Means 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.
- O. Cannabis Server Permit Education Provider.** Means a person that provides cannabis server education courses and examinations.
- P. Cannabis Testing Laboratory.** Means a person that samples, collects, and tests cannabis products and transports cannabis products for the purpose of testing.
- Q. Cannabis Training and Education Program.** Means 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.
- R. 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.
- S. Child day care.** Means a use of property, duly licensed by the state, in which child care, protection, and supervision is provided on a regular basis away from the children's primary residence for less than twenty four hours per day (24 hrs./day). Child day care includes "child care center" and "family child care home". Child day care does not include public or private schools, or facilities operated in connection with an employment use,

shopping center, or other principal use where children are cared for while parents or guardians are occupied on the premises or in the immediate vicinity.

T. Commercial Cannabis Activity. Means the cultivation, production, possession, manufacture, storage, testing, researching, labeling, transportation, couriering, purchase for resale, sale or consignment of cannabis products. 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.

U. Consumer. Means a person twenty-one (21) years of age or older who purchases, acquires, owns, possesses, or uses a cannabis product for a purpose other than resale.

V. Contaminant. Means pesticides and other foreign material, such as hair, insects or other similar adulterants, in harvested cannabis.

W. Controlling Person. Means a person that controls a financial or voting interest of ten percent (10%) or more of, or an officer or board member of, a cannabis establishment. Does not include a bank or licensed lending institution.

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

Y. Department. Means the regulation and licensing department.

Z. Director. Means the director of the division.

AA. Division. Means the Cannabis Control Division of the Department.

BB. Dry Weight Basis. When used in context of the regulation of commercial cannabis activity, means 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.

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

DD. Financial Consideration. Means value that is given or received, directly or indirectly, through sales, barter, trade, fees, charges, dues, contributions, or donations.

EE. Homegrown (Homemade). Means grown or made for purposes that are not dependent or conditioned upon the provision or receipt of financial consideration.

FF. Household. Means 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.

GG. Immature Cannabis Plant. Means a cannabis plant that has no observable flowers or buds.

HH. Industry Standard. Means the prevailing customary standards of business practice in the cannabis industry in jurisdictions within the United States.

II. 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 (200) total mature cannabis plant 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.
5. Couriers of cannabis products to qualified patients, primary caregivers or reciprocal participants, or directly to consumers.

JJ. Law Enforcement. Means the City of Carlsbad Police Department, the divisions of the Carlsbad Police Department, and the individual officers and enforcement personnel of the Carlsbad Police Department.

KK. Licensed Premises. Means a location that includes:

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

LL. Local Jurisdiction. Means the City of Carlsbad.

MM. Manufacture. Means to compound, blend, extract, infuse, package or otherwise prepare a cannabis product.

NN. Mature Cannabis Plant. Means a female cannabis plant in the flowering stage of growth.

OO. Medical Cannabis. Means cannabis products used by a qualified patient or reciprocal participant in accordance with the Lynn and Erin Compassionate Use Act.

PP. Medical Cannabis Program. Means the program created pursuant to the Lynn and Erin Compassionate Use Act.

QQ. Medical Cannabis Registry. Means the system by which the department of health approves or denies applications and issues and renews registry identification cards for qualified patients.

RR. Place of Worship. Means a building dedicated to religious worship, such as a church, synagogue, parish, mosque or any assembly hall associated with religious worship, and may include such accessory uses as a convent, monastery or parish hall.

SS. Primary Caregiver. Means a resident of New Mexico who is at least eighteen (18) 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.

TT. Public Park. Means a public playground, public recreation center or area, and other public areas, created, established, designated, maintained, provided or set aside by the City, for the purposes of public rest, play, recreation, enjoyment or assembly, and all buildings, facilities and structures located thereon or therein.

UU. 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.

VV. Qualified Patient. Means a resident of New Mexico who holds a registry identification card pursuant to the Lynn and Erin Compassionate Use Act.

WW. Reciprocal Participant. Means 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.

XX. Retail Establishment. Means a location at which cannabis products are sold to qualified patients, primary caregivers and reciprocal participants, or directly to consumers.

YY. School. Means any institution of learning for minors, whether public or private, offering instruction in those courses of study required by the State of New Mexico and maintained pursuant to standards set by the State Board of Education. This definition includes a nursery school, kindergarten, elementary school, middle or junior high school, senior high school, or any special institution of education, but it does not include a vocational or professional institution of higher education, including a community or junior college, college, or university.

ZZ. Superintendent. Means the superintendent of regulation and licensing.

Aa. Unprocessed. Means unaltered from an original, raw or natural state.

Bb. 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.
4. A cannabis retailer.

Cc. Waste or Wastage. Means the process of rendering cannabis or cannabis products unusable and unrecognizable, including the destruction of cannabis or cannabis products.

Dd. Zoning Ordinance. Means Chapter 56, *Zoning Ordinance*, of the Carlsbad Code of Ordinances.

Sec. 9-12. 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 City of Carlsbad 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.

Sec. 9-13. – Sec. 9-14. – RESERVED

ARTICLE 3: NON-COMMERCIAL CANNABIS

Sec. 9-15. Regulation

A. Personal Possession

- 1) 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 cannabis extracts, and a maximum of 800 milligrams of edible cannabis in public places within the City of Carlsbad. The possession or 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. The possession in excess of two ounces of cannabis, sixteen grams of cannabis extract and eight hundred milligrams of edible cannabis is permitted if the excess is stored in the person's private residence and not visible from a public place.

- 2) It shall be unlawful for any person to consume, smoke, inhale, exhale, burn or carry any lighted or heated device or pipe, vape, or ingest any cannabis or cannabis related products, which includes, but is not limited to, cannabis flower, various edibles, tinctures, or CBD oil that contains THC, in any public place, except in an approved and licensed cannabis consumption area.
- 3) Unless otherwise allowed in the Cannabis Regulation Act or the Lynn and Erin Compassionate Use Act (NMSA 1978, § 26-2B-1 through 26-2B-7), it shall be unlawful:
 - A. 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.
 - B. For any person under 21 years of age to possess, consume, or obtain cannabis.
 - C. 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.

B. Non-commercial cultivation

1. 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. Residents within the city limits are prohibited from growing or cultivating cannabis plants in the front or side yards of their properties. All growing or cultivating of cannabis plants must take place within the rear yard space of the property. No part of any personal cannabis plant being grown in the rear yard space of a property may be visible from the public right-of-way (ROW). Construction or installation of any type of accessory structure over 120 sq. ft., including any greenhouse for at-home cannabis cultivation, requires a building permit from the City of Carlsbad's Building Department.
2. It shall be unlawful for any person who is less than 21 years of age to intentionally produce cannabis.
3. 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.

Sec. 9-16. – 9-20. RESERVED

ARTICLE 4: COMMERCIAL CANNABIS

Sec. 9-21. Permitted Zoning Districts

A. The following zoning districts have been designated to allow cannabis establishments.

1. *“R-R” Rural Residential District Zoning.* As stated in Sec. 56-40 of the Carlsbad Zoning Ordinance, “R-R” Rural Residential District zoning is intended to provide for areas that will accommodate agricultural, ranching, and natural resource uses and very low-density residential uses, until such time as other development is appropriate.
2. *“C-1” Commercial 1 District Zoning.* As stated in Sec. 56-40 of the Carlsbad Zoning Ordinance, the Commercial 1 District is intended to accommodate neighborhood-scale retail, office, and customer service uses. Such uses are regulated in order to reduce adverse impacts on surrounding residential development.
3. *“C-2” Commercial 2 District Zoning.* As stated in Sec. 56-40 of the Carlsbad Zoning Ordinance, the Commercial 2 District is intended to accommodate community and regional-scale retail and commercial uses. Such uses are regulated in order to be compatible with surrounding uses and existing infrastructure.
4. *“I” Industrial District Zoning.* As stated in Sec. 56-40 of the Carlsbad Zoning Ordinance, the Industrial District is intended to accommodate heavy and/or concentrated fabrication, production, research, manufacturing, and industrial uses.
5. *Planned Unit Development (PUD):* Cannabis Establishments shall be allowed to locate within this zone if allowed by the PUD regulations.

B. Cannabis establishments shall be prohibited in the following residential zoning districts.

1. *“R-1” Residential 1 District*
2. *“R-2” Residential 2 District.*

C. Cannabis establishments seeking to locate in “R-R” Rural Residential Zoning Districts, further regulation shall apply to the property. These regulations include, but are not limited to the following: eligible properties shall be at least 0.50 acres in size, all activity related to cannabis cultivation/production and/or sales shall be screened from the public and surrounding residential properties by a solid screen or fence at least six (6) feet in height (chain link fencing with slats shall not constitute a solid screen), and signage shall not be intrusive or detrimental in nature to the surrounding properties. (See Chapter 42, *Sign Ordinance*, of the Carlsbad Code of Ordinances, for further sign related regulation).

D. Cannabis establishments seeking to locate within “C-1” Commercial 1 District Zoning, shall be limited to cannabis retail sales and production of cannabis products only. Cannabis cultivation shall not be permitted within the “C-1” Commercial 1 District. Cannabis establishments in this zone shall fully adopt the neighborhood aesthetics, such as keeping with the downtown shopping district look and architecture, or maintaining the surrounding look of any neighborhood in which the business locates. Any cannabis establishment located within this

zoning district where the property is part of an established neighborhood shall screen the business activity from the public or neighboring residential properties with a solid screen or solid fence at least six (6) feet in height. Any customer related circulation at the property shall be adequately provided for and screened from neighboring properties, and shall not result in a public nuisance or a blockage of a public street or alley.

Sec. 9-22. Prohibited Locations and Activities

- A. *Prohibited Locations:* cannabis establishments are prohibited from locating closer than 300' to a school, child day care center, place of worship, or public park in existence at the time of application. All measurements for the purpose of determining the location of a licensed premises in relation to schools or daycare centers shall be the shortest direct line measurement between the actual limits of the real property boundary of the school or daycare center in which there is regularly conducted educational functions or childcare, and the actual limits of the real property boundaries of the proposed cannabis establishment. No business that is licensed under the Liquor Control Act may sell or allow consumption of cannabis or cannabis products.
- B. *Prohibited Access:* Any approved *cannabis consumption areas* shall restrict access to people who are 21 years of age or older. The smoking or vaping of cannabis products is only allowed within a licensed *cannabis consumption area* that 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 Article III, Sections 32-76 through 32-87 of Chapter 32, Carlsbad Code of Ordinances, and the Dee Johnson Clean Indoor Air Act, NMSA 1978, Chapter 24, Article 16.
- C. *Hours of Operation:* Products may only be served and consumed in *cannabis consumption areas* between the hours of 10:00 a.m. and midnight Monday through Saturday and noon to midnight on Sundays. *Cannabis retailers* may only sell cannabis products for off-site consumption between the hours of 7:00 a.m. and midnight Monday through Sunday.

Sec. 9-23. – 9-30. RESERVED

Sec. 9-31. Commercial Cannabis Activities

- A. *Cannabis Cultivation* and *Cannabis Producer* for commercial purposes shall be restricted to the "R-R" Rural Residential District, the "C-2" Commercial 2 District, the "I" Industrial District, and the "PUD" Planned Unit Development District (if the PJD regulations allow). *Cannabis Cultivation* businesses shall limit the number of mature plants being grown at the premises as defined in 16.8.8.9 NMAC, depending on the Level designation of the license. Those limits on the number of mature cannabis plants are as follows:
1. Level 1: 201 – 1,000 mature cannabis plants;
 2. Level 2: 1,001 – 3,000 mature cannabis plants;

3. Level 3: 3,001 – 6,000 mature cannabis plants;
4. Level 4: 6,001 – 8,000 mature cannabis plants.

For purposes of calculating the maximum number of authorized mature cannabis plants, the germination, seedling, and vegetative stages are classified as immature cannabis plants and are excluded from a licensee's approved cannabis plant level. In no event shall a licensee be permitted to grow more than 10,000 mature cannabis plants at one time. *Cannabis Cultivation* activity shall be screened and not be viewable from the public ROW.

- B. *Cannabis Producer Microbusiness* shall be restricted to the "R-R" Rural Residential District, the "C-2" Commercial 2 District, the "I" Industrial District, and the "PUD" Planned Unit Development District (if the PUD regulations allow). A *Cannabis Producer Microbusiness* shall limit the number of mature cannabis plants to 200 or less, and shall be limited to a single licensed premises.
- C. *Cannabis Retailer* shall be restricted to the "R-R" Rural Residential District, the "C-1" Commercial 1 District, the "C-2" Commercial 2 District, the "I" Industrial District, and the "PUD" Planned Unit Development District (if the PUD regulations allow). *Cannabis Retailers* should make reasonable efforts to sell a minimum of twenty five percent (25%) of their monthly cannabis sales to the medical cannabis industry, qualified patients, primary caregivers, and reciprocal participants, or to other licensed cannabis retail establishments that meet or exceed this twenty five percent threshold. Signage for the *Cannabis Retailer* shall not be intrusive or detrimental to the surrounding properties, and shall not create a nuisance to the public. All signage must fully conform to the regulations found within Chapter 42 of the Carlsbad Code of Ordinances, the *Sign Ordinance*. Cannabis establishments shall not conduct cannabis establishment operations outside of the licensed premises boundaries as approved by the Cannabis Control Division.
- D. *Cannabis Consumption Area* shall be restricted to the "R-R" Rural Residential District, the "C-1" Commercial 1 District, the "C-2" Commercial 2 District, the "I" Industrial District, and the "PUD" Planned Unit Development District (if the PUD regulations allow). *Cannabis Consumption Areas* shall restrict entry to those persons 21 years of age or older. These areas must also fully comply with all provisions of the Carlsbad Code of Ordinances Chapter 32, Article III, Sections 32-76 through 32-87, and the Dee Johnson Clean Indoor Air Act, NMSA 1978, Chapter 24, Article 16. Smoking is allowed in *Cannabis Consumption Areas* or a licensed premises only if the consumption area is in a designated smoking area or in a stand-alone 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.

Cannabis establishments having a designated Cannabis Consumption Area on site shall meet the following standards to the satisfaction of the City:

1. The designated Cannabis Consumption Area shall be located in a non-work area that employees are not required to enter as a condition of their employment.
 2. The designated Cannabis Consumption Area shall have signage to identify established cannabis consumption areas.
 3. The designated Cannabis Consumption Area shall have a separate heating, ventilation and air conditioning (HVAC) system such that none of the air in the designated Cannabis Consumption Area will be recirculated into other parts of the premises, pursuant to the Dee Johnson Clean Indoor Air Act.
 4. The designated Cannabis Consumption Area shall be completely separated from the remainder of the premises, and all doors leading to the designated Cannabis Consumption Area shall be self-closing.
- E. *Cannabis Research Laboratory* and *Cannabis Testing Laboratory* shall be restricted to the “R-R” Rural Residential District, the “C-1” Commercial 1 District, the “C-2” Commercial 2 District, the “I” Industrial District, and the “PUD” Planned Unit Development District (if the PUD regulations allow). In the event that a laboratory intends to cultivate cannabis on a large scale, meaning growing over fifty (50) mature plants at one time, that laboratory will be prohibited from locating within the “C-1” Commercial 1 District.
- F. A licensee may conduct any lawful activity or any combination of lawful activities at a licensed premises; provided that the licensee is not a licensee pursuant to the Liquor Control Act. Licensees are allowed to conduct other licensed activities including activities pursuant to the Hemp Manufacturing Act, except for sales of alcoholic beverages.
- G. PERMIT PROCEDURES FOR CANNABIS RELATED ACTIVITIES.
Cannabis related activities, approval and permit required.
1. No person(s) or entity shall engage in the production, manufacture, or sale of cannabis or cannabis products in any zones without a valid Cannabis permit issued by the City of Carlsbad, permitting the specific cannabis-related activity or activities sought to be permitted on the premises. Cannabis permits are issued to the applicant(s) and are not assignable or transferable.
 2. Application and fee. Anyone wishing to conduct cannabis-related activity must submit a completed license permit application. The application shall be returned to the City Clerk accompanied by the application fee of \$250.00 for the use(s) to be permitted, and must show, at a minimum:
 - (a) a valid New Mexico tax identification number; and

- (b) evidence that the property is owned by the applicant or that the applicant has written authorization from the property owner to carry on a cannabis-related business; and
 - (c) compliance with existing fire and life safety requirements; and
 - (d) the cannabis-related activity or activities are appropriately subject to licensure by the State Regulation and Licensing Department pursuant to the Cannabis Regulation Act.
- 3. An annual fee of \$250.00 due on July 1 of each year shall be paid by all entities wishing to continue commercial cannabis activities within the City.
- H. All commercial *Cannabis Establishments* preparing to locate within the city limits of Carlsbad shall secure a Business Registration from the City's Licensing and Permits Department. Each applicant for a Business Registration shall submit a detailed site plan of the subject property that fully conforms to all applicable laws, rules, regulations, and requirements. All needed Building Permits shall be secured from the City's Building Department prior to any construction, remodeling, or other similar activities.
- I. Cannabis establishments shall display a current valid division-issued license in a conspicuous place on the licensed premises and said license must be made available upon request by relevant City of Carlsbad 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.
- J. Cannabis establishments and licensees shall comply with all adopted City of Carlsbad 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.
- K. 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. Licensee shall submit a request to the City under the Inspection of Public Records Act (NMSA 1978, 14-2-1, et seq.), in order to access any law enforcement records.
- L. Licensees must notify the City Clerk's Office when 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.

- M. Licensees must provide a physical mailing address and an email address upon application for a business registration with the City Clerk's Office and the City's Planning Office. General correspondence from the City of Carlsbad will be sent to the licensee's email address of record. Licensees must inform the City Clerk's Office and the City's Planning Office 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 City of Carlsbad of a change in physical or email address does not relieve the licensee from the obligation of responding to a City of Carlsbad communication.
- N. 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 division.

Sec. 9-32. 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.

- F. Any cannabis establishment that is an outdoor area or greenhouse shall have adequate security measures to ensure that the outdoor area or greenhouse is not accessible to unauthorized individuals and is secure to prevent and detect diversion, theft, or loss of cannabis, which shall at a minimum include:
1. a perimeter security fence designed to prevent unauthorized entry to any cannabis cultivation areas and signs that shall be a minimum of 12" x 12" and which state: "Do Not Enter- Limited Access Area- Access Limited to Authorized Personnel Only" in lettering no smaller than one inch in height; and
 2. a screen that obscures cannabis cultivation areas from being readily viewed from outside of the fenced area.

Sec. 9-33. Construction and 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, zoning laws, licensing laws, and fire codes. Licensees shall also ensure that each structure obtains a Certificate of Occupancy from the City of Carlsbad prior to occupancy and use of the structure.
- B. Licensees shall ensure that all licensed premises are in compliance with Chapter 8 of the Carlsbad Code of Ordinances titled, "Buildings and Building Regulations." Additionally, Licensees shall ensure compliance with the Commercial Building Code which encompasses the International Building Code, adopted by the City of Carlsbad by reference and amended from time to time, and as set forth in Section 8-1 of the Carlsbad Code of Ordinances.
- C. Licensee shall comply with all ordinances and regulations adopted by the City of Carlsbad related in any way to construction, alterations, demolition, and maintenance of all buildings owned or operated by the licensee in Carlsbad, New Mexico, including, but not limited to, Chapter 8 of the Carlsbad Code of Ordinances, where applicable.

Sec. 9-34. Application of Fire Safety Laws

- A. Licensees shall ensure all licensed premises are compliant with Section 59A-52-15 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.
- B. Licensees shall ensure compliance with the Chapter 20 of the Carlsbad Code of Ordinances titled "Fire Prevention and Protection." Additionally, Licensees shall ensure compliance with the International Fire Code, adopted by the City of Carlsbad by reference and amended

from time to time, published by the International Fire Code Institute, and as set forth in Section 20-26(a) of the Carlsbad Code of Ordinances.

Sec. 9-35. Wastage of Cannabis and 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 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. Wastage of cannabis or cannabis plants shall constitute "rubbish" as that term is defined in Section 44-1 of the Carlsbad Code of Ordinances. Any disposal of wasted cannabis or cannabis plants shall be conducted in accordance with Section 44-4 of the Carlsbad Code of Ordinances unless the division promulgates rules that provide for greater requirements for wasted cannabis or cannabis plants disposal. Licensees shall not discharge any wasted cannabis or cannabis plants into the City of Carlsbad's publicly owned sanitary sewer system at any time.

Sec. 9-36. OPERATIONAL REQUIREMENTS

- A. Retail cannabis establishments must operate within a fully enclosed and stationary building or structure, capable of being locked and secured.
- B. Cannabis establishments may not display products, engage consumers or consummate sales outside of the licensed property except as allowed by the Carlsbad Cannabis Regulation Ordinance.
- C. There shall be no outdoor cultivation, processing, curing, drying, selling, storage, or other display of cannabis or cannabis products at a retail cannabis establishment.
- D. Cannabis establishments shall have recorded video surveillance covering all plants and the entire exterior. The recorded video surveillance shall be operating 24 hours a day, seven days a week. Records of surveillance shall be kept for a minimum of 30 days.
- E. The odor of cannabis must not be perceptible at any adjoining use of the property or on other parcels.

- F. Cannabis establishments must provide for off-site disposal of cannabis products and other solid waste in compliance with state, federal and local law.
- G. Cannabis establishments shall not provide drive-thru services for delivery of cannabis products.

Sec. 9-37. Utilities

Pursuant to Chapter 52 of the Carlsbad Code of Ordinances, the City of Carlsbad operates and maintains the public water distribution system in Carlsbad, New Mexico. It has been a matter of public policy that water conservation is of high importance to the City of Carlsbad as the geographical location of Carlsbad, New Mexico, is situated in an area with limited water resources. Pursuant to NMSA 1978, Section 26-2C-7(B)(3), the City of Carlsbad 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 Carlsbad, New Mexico.

- A. Cannabis producers engaged in cultivation of cannabis plants shall not connect to the City of Carlsbad water service at the cannabis establishment wherein the cultivation activity shall occur. Exceptions to this subsection shall include personal use producers (as set forth in NMSA 1978, Section 26-2C-27), cannabis producer microbusinesses (1- 200 mature cannabis plants), integrated cannabis microbusinesses (1-200 mature cannabis plants), and vertically integrated cannabis establishments (1-200 mature cannabis plants) engaged in the cultivation of two hundred (200) or fewer cannabis plants. Cannabis producer microbusinesses, integrated cannabis microbusinesses, and vertically integrated cannabis establishments shall be required to connect to an adequately sized water main as determined by the Utilities Director, to ensure adequate level of water services to neighboring properties. The City shall install, at the applicant's expense, an ultrasonic water meter at the subject property to provide the most accurate monitoring possible of the water usage for the property. The applicant shall submit a satisfactory cultivation plan to the City of Carlsbad Utilities Director that exhibits the producer's steps to limit impact on neighboring properties through use of water reduction and water conservation opportunities, including:
 1. drip irrigation or subsurface drip irrigation;
 2. water reclamation and reuse systems;
 3. measures to limit or prohibit evaporation;
 4. renewable energy generation and energy efficiency measures; and
 5. measures to limit or prohibit noxious odors.
- B. Upon review of the required cultivation plan, the City of Carlsbad Utilities Director may approve or deny a request to connect to the City of Carlsbad water service from a Cannabis

producer microbusinesses, integrated cannabis microbusinesses, and vertically integrated cannabis establishments. Within ten (10) business days after the request, the City of Carlsbad Utilities Director shall state in writing the basis of their decision to approve or deny the request. The City of Carlsbad Utilities Director's decision may be appealed to the City of Carlsbad Water Board. A written appeal must be filed with the City of Carlsbad Utilities Director within fifteen (15) days of the City of Carlsbad Utility Director's written decision. Failure to timely file a written appeal shall preclude the applicant from further appeal of the Utility Director's decision.

- C. The appeal will be heard by the Water Board within thirty (30) days of the written notice of appeal. Notice of the date and time of the appeal hearing shall be mailed to the applicant, via US Postal mail, to the applicant's address of record. The appeal hearing shall be recorded and witnesses in support of and opposed to the approval may testify before the Water Board. A decision will be rendered by the Water Board via majority vote in an open meeting. Within ten (10) days of the Board's decision, the Water Board chair shall render a written decision either upholding or overturning the decision of the Utilities Director. The written decision of the Water Board may be appealed to the City Council. A written appeal must be filed with the City of Carlsbad Water Board within fifteen (15) days of the Water Board's written decision. Failure to timely file a written appeal shall preclude the applicant from further appeal of the Water Board's decision.
- D. The appeal of the Water Board's decision will be heard by the City Council within thirty (30) days of the written notice of appeal. Notice of the date and time of the appeal hearing shall be published once in the Carlsbad Current Argus and also mailed to the applicant, via US Postal mail, to the applicant's address of record. The appeal hearing shall be recorded and witnesses in support of and opposed to the approval may testify before the City Council. A decision will be rendered by the City Council via majority vote in an open meeting. Within ten (10) days of the Council's decision, the Mayor shall render a written decision either upholding or overturning the decision of the Water Board. The written decision of the City Council shall be final.
- E. Cannabis producer microbusinesses, integrated cannabis microbusinesses, and vertically integrated cannabis establishments that connect to the City of Carlsbad water service, as set forth herein, shall abide by all requirements as outlined in Chapter 52 of the Carlsbad Code of Ordinances. Cannabis producers engaged in the cultivation of cannabis plants shall constitute "commercial consumers" and pay the applicable water and sewer service rates.
- F. Cannabis producer microbusinesses, integrated cannabis microbusinesses, and vertically integrated cannabis establishments that connect to the City of Carlsbad water service, as set forth herein, shall abide by Chapter 52, Article V, of the Carlsbad Code of Ordinances, titled "*Water Conservation, Emergency Response and Drought Management*".
- G. Cannabis producer microbusinesses, integrated cannabis microbusinesses, and vertically integrated cannabis establishments that connect to the City of Carlsbad water service, as set

forth herein, shall submit, and have approved by the Utilities Director, a cultivation plan as contemplated by 16.8.2.27(B) NMAC.

- H. Cannabis producer microbusinesses, integrated cannabis microbusinesses, and vertically integrated cannabis establishments that connect to the City of Carlsbad 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.
- I. 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.
- J. It shall be unlawful for any person 21 years of age or older, unless licensed under the 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 that violates this subsection shall be subject to penalties as outlined in the Cannabis Regulation Act.

Sec. 9-38. Medical Cannabis

All *Medical Cannabis* establishments shall fully comply with the rules and regulations found within the *Lynn and Erin Compassionate Use Act*. Any *Medical Cannabis* establishment in existence within the City of Carlsbad at the time of the adoption of this ordinance shall be allowed to remain in place and continue business in the same manner and scale as experienced prior to adoption. If a *Medical Cannabis* establishment intends to participate in the recreational cultivation, sale, manufacture, production, transport, or storage of cannabis, that establishment may be subject to further regulation as found within this chapter.

Sec. 9-39. Enforcement

A certified Carlsbad Police Officer, Carlsbad Fire Chief or designee, or a Carlsbad Code Enforcement Officer may issue citations for violation of this Ordinance.

Sec. 9-40. Penalties

Any violation of this Ordinance may be enforced in any court of competent jurisdiction. The maximum penalty per violation shall be \$300 and/or 90 days imprisonment. Each day during the time in which a violation occurs shall be deemed a separate violation. Nothing herein shall prevent the City of Carlsbad from seeking injunctive relief, if appropriate.

Sec. 9-41. State Law Applicable

Nothing contained in the Carlsbad 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.

Sec. 9-42. Savings Clause

Should any portion of this Ordinance be declared unenforceable after a final, non-appeal decision of a court of competent jurisdiction, the remaining provisions of this Ordinance shall, to the extent feasible, remain in full force and effect.

Sec. 9-43. Emergency Clause and Effect Date

Because of the urgent need for regulation pursuant to this Ordinance, the Carlsbad City Council declares that it is necessary for the public peace, health and safety that this Ordinance take effect immediately after passage when it is recorded in the book kept by the City for that purpose and authenticated by the signature of the Carlsbad City Clerk. In the event a court of competent jurisdiction finds that the passage of this Ordinance did not constitute an emergency, then the effective date of this Ordinance shall be 30 days after this Ordinance is recorded with the County Clerk.

Sec. 9-44. – 9-60. RESERVED

ARTICLE 5: NON-CONFORMITIES

SEC. 9-61. Non-conforming uses and structures.

A. Non-conforming Use

Any use lawfully occupying a structure or land on the effective date of this Code or of subsequent amendments to it that does not conform to the regulations of this Code, as adopted or amended, or which is not specifically permitted by this Code, shall be deemed to be a legally non-conforming use and may be continued, and the right to engage in such use shall run with the land, subject to the provisions of this Article. No changes in the type, scale or intensity of the use are permitted, except those resulting in conformity of the use.

B. Non-conforming Structure

Any structure lawfully existing on the effective date of this Code, or of subsequent amendments to it, that does not conform to the regulations of this Code, as adopted or amended, or which is not specifically permitted by this Code, shall be deemed to be a legally non-conforming structure and may continue to be used, and the right to use the structure shall run with the land, subject to the provisions of this Article. Any structure for which a permit has been lawfully granted as of the effective date of this Code, or of subsequent amendments to it, must be completed in accordance with the approved plans; provided that actual construction is started within 180 calendar days of the date of issuance of the permit and completed within two years, and the permit remains unrevoked and unexpired. Such structure shall thereafter be deemed to be a legally non-conforming structure.

C. Enlargement or Extension of Legally Non-Conforming Structures.

A legally non-conforming structure may not be enlarged, expanded, extended, reconstructed or structurally altered except:

1. If the enlargement, expansion, extension, reconstruction or alteration is required by law or order.
2. If the enlargement, expansion, extension, reconstruction or alteration brings the structure into full conformance with all the provisions of this Code and all regulations of the zone in which it is located.
3. The structure may be maintained against ordinary wear and tear.

D. Damage or Destruction of Non-Conforming Structures.

Nothing in this Code shall be construed to prevent the restoration and resumption of a former use permitted under this Article or any legally non-conforming structure that is damaged or partially destroyed by fire or other calamity. Such restoration shall be commenced within six months after such damage and diligently pursued to completion and shall bring the non-conforming structure into compliance with all provisions of this Code to the greatest extent possible. A legally non-conforming structure that is completely destroyed or damaged by fire or other calamity or voluntarily razed or required by law to be razed, shall not be restored except in full conformance with all the provisions of this Code.

Sec. 9-62. – 9-100. RESERVED