



Los Alamos County  
Community Development Department  
**PLANNING & ZONING COMMISSION STAFF REPORT**

**Public Hearing Date:** July 28, 2021  
**Subject:** Case No. ZCA-2021-0008, Ordinance No. 02-318, an ordinance amending the text of Chapter 16, Article I Section 9, and Article VII Section 287 and adding new Sections 288 and 289, to adopt local regulations for cannabis cultivation, manufacturing, and retail sales  
**Applicant:** Los Alamos County, Community Development Department  
**Case Manager:** Bryce Ternet, Planning Manager

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**Case No. ZCA-2021-0007:** A request for approval of draft Ordinance No. 02-318, Text Amendments to Los Alamos County Code of Ordinances, Chapter 16, Article I Section 9, and Article VII Section 287 and adding new Sections 288 and 289, to adopt local regulations for cannabis cultivation, manufacturing, and retail sales. ***See Attachment A.***

#### **SUMMARY**

The proposed text amendments and associated draft ordinance address cannabis cultivation, manufacturing, and retail sales within Los Alamos County (“the County”). The proposed text amendments are submitted for consideration in response to the State of New Mexico enacting the Cannabis Regulation Act (“the Act”) legalizing the production, manufacturing, sale, and adult-consumption of cannabis throughout the State of New Mexico. Los Alamos County is taking steps to address this statewide change.

The Act expressly defines and limits the amount of local control a municipality or county can impose on the adult-use cannabis industry through its power to regulate land use within their territorial limits. The Act allows municipalities and counties to adopt time, place, and manner rules and regulations that do not conflict with the Act or the Dee Johnson Clean Indoor Air Act, including rules that reasonably limit density of licenses and operating times consistent with neighborhood uses as well as establishing rules and regulations for the smoking, vaporizing and ingesting of cannabis products within an indoor or outdoor cannabis consumption area.

However, the Act prohibits a municipality or county from:

- completely prohibiting the operation of licensed adult-use cannabis operations within its boundaries;
- preventing the transportation cannabis products on public roads when such transport is in compliance with the Act;
- prohibiting or limiting signage attached to or located on licensed premises that identifies the premises as a cannabis establishment;
- requiring a licensed premises or a cannabis consumption area to relocate more than three hundred feet from a school or daycare center that was in existence at the time the cannabis establishment was licensed; and

- requiring an existing licensee to relocate, or prohibit a person from producing homegrown cannabis as provided for in the Act.

By September 1, 2021, the State Cannabis Control Division (“the Division”) will start accepting applications for producers, microbusiness producers, and from medical cannabis businesses. By January 1, 2022, the Division will accept applications for all other license types, including for cannabis education and training programs. Legal sales begin on a date set by the Division, which can be no later than April 1, 2022.

Although the County’s Chapter 16 Development Code is currently undergoing an update process, the County is attempting to incorporate State law changes into County Code in order to have local regulations firmly in place by January 1, 2022.

### **TEXT AMENDMENTS**

Using the state law as a guideline, staff has submitted proposed changes to County Code that address non-individual cannabis cultivation and manufacturing, and retail sales. If approved, the proposed text amendments would be implemented through the adoption of an ordinance. ***See Attachment B.***

The proposed additions to County Code include definitions within the code for cannabis cultivation and manufacturing facilities, and cannabis retail establishments. Proposed additions include local regulations for cannabis cultivation and manufacturing facilities, and cannabis retail establishments.

These proposed changes include possible alternatives for decision-makers to consider regarding local regulations, such as establishing a minimum distance between cannabis cultivation and manufacturing facilities or cannabis retail establishments, or to allow cannabis retail establishments to be permitted to have on-site designated indoor cannabis vaping and/or outdoor cannabis vaping and smoking areas.

The proposed additions include amending the Use Index Table by adding cannabis cultivation and manufacturing facilities and cannabis retail establishments as use categories and then identifying within which zoning districts of the County these may be permitted, require special use permit, or are not permitted.

### **INTERDEPARTMENTAL REVIEW COMMITTEE (IDRC) REVIEW**

On July 22, 2021, IDRC reviewed the application and unanimously approved to move it forward to the Planning and Zoning Commission for consideration and recommendation to County Council, without conditions.

### **PUBLIC NOTICE**

Notice was provided at least 15 days prior to the public hearing within accordance to the Los Alamos County Code of Ordinances, Chapter 16, Development Code, Sec. 16-192 (a), which includes:

- (1) Publication within the Los Alamos Daily Post, the County’s official newspaper of record (published 7/8/2021); and
- (2) Posting at the Los Alamos County Municipal Building (7/8/2021)

### **TEXT AMENDMENT REVIEW CRITERIA**

***Sec. 16-158. - Amendment to text. During the course of the review of any request for amendment to the text of this chapter, including determination of uses and addition, deletion or change in the Use Index,***

***the IDRC shall utilize the following criteria in formulating a recommendation to the planning and zoning commission; and the planning and zoning commission shall utilize the following criteria in making its recommendation to the county council. The county council shall utilize the following criteria in making its determination of approval or denial:***

- 1. The request substantially conforms to the comprehensive plan and shall not be materially detrimental to the health, safety and general welfare of the county;***

**Staff Response:** The proposed text amendments are in response to the passing of New Mexico State Cannabis Regulation Act legalizing cannabis cultivation, manufacturing, and retail sales. Per State guidance, the cultivation, manufacturing, and retail sale of cannabis are no longer considered as criminal activities and are hereafter to be incorporated into permitted State and municipal manufacturing and retail use. The proposed text amendments provide further clarification of State guidelines specifically for Los Alamos County. Therefore, as the County seeks to provide clarification and institute local regulation regarding the cultivation, manufacturing, and retail sale of cannabis, the proposed text amendments conform with the comprehensive plan's goal to provide for the health, safety and general welfare of the county.

- 2. A request for amendment to the comprehensive plan shall, if necessary, be submitted concurrently with the request for amendment to the text of this chapter.***

**Staff Response:** The proposed text amendments apply to County development code only and would not require a subsequent amendment to the County's comprehensive plan.

- 3. The proposed change will not result in land use inconsistent with the purpose of the district or incompatible with a use allowed in the district.***

**Staff Response:** The proposed text amendments will not result in land use inconsistent with the purpose of the district or result in an incompatible use allowed in a district as State guidelines require local jurisdictions to address the cultivation, manufacturing, and retail sale of cannabis no differently than how similar uses are already addressed in local controls. Therefore, the proposed text amendments consider cannabis cultivation and manufacturing as agricultural production and manufacturing already considered by existing code, and cannabis retail sales as considered by existing code regarding retail services.

Proposed text amendments specify that the cultivation, manufacturing, and retail sale of cannabis shall only be allowable within zoning districts where agricultural production and manufacturing uses are currently allowed by County Code, and retail sales of cannabis shall only be allowed in zoning districts currently allowing retail sales. Additionally, specifically regarding retail sales of cannabis, specific measures regarding proximity to sensitive uses shall apply. Therefore, cannabis-related uses would not be inconsistent with existing zoning districts based on proposed text amendments.

***4. The proposed change will clarify existing language, remove redundant or inconsistent language or will simplify the understanding and implementation of the Code.***

**Staff Response:** The proposed text amendments will not result in land use inconsistent with the purpose of the district or result in an incompatible use allowed in a district as State guidelines require local jurisdictions to address cannabis cultivation, manufacturing, and retail sale of cannabis no differently than how similar uses are already addressed in local controls. Therefore, the proposed text amendments would provide clarification specifically for Los Alamos County based on State guidelines.

**FINDINGS OF FACT**

1. The application ZCA-2021-0008 is a request for approval of draft Ordinance No. 02-318, Text Amendments to Los Alamos County Code of Ordinances, Chapter 16, Article I Section 9, and Article VII Section 287 and adding new Sections 288 and 289, to adopt local regulations for cannabis cultivation, manufacturing, and retail sales.
2. The proposed text amendments are in response to the passing of New Mexico State Cannabis Regulation Act legalizing cannabis cultivation, manufacturing, and retail sales. Per State guidance, the cultivation, manufacturing, and retail sale of cannabis are no longer considered as criminal activities and are hereafter to be incorporated into permitted State and municipal manufacturing and retail use. The proposed text amendments provide further clarification of State guidelines specifically for Los Alamos County. Therefore, as the County seeks to provide clarification and institute local regulation regarding the cultivation, manufacturing, and retail sale of cannabis, the proposed text amendments conform with the comprehensive plan's goal to provide for the health, safety and general welfare of the county.
3. The proposed text amendments apply to County development code only and would not require a subsequent amendment to the County's comprehensive plan.
4. The proposed text amendments will not result in land use inconsistent with the purpose of the district or result in an incompatible use allowed in a district as State guidelines require local jurisdictions to address the cultivation, manufacturing, and retail sale of cannabis no differently than how similar uses are already addressed in local controls. Therefore, the proposed text amendments consider cannabis cultivation and manufacturing as agricultural production and manufacturing already considered by existing code, and cannabis retail sales as considered by existing code regarding retail services.
5. Proposed text amendments specify that the cultivation, manufacturing, and retail sale of cannabis shall only be allowable within zoning districts where agricultural production and manufacturing uses are currently allowed by County Code, and retail sales of cannabis shall only be allowed in zoning districts currently allowing retail sales. Additionally, specifically regarding retail sales of cannabis, specific measures regarding proximity to sensitive uses shall apply. Therefore, cannabis-related uses would not be inconsistent with existing zoning districts based on proposed text amendments.
6. The proposed text amendments will not result in land use inconsistent with the purpose of the district or result in an incompatible use allowed in a district as State guidelines require local jurisdictions to address cannabis cultivation, manufacturing, and retail sale of cannabis no differently than how similar uses are already addressed in local controls. Therefore, the proposed text amendments would provide clarification specifically for Los Alamos County based on State guidelines.
7. Notice of this public hearing, setting forth the nature of the request, and the date, time and place of the public hearing, was announced and published in The Los Alamos Daily Post, the official newspaper of record; all in accordance with the requirements of §16-192 of the Los Alamos County Development Code.

8. The proposed application, ZCA-2021-0008, including attached draft Ordinance No. 02-318, were presented to the Planning & Zoning Commission for consideration of recommending approval of the application to the County Council on July 28, 2021.

### **CONCLUSIONS OF LAW**

After full hearing and consideration, the Planning and Zoning Commission finds that the application has met each applicable County Code text amendment criteria contained in §16-158 of the Los Alamos County Development Code and is acting under the authority granted it by §16-452(b)(1)(a) of the Development Code.

### **MOTION**

#### **Motion Option 1:**

I move to **recommend approval** of Case No. ZCA-2021-0008 to County Council for text amendments to Los Alamos County Code, Chapter 16-543 as presented in the application. Recommendation is based on the Findings of Facts established at the hearing and conclusion that the application has met each applicable review criteria contained in §16-158 of the Los Alamos County Development Code and that the Commission is acting under the authority granted by §16-452(b)(1)(a) of the Development Code.

I further move to authorize the Chair to sign a Final Order approving the application and Findings of Fact and Conclusions of Law for this case, based on this decision and to be subsequently prepared by County staff.

#### **Motion Option 2:**

I move to **recommend denial** of application number ZCA-2021-0008, text amendments to Los Alamos County Code, Chapter 16 to County Council as the proposed text amendments do not conform to the review criteria within §16-158 of the Los Alamos County Development Code.

I further move to authorize the Chair to sign a Final Order recommending denial of the application to County Council, based on this decision and to be subsequently prepared by County staff.

### **ATTACHMENTS**

Attachment A: Text Amendment Application (ZCA-2021-0008)

Attachment B: Proposed Code Amendments in Draft Ordinance Format (Ordinance No. 02-318)

LOS ALAMOS  
Community Development

**TEXT AMENDMENT APPLICATION**

Los Alamos County Community Development Department  
1000 Central Ave, Suite 150, Los Alamos NM 87544  
(505) 662-8120

*Note: The Planning & Zoning Commission considers Applications for Text Amendments at a public hearing and recommends approval or denial to the County Council. Council has final authority to approve or deny.*

**Describe the purpose of the proposed amendment:**

The purpose of the proposed amendment is to include within County Code provisions concerning commercial cannabis cultivation, manufacturing, and retail sales. The proposed text amendments are in response to passing of the New Mexico State Cannabis Regulation Act legalizing the production, distribution, and retail sale of cannabis.

**Provide the existing (if applicable) and proposed text. (Use strikeouts for any text to be removed and underline any new language proposed.) Use this space or attach additional sheet(s):**

Draft Ordinance 02-318 includes strikeouts for any text to be removed and underlining for new proposed language.

**APPLICANT** (Unless otherwise specified, all communication regarding this application shall be to Applicant):



**Check here if Applicant is County Staff.** Indicate Department and Title: Community Development

Department, Community Development Director

Name: Paul Andrus

Phone: 505-662-8055

Address: 1000 Central Avenue, Ste 150, Los Alamos, NM 87444 Email: paul.andrus@lacnm.us

SIGNATURE

ATTACHMENT B

DATE

7/6/21

## TEXT AMENDMENT REVIEW CRITERIA:

### **The Los Alamos County Code of Ordinances, Chapter 16, Development Code, Sec. 16-158:**

*During the course of the review of any request for amendment to the text of this chapter, including determination of uses and addition, deletion or change in the Use Index, the planning and zoning commission shall utilize the following criteria in making its recommendation to the county council. The county council shall utilize the following criteria in making its determination of approval or denial:*

**Please provide your response to each of the following criteria. (Attach additional sheets if needed.)**

- (1) *The request substantially conforms to the comprehensive plan and shall not be materially detrimental to the health, safety and general welfare of the county;***

The proposed text amendments are in response to the passing of New Mexico State Cannabis Regulation Act legalizing cannabis cultivation, manufacturing, and retail sales. Per State guidance, the cultivation, manufacturing, and retail sale of cannabis are no longer considered as criminal activities and are hereafter to be incorporated into permitted State and municipal manufacturing and retail use. The proposed text amendments provide further clarification of State guidelines specifically for Los Alamos County. Therefore, as the County seeks to provide clarification and institute local regulation regarding the cultivation, manufacturing, and retail sale of cannabis, the proposed text amendments conform with the comprehensive plan's goal to provide for the health, safety and general welfare of the county.

- (2) *A request for amendment to the comprehensive plan shall, if necessary, be submitted concurrently with the request for amendment to the text of this chapter.***

The proposed text amendments apply to County development code only and would not require a subsequent amendment to the County's comprehensive plan.

- (3) *The proposed change will not result in land use inconsistent with the purpose of the district or incompatible with a use allowed in the district.***

The proposed text amendments will not result in land use inconsistent with the purpose of the district or result in an incompatible use allowed in a district as State guidelines require local jurisdictions to address the cultivation, manufacturing, and retail sale of cannabis no differently than how similar uses are already addressed in local controls. Therefore, the proposed text amendments consider cannabis cultivation and manufacturing as agricultural production and manufacturing already considered by existing code, and cannabis retail sales as considered by existing code regarding retail services.

Proposed text amendments specify that the cultivation, manufacturing, and retail sale of cannabis shall only be allowable within zoning districts where agricultural production and manufacturing uses are currently allowed by County Code, and retail sales of cannabis shall only be allowed in zoning districts currently allowing retail sales. Additionally, specifically regarding retail sales of cannabis, specific measures regarding proximity to sensitive uses shall apply. Therefore, cannabis-related uses would not be inconsistent with existing zoning districts based on proposed text amendments.

- (4) *The proposed change will clarify existing language, remove redundant or inconsistent language or will simplify the understanding and implementation of the Code.***

The proposed text amendments will not result in land use inconsistent with the purpose of the district or result in an incompatible use allowed in a district as State guidelines require local jurisdictions to address cannabis cultivation, manufacturing, and retail sale of cannabis no differently than how similar uses are already addressed in local controls. Therefore, the proposed text amendments would provide clarification specifically for Los Alamos County based on State guidelines.

## ATTACHMENT B

THIS SECTION TO BE COMPLETED BY THE COMMUNITY DEVELOPMENT DEPARTMENT

*For County Use:*

*Date of Submittal:* July 6, 2021

*Staff Initial:* Df

*CDD Application Number:* ZCA-2021-0008

*Fees Paid:* NA

ATTACHMENT B