VILLAGE OF EAGLE NEST
ORDINANCE NO. 2021 - 01

AN ORDINANCE REGULATING CANNABIS PRODUCTION, CANNABIS MANUFACTURING, CANNABIS RETAILING AND OTHER CANNABIS RELATED ACTIVITIES

WHEREAS, the Cannabis Regulation Act (NMSA 1978 §§ 26-2C-1 et seq.) has authorized a variety of uses related to the legalization of medical and recreational commercial cannabis activities, which legalization has the potential to greatly expand the legal cannabis market; and

WHEREAS, Cannabis cultivation, production, manufacturing, and consumption creates strong odors, can involve the use of significant amounts of energy and water; and require security and other measures to reduce the risk of theft or other diversion to the illegal cannabis market, including possession and use by persons under the age of twenty-one; and

WHEREAS, Cannabis is an intoxicating drug, making it appropriate to regulate the hours during which cannabis products may be sold and the areas in which cannabis products may be consumed; and

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

WHEREAS, Pursuant to N. M. S. A. 1978, § 3-17-1, the governing body of a municipality may adopt ordinances or resolutions not inconsistent with the laws of New Mexico for the purpose of providing for the safety, preserving the health, promoting the prosperity and improving the morals, order, comfort and convenience of the municipality and its inhabitants.

WHEREAS, the Village Council of the Village of Eagle Nest, New Mexico finds that it will promote the public health, safety, and welfare to enact provisions regulating the use of Cannabis.

BE IT THEREFORE RESOLVED AND ORDAINED BY THE GOVERNING BODY OF THE VILLAGE OF EAGLE NEST, AS FOLLOWS:

The Village of Eagle Nest ("Village") ORDINANCE, titled “Commercial Cannabis Activity Application Requirements and Performance Standards” shall read as follows:
ARTICLE 1 COMMERCIAL CANNABIS ACTIVITY APPLICATION REQUIREMENTS AND PERFORMANCE STANDARDS

SECTION 1 DEFINITIONS

As used in the Cannabis Regulation Act:

A. "advertisement":

(1) 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

(2) does not include:

(a) a sign or outdoor display or other statement permanently affixed to a licensed premises that is intended to induce the sale of a cannabis product produced or sold on the premises;

(b) a label affixed to a cannabis product or the covering, wrapper or container of a cannabis product; or

(c) 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":

(1) means all parts of the plant genus Cannabis containing a delta-9-tetrahydrocannabinol concentration of more than three-tenths percent on a dry weight basis, whether growing or not; the seeds of the plant; the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture or preparation of the plant, its seeds or its resin; and

(2) does not include:

(a) 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

(b) the weight of any other ingredient combined with cannabis products to prepare topical or oral administrations, food, drink or another product;

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

D. “cannabis courier” means a person that transports cannabis products to qualified patients, primary caregivers or reciprocal participants or directly to consumers;

E. “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;

F. “cannabis extract”:

(1) means a product obtained by separating resins, tetrahydrocannabinols or other substances from cannabis by extraction methods approved by the division; and

(2) does not include the weight of any other ingredient combined with cannabis extract to prepare topical or oral administrations, food, drink or another product;

G. “cannabis flowers” means only the flowers of a cannabis plant;

H. “cannabis manufacturer” means a person that:

(1) manufactures cannabis products;

(2) packages cannabis products;

(3) has cannabis products tested by a cannabis testing laboratory; or

(4) purchases, acquires, sells or transports wholesale cannabis products to other cannabis establishments;

I. “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;
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 product" means a 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 cannabis products and all parts of the plant genus Cannabis for the purpose of studying cannabis cultivation, characteristics or uses;

M. "cannabis retailer" means a person that sells cannabis products to qualified patients, primary caregivers or 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. "commercial cannabis activity":

(1) means the cultivation, production, possession, manufacture, storage, testing, researching, labeling, transportation, couriering, purchase for resale, sale or consignment of cannabis products; and

(2) 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;

S. "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;

T. "contaminant" means pesticides and other foreign material, such as hair, insects or other similar adulterants, in harvested cannabis;

U. "controlling person":

(1) means a person that controls a financial or voting interest of ten percent or more of, or an officer or board member of, a cannabis establishment; and

(2) does not include a bank or licensed lending institution;

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

W. "department" means the regulation and licensing department;

X. "director" means the director of the division;
Y. “division” means the cannabis control division of the department;

Z. “dry weight basis”, when used in the context of 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;

AA. “facility” means a building, space or grounds licensed for the production, possession, testing, manufacturing or distribution of cannabis, cannabis extracts or cannabis products;

BB. “financial consideration” means value that is given or received, directly or indirectly, through sales, barter, trade, fees, charges, dues, contributions or donations;

CC. “homegrown” or “homemade” means grown or made for purposes that are not dependent or conditioned upon the provision or receipt of financial consideration;

DD. “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;

EE. “immature cannabis plant” means a cannabis plant that has no observable flowers or buds;

FF. “industry standards” means the prevailing customary standards of business practice in the cannabis industry in jurisdictions within the United States;

GG. “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 consumers;

HH. “licensed premises” means a location that 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 that are specifically included in the license for the production, manufacturing, wholesale sale or retail sale of cannabis products; and

(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 a right to occupy;

II. “local jurisdiction” means a municipality, home rule municipality or county;
JJ. "manufacture" means to compound, blend, extract, infuse, package or otherwise prepare a cannabis product;

KK. "medical cannabis" means cannabis products used by a qualified patient or reciprocal participant in accordance with the Lynn and Erin Compassionate Use Act;

LL. "medical cannabis program" means the program created pursuant to the Lynn and Erin Compassionate Use Act;

MM. "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;

NN. "primary caregiver" means a resident of New Mexico who is at least eighteen 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;

OO. "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;

PP. "qualified patient" means a resident of New Mexico who holds a registry identification card pursuant to the Lynn and Erin Compassionate Use Act;

QQ. "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;

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

SS. "superintendent" means the superintendent of regulation and licensing;

TT. "unprocessed" means unaltered from an original, raw or natural state; and

UU. "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.

SECTION 2   CANNABIS PRODUCTION

This subsection shall apply to all applicants seeking a permit to allow for the growth of cannabis plants in quantities greater than six (6) mature and six (6) immature cannabis plants. The applicant shall...
provide:

a. a certified survey plat depicting the proposed location for the growth of cannabis, including outdoor and indoor growing, which identifies the total area to be covered.

b. a map which identifies the nearest school, daycare, library, and/or senior center and evidence that the nearest school, daycare, library, and/or senior center is greater than three hundred feet (300') from the perimeter of the property proposed for cannabis production.

c. the document(s) provided to the Regulation and Licensing Division (RLD) which applicant(s) utilized to apply for a producer's license pursuant to the Cannabis Regulation Act, or a copy of the actual license issued to the applicant by the RLD.

1. If the applicant fails to provide documentation or provides incomplete or otherwise insufficient documentation regarding the status of their license application through RLD, the Planning Director shall inform the applicant of the deficiencies in writing and shall take no further action on the application until the deficiencies are remedied. If the applicant fails to correct the deficiencies indicated in the letter deeming the application incomplete within sixty (60) calendar days of receipt of notice of deficiencies, the application shall be considered withdrawn, and it will be returned to the applicant.

2. The Village Council may issue a Special Use Permit only upon receipt of the applicant(s) license from RLD or a certified copy of such license, and completion of the applicable Village of Eagle Nest permitting process.

d. the production of cannabis for commercial manufacturing, sale, or consumption shall be limited to those areas of the Village of Eagle Nest zoned Agricultural Zone as described within the Zoning Ordinance and Zoning Map of the Village of Eagle Nest, New Mexico.

e. Cannabis production can involve the use of significant amounts of water. As such, for each Acre of proposed cannabis production and/or growing, Applicants shall deed to the Village of Eagle Nest 1.4 acre-feet of water. All water transfers must be approved by New Mexico’s Office of the State Engineer.

SECTION 3 CANNABIS MANUFACTURING

This subsection shall apply to all applicants seeking a permit to allow for the manufacture of cannabis products, packaging of cannabis products, and the purchase, acquisition, sale, or transport of wholesale cannabis products to other cannabis establishments. The applicant shall provide:

a. a map which identifies the nearest school or daycare and evidence that the nearest school or daycare is greater than three hundred feet (300') from the perimeter of the property proposed for cannabis manufacturing activity.

b. the document(s) provided to the Regulation and Licensing Division (RLD) which applicant(s) utilized to apply for a manufacturing license pursuant to the Cannabis
Regulation Act, or a copy of the actual license issued to the applicant by the RLD.

1. If the applicant fails to provide documentation or provides incomplete or otherwise insufficient documentation regarding the status of their license application through RLD, the Planning Director shall inform the applicant of the deficiencies in writing and shall take no further action on the application until the deficiencies are remedied. If the applicant fails to correct the deficiencies indicated in the letter deeming the application incomplete within sixty (60) calendar days of receipt of notice of deficiencies, the application shall be considered withdrawn, and it will be returned to the applicant.

2. The Planning Director may issue a permit only upon receipt of the applicant(s) license from RLD or a certified copy of such license, and completion of the applicable Village of Eagle Nest permitting process.

c. the manufacturing of cannabis for retail sale or consumption shall be limited to those areas of the Village of Eagle Nest zoned Agricultural Zone as described within the Zoning Ordinance and Zoning Map of the Village of Eagle Nest, New Mexico

SECTION 4 CANNABIS RETAILERS

This subsection shall apply to all applicants seeking a permit to allow for the sale of cannabis and cannabis products to qualified patients, primary caregivers, reciprocal participants or directly to consumers. Cannabis consumption room or area shall be allowed commercially only in a designated co-located area of a Cannabis Retailer.

a. The applicant shall provide:

1. a map which identifies the nearest school, daycare, library, and/or senior center and evidence that the nearest school, daycare, library, and/or senior center is greater than three hundred feet (300') from the perimeter of the property proposed for cannabis retail.

2. the document(s) provided to the Regulation and Licensing Division (RLD) which applicant(s) utilized to apply for a cannabis retail license pursuant to the Cannabis Regulation Act, or a copy of the actual license issued to the applicant by the RLD.

   i. If the applicant fails to provide documentation or provides incomplete or otherwise insufficient documentation regarding the status of their license application through RLD, the Planning Director shall inform the applicant of the deficiencies in writing and shall take no further action on the application until the deficiencies are remedied. If the applicant fails to correct the deficiencies indicated in the letter deeming the application incomplete within sixty (60) calendar days of receipt of notice of deficiencies, the application shall be considered withdrawn, and it will be returned to the applicant.

   ii. The Planning Director may issue a permit only upon receipt of the
applicant(s) license from RLD or a certified copy of such license, and completion of the applicable Village of Eagle Nest permitting process.

3. An affidavit that the proposed cannabis retail location is not within one hundred (100) feet of any other cannabis retail location that was in operation at the time of the application submission to the Village.

b. A vertically integrated cannabis establishment or an integrated cannabis microbusiness must apply for a permit pursuant to the provisions of this subsection, provided the establishment or microbusiness intends to sell cannabis or cannabis products to qualified patients, caregivers, reciprocal patients, or consumers, regardless of an existing permit for cannabis production or cannabis manufacture.

c. The sale of cannabis and cannabis products shall be limited to those areas of the Village of Eagle Nest between Neal Road and Green Mountain Road facing Highway 64.

SECTION 5 HOURS OF OPERATION

Provided that a license has been issued by the New Mexico Regulation and Licensing Division, and a Special Use Permit has been issued by the Village Council:

a. Cannabis products may be served and consumed in cannabis consumption areas between the hours of 8:00 am and 8:00 pm Monday through Saturday, and from Noon to 8:00 PM on Sundays.

b. Cannabis retailers may sell cannabis products for off-site consumption between the hours of 8:00 am and 8:00 pm Monday through Sunday.

Dispenser, retail, and club licenses shall close their places of business during voting hours on the days of the biennial primary election of each even numbered year and the biennial general election held upon the first Tuesday in November of each even numbered year, and on the days of Village elections for Village officers, and on the days of such other elections as may be prescribed by rules and regulations promulgated by the State of New Mexico.

It is unlawful for any licensed retailer of cannabis products to sell or deliver cannabis products, or for any licensed dispenser or club to sell, deliver, serve or permit the consumption of cannabis products, on their licensed premises during hours other than those prescribed by this section.

SECTION 6 CANNABIS CONSUMPTION AREAS

a. A cannabis consumption area in which consumption is limited to consumption by qualified patients or reciprocal participants may be located inside any cannabis retailer; provided, however, that smoking of cannabis products in such consumption areas is only allowed if the cannabis consumption area occupies a standalone building from which smoke does not infiltrate other indoor workplaces or other indoor public places where smoking is otherwise prohibited pursuant to the Dee Johnson Clean Indoor Air Act, NMSA 1978, Chapter 24, Article 16.
b. Cannabis consumption areas that are open to consumers are also subject to the following:

1. the smoking 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 the Dee Johnson Clean Indoor Air Act, NMSA 1978, Chapter 24, Article 16; and

2. access to cannabis consumption areas open to consumers is restricted to persons twenty-one years of age and older.

SECTION 7 BUSINESS REGISTRATION

Any person engaged in commercial cannabis activities must comply with the Village of Eagle Nest business registration process as outlined in Village of Eagle Nest Ordinance 2004-01.

SECTION 8 SECURITY/FENCING

a. Each commercial and non-commercial cannabis producer, cannabis research laboratory, and cannabis testing laboratory is required to erect and maintain a lockable fence of sturdy construction measuring at least six feet (6') in height enclosing and screening from view the area where cannabis is located. The enclosure at commercial locations shall remain securely locked during non-business hours.

b. Cannabis cultivation and production for personal use in quantities and as permitted by the New Mexico Cannabis Regulation Act and the Lynn and Erin Compassionate Use Act is allowed anywhere in the Village, subject to the following: Cannabis cultivation and production for personal use must be conducted inside an enclosed and locked dwelling unit or an appropriate accessory structure (e.g., a controlled-environment agricultural structure).

SECTION 9 MOBILE UNITS

Cannabis sales from mobile, portable, or temporary units or drive-through locations are prohibited.

SECTION 10 SMOKING OF CANNABIS IN PUBLIC PLACE

Smoking of cannabis products in a public place, except as permitted by state law, is prohibited.

SECTION 11 EXISTING MEDICAL CANNABIS ESTABLISHMENTS

Any medical cannabis establishment existing as of the date of the passage of this Ordinance shall not be required to comply with the location requirements described within this ordinance.

SECTION 12 ENFORCEMENT

A Code Compliance Officer as designated by the Village, or a certified Colfax County Sheriff's deputy per agreement between the Village of Eagle Nest and Colfax County, New Mexico may issue citations for violation of this Ordinance.
SECTION 13 PENALTIES

With the exception of violations punishable by State law, any violation of this Ordinance may be enforced in any court of competent jurisdiction. The maximum penalty per violation shall be five hundred dollars ($500). Each day during the time in which a violation occurs shall be deemed a separate violation. Nothing herein shall prevent the Village of Eagle Nest from seeking injunctive relief, if appropriate.

SECTION 14 SEVERABILITY 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 remain in full force and effect.

PASSED, APPROVED AND ADOPTED THIS ___ DAY OF December 2021 BY THE GOVERNING BODY OF THE VILLAGE OF EAGLE NEST, NEW MEXICO.

ATTEST:
(SEAL)

Richard A. Cordova, Mayor

Julie Kulhan, Mayor Pro-tem

Jamie McCaslin, Councilor

David Bolsinger, Councilor

Michelle Tousley, Councilor