

CITY OF HOBBS

ORDINANCE NO. _____

AN ORDINANCE AMENDING CHAPTER 5.06 OF THE HOBBS MUNICIPAL CODE FOR THE POSSESSION, CULTIVATION, MANUFACTURE AND SALE OF CANNABIS

WHEREAS, on October 4, 2021, the City Commission adopted Ordinance No. 1133, the City of Hobbs Cannabis Regulation Ordinance, which authorized the City of Hobbs to exercise the authority granted to it by the Cannabis Regulation Act (NMSA 1978, §§ 26-2C-1 through 26-2C-42), to control and restrict the cultivation, manufacture and sale of cannabis and cannabis-derived products in Hobbs, New Mexico; and

WHEREAS, on September 27, 2021, prior to the adoption of the Cannabis Regulation Ordinance, the City of Hobbs City Commission held a work session wherein members of the public voiced their concerns and desires related to the Ordinance; and

WHEREAS, having considered the concerns of the public and so desiring to honor the wishes of the public to the greatest extent possible while protecting the health, safety, and welfare of the general public, the City Commission seeks to amend the Cannabis Regulation Ordinance, Chapter 5.06 of the Hobbs Municipal Code; and

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

Chapter 5.06 POSSESSION, CULTIVATION, MANUFACTURE AND SALE OF CANNABIS

5.06.110 Cannabis Producers – restrictions.

Pursuant to Chapter 13.04 of the Hobbs Municipal Code, the City of Hobbs operates and maintains the public water distribution system in Hobbs, New Mexico. It has been a matter of public policy that water conservation is of high importance to the City of Hobbs as the geographical location of Hobbs, New Mexico, is situated in an area with no natural surface water. Pursuant to NMSA 1978, Section 26-2C-7(B)(3), the City of Hobbs 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 Hobbs, New Mexico.

- A. Cannabis producers engaged in cultivation of cannabis plants shall not connect to the City of Hobbs 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, and Level 1 Producers (201-1,000 mature cannabis plants). Cannabis producer microbusinesses, integrated cannabis microbusinesses, ~~and~~ vertically integrated cannabis establishments, and Level 1 Producers shall be required to connect to a 10 inch water line at minimum, to ensure adequate water services to neighboring properties, and submit a satisfactory cultivation plan to the City of Hobbs 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 minimum water line connection and cultivation plan, the City of Hobbs Utilities Director may approve or deny a request to connect to the City of Hobbs water service from a Cannabis producer microbusinesses, integrated cannabis microbusinesses, ~~and~~ vertically integrated cannabis establishments, or Level 1 Producers. Within ten (10) business days after the request, the City of Hobbs Utilities Director shall state in writing the basis of their decision to approve or deny the request. The City of Hobbs Utilities Director's decision may be appealed to the City of Hobbs Utilities Board. A written notice of appeal, stating the basis for the appeal, must be filed

with the City of Hobbs Utilities Director within fifteen (15) days of the City of Hobbs ~~Utility-Utilities~~ Director's written decision. Failure to timely file a written notice of appeal shall preclude the ~~applicant~~ appellant from further appeal of the ~~Utility-Utilities~~ Director's decision. The appeal outlined herein may be:

1. an appeal of the Utilities Director's denial based on the minimum water line connection and requesting a variance from the minimum water line connection requirement; or

2. an appeal of the Utilities Director's denial based on the adequacy of the producer's cultivation plan.

- C. Appeal Process and Considerations. The appeal will be heard by the Utilities Board within thirty (30) days of the written notice of appeal. A request to continue the appeal hearing shall operate to waive the thirty (30) day requirement for the appeal hearing and the appeal hearing will be reset as soon as practical. Notice of the date and time of the appeal hearing shall be mailed to the ~~applicant~~ producer, via US Postal mail, to the ~~applicant's~~ producer's address of record. The appeal hearing shall be recorded and witnesses in support of and opposed to the approval may testify before the Utilities Board. The parties may be represented by counsel. The City of Hobbs will be represented by the City Attorney or their designee. The appellant shall bear the burden of proof at the appeal hearing before the Utilities Board. A decision will be rendered by the Utilities Board via majority vote in an open meeting. Within ten (10) days of the Board's decision, the Utilities Board chair shall render a written decision either upholding or overturning the decision of the Utilities Director. The written decision of the Utilities Board may be appealed to the City Commission. A written notice of appeal, stating the basis for the appeal, must be filed with the City of Hobbs Utilities Board within fifteen (15) days of the Utilities Board's written decision. Failure to timely file a written appeal shall preclude the ~~applicant~~ appellant from further appeal of the Utilities Board's decision.

1. Variance from Water Line Requirement. At the conclusion of the appeal hearing, the Utilities Board will render a decision either upholding or overturning the decision of the Utilities Director related to the producer's water line requirement. If the Utilities Board renders a decision to overturn the Utilities Director's decision, the Utilities Board may grant a preliminary variance, subject to review by the City Commission, from the requirement that the producer connect to a 10 inch water line. The Utilities Board may grant a preliminary variance if the record before the Utilities Board establishes that:

- a. based on the producer's submitted cultivation plan, the producer's current water line will allow adequate water service to producer's property for producer's intended use; and

- b. based on the written opinion of a New Mexico licensed certified professional engineer of record, the producer's intended water use will not limit or significantly impact the water services to neighboring properties; and
- c. the producer has exhibited acknowledgment and consent, via sworn letter(s) or direct testimony, from the majority of adjacent properties that share the common water line with the producer's property or no substantial evidence is presented that adjacent property owners are opposed to the producer's intended use of the common water line.

2. Adequacy of Producer's Cultivation Plan. At the conclusion of the appeal hearing, the Utilities Board will render a decision either upholding or overturning the decision of the Utilities Director related to the producer's cultivation plan. In their appeal review, the Utilities Board may consider an amended cultivation plan submitted by the producer which corrects any errors or directly addresses any deficiencies noted by the Utilities Director. If the Utilities Board renders a decision to overturn the Utilities Director's decision, the Utilities Board may grant approval of the producer's cultivation plan as written if the record before the Utilities Board establishes that:

- a. based on the cultivation plan before the Utilities Board, the producer has exhibited an ability to significantly and consistently conserve water utilizing any process that may be well established as a water conservation tool in the industry or that is proprietary or novel; and
- b. based on the written opinion of a New Mexico licensed certified professional engineer of record, the producer's intended cultivation practices will not limit or significantly impact the water services to neighboring properties; and
- c. the producer has established, via direct evidence and direct testimony, that they have corrected all deficiencies noted in their original cultivation plan which was previously denied by the Utilities Director.

- D. The appeal of the Utilities Board's decision will be heard by the City Commission within thirty (30) days of the written notice of appeal. A request to continue the appeal hearing shall operate to waive the thirty (30) day requirement for the appeal hearing and the appeal hearing will be reset as soon as practical. Notice of the date and time of the appeal hearing shall be published once in the Hobbs News-Sun and also mailed to the ~~applicant~~ producer, via US Postal mail, to the ~~applicant's~~ producer's address of record. Notwithstanding the procedures outlined in Article III of Chapter 2.04 of the Hobbs Municipal Code, the appeal before the City Commission shall be limited to a review of the evidence and record established before the Utilities Board. The parties may be represented by counsel. The City of Hobbs will be represented by the City

Attorney or their designee. Prior to the appeal hearing, the parties, either pro se or through their counsel, may submit briefing regarding applicable law, points of error made by the Utilities Board, and other issues brought to the attention of the Utilities Board that may substantially impact the outcome of the City Commission's decision. The City Commission, through affirmative vote, may allow additional evidence and testimony to be presented for consideration. The parties, either pro se or through their counsel, may present argument before the City Commission and the City Commission reserves the right to ask questions of the parties. The appeal hearing shall be recorded, ~~and witnesses in support of and opposed to the approval may testify before the City Commission.~~ A decision will be rendered by the City Commission via majority vote in an open meeting. Within ten (10) days of the Commission's decision, the Mayor shall render a written decision either upholding or overturning the decision of the Utilities Board. The written decision of the City Commission shall be final.

- E. Cannabis producer microbusinesses, integrated cannabis microbusinesses, ~~and~~ vertically integrated cannabis establishments, and Level 1 Producers that connect to the City of Hobbs water service, as set forth herein, shall abide by all requirements as outlined in Chapter 13.04 of the Hobbs Municipal Code. 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, and Level 1 Producers that connect to the City of Hobbs water service, as set forth herein, shall abide by the City of Hobbs water conservation and water restriction ordinance as outlined in Chapter 13.20 of the Hobbs Municipal Code titled, "Regulations For Water Conservation, Water Restrictions and Water Waste."
- G. Cannabis producer microbusinesses, integrated cannabis microbusinesses, ~~and~~ vertically integrated cannabis establishments, and Level 1 Producers that connect to the City of Hobbs 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, and Level 1 Producers that connect to the City of Hobbs 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.

PASSED, ADOPTED AND APPROVED this ____ day of November, 2021.

SAM D. COBB, Mayor

ATTEST:

JAN FLETCHER, City Clerk