

DOÑA ANA COUNTY ORDINANCE NO. 324-2021

AN ORDINANCE AMENDING CHAPTER 350, THE UNIFIED DEVELOPMENT CODE, OF THE COUNTY OF DOÑA ANA, AMENDMENT NO. 3. This amendment repeals and replaces the following sections: Section 350-501 (Zoning Districts); Section 350-502 (Regulations General to all Zones); Section 350-510 (Home Occupation Permits); and Section 350-702 (Glossary).

WHEREAS, on December 13, 2016 the Board of County Commissioners (“BOCC”) approved and adopted Ordinance No. 287-2016, the Unified Development Code for Doña Ana County (“UDC”), which has been codified as Chapter 350 in the Code of Doña Ana County; and

WHEREAS, the UDC is a single document that incorporates all related land use regulations, including zoning and the official zoning map, subdivision regulations, and construction and development standards for Doña Ana County; and

WHEREAS, County Staff has administered the UDC since its effective date of February 2, 2017 and the UDC has subsequently been amended twice: Amendment No. 1 was adopted by the BOCC on November 14, 2017, and Amendment No. 2 was adopted on December 8, 2020; and

WHEREAS, The Cannabis Regulation Act (New Mexico House Bill 2) was approved by the State of New Mexico and signed into law on April 12, 2021 and grants local jurisdictions the authority to regulate the time, place, and manner of commercial cannabis facilities including cultivation, manufacturing, packaging, research, testing, sale, and the transport of cannabis; and

WHEREAS, on January 1, 2022, the Cannabis Control Division (CCD) will publicize rules for licensing and regulating commercial cannabis activity, issue cannabis server permits, and accept license applications for all license types and retail sales will be allowed by the State no later than April 1, 2022; and

WHEREAS, in order to accommodate the cannabis industry and adhere to the licensing timelines set by the State of New Mexico, Staff had presented a draft amendment to the UDC regulating Cannabis Establishments to the Planning and Zoning Commission (P&Z) in which they were discussed with the public at three separate P&Z Meetings; and

WHEREAS, on October 14, 2021, the P&Z voted unanimously (5-0-0 of those present) to recommend to the BOCC that the proposed UDC amendments regulating Cannabis Establishments within Doña Ana County be adopted; and

WHEREAS, County Staff, the Planning and Zoning Commission and the Board of County Commissioners have determined that this amendment is in the public interest and is necessary to improve the overall public health, safety and general welfare of its residents by regulating Cannabis Establishments.

NOW THEREFORE, BE IT ORDAINED THAT the Unified Development Code, Chapter 350, of the Code of Doña Ana County is hereby amended as follows:

Section 1.

The following sections of Chapter 350 of the Code of Doña Ana County are hereby amended as more particularly described herein: Section 350-502 (Regulations General to all Zones); Section 350-502.G (Cannabis Establishments); Section 350-510 (Home Occupation Permits); and Article VII: Glossary of Terms.



Section 2.

The above-mentioned sections or subsections thereof, the Code of Doña Ana County are hereby amended to read as follows (section and subsection numbers and letters along with their corresponding headings are provided as reference):

§ 350-501. Zoning districts.

Table 5.1 Land Use Classification Matrix: Zoning Districts [Amended 11-14-2017 by Ord. No. 294-2017; 12-8-2020 by Ord. No. 317-2020]	
Legend	
P	Permitted
C	Conditional uses, see Table 5.2
A	Permitted if assessed as agriculture for on-farm operations only; an SUP is required if not assessed as agriculture.
S	Special use permit
*	Retail uses not elsewhere classified, limited by building size
N	Natural
T2	Rural
T3	Neighborhood Edge
T4	General Neighborhood
T5	Town Center
R5	Rural Density Residential
R5L	Rural Density Residential - Limited
D1	Low Density Residential
D1L	Low Density Residential - Limited
D2	Medium Density Residential
D2L	Medium Density Residential - Limited
D3	High Density Residential
DM	Mobile Home Park
MU	Mixed Use
C1	Neighborhood Commercial
C2	Community Commercial
C3	Regional Commercial
I1	Light Industrial

I2	Medium Industrial
I3	Heavy Industrial
Inst	Institutional/Government

Consult § 350-501, Table 5.1, 5.2 and 5.3 for additional restrictions on uses. Lots in all zones shall conform to Tables 5.4 through 5.17, Site Standards.

Table 5.1 Land Use Classification Matrix: Zoning Districts	ZONING DISTRICTS																			
	Transect Zones					Use Zones														
	N	T2	T3	T4	T5	R5	R5L	D1	D1L	D2	D2L	D3	DM	MU	C1	C2	C3	I1	I2	I3
Civic Space																				
Park		P	P	P		P	P	P	P	P	P	P								
Green		P	P	P		P	P	P												
Square				P	P															
Plaza				P	P															
Neighborhood multipurpose field				P	P		P	P	P	P	P	P	P	P						
Playground		P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P			
Community garden, small		P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P			
Community garden, medium		P	P	P		P	P	P	P	P			P	P	P	P	P			
Community garden, large		P	P			P	P	P	P				P	P	P	P	P			
Residential																				
Apartment or condominium complex				P	P					P	P	P		P	P					
Duplex				P	P					P	P	P		P						
Accessory dwelling		P	P	P	P	S	S	S	S	P	P									
Fourplex				P	P							P		P	P					
Home occupation (see § 350-510, Home occupation permits)		P	P	P	P	P	P	P	P	P	P	P	P	P						
Live-work unit				P	P									P						
Mobile home park		S	S									S	P		S	S				
Single-family dwelling, mobile home		P	P	P		P		P		P			P							
Single-family dwelling, site-built		P	P	P	P	P	P	P	P	P	P		P							

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PRIMARY USE OF PROPERTY																					
Townhouse				P	P							P		P							
Triplex				P	P							P		P							
Community types		P	P	P	P	P		P	P	P	P	P	P	P	P	P	P				
Lodging																					
Bed-and-breakfast		P	S	P	P	S	S	S	S	P	P	P		P							
Hotel and motel				C	P									P		P	P				
Inn				C	P									P	P	P	P				
Recreational vehicle park		S		C										P	S	P	P	P			
Office																					
Laboratory, scientific, agricultural research, office and service		S	S	C	P									P	P	P	P	P	P		
Office, general			S	C	P									P	P	P	P	P			
Office, small			S	P	P									P	P	P	P	P	P		
Retail and Service																					
Adult bookstore or adult entertainment																S	S	S	S	S	S
Cannabis Retailer		S	S	S	P									S	P	P	P				
Commercial laundry				C	P										P	P	P				
Commercial use not elsewhere classified		S	S	C	P									P	P	P	P				
Convenience store					P									P	P	P	P	P			
Display gallery				C	P									P	P	P	P				
Gas station				P	P									S	P	P	P	P	P	P	P
Kiosk				P	P									P	P	P	P				
Retail facility, large, over 10,000 sq. ft.*				C	S											P	P	P			
Retail facility, medium, 5,000 to 10,000 sq. ft.*		S	S	C	P										P	P	P				
Retail facility, small, under 5,000 sq. ft.*		S	S	C	P									P	P	P	P				
Open market building			S	P	P									P	P	P	P				
Personal service			S	C	P									P	P	P	P	P			

Table 5.1 Land Use Classification Matrix: Zoning Districts	ZONING DISTRICTS																				
	Transect Zones					Use Zones															
	Z	T2	T3	T4	T5	R5	R5L	D1	D1L	D2	D2L	D3	DM	MU	C1	C2	C3	I1	I2	I3	
PRIMARY USE OF PROPERTY																					
Bar, pub, tavern, wine tasting room				C	P									P	P	P	P	P			
Nightclub					S											P	P	P			
Restaurant, bakery, catering service			S	C	P									P	P	P	P	P	S	S	
Food truck/push cart		P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P
Institutional																					
Community building, public or private		P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P				
Convention or exhibition hall														P			P				
Cultural center				C	P									P							
Entertainment facility, not adult entertainment					P										P	P	P				
Exhibition center					P									P							
Institutional use such as library, educational or cultural				C	P										P	P	P				
Museum				C	P									P	P	P	P				
Off-site parking area for commercial and industrial use				C	P										P	P	P	P	P	P	P
Prison																				S	S
Recreation and sports facility		S	P	P		S	S	S	S	S	S	S	S	S	P	P	P				
Religious institution		S	S	P	P	S	S	S	S	S	S	S	S	P	P	P					
Theater and like places of assembly				C	P									P	P	P					
Sports stadium					P									P	P	P		P			
Agriculture																					
Agricultural packaging and warehousing		A				A	A	A	A							P	P	P	P	P	P

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PRIMARY USE OF PROPERTY																					
Agricultural processing facility		A				A	A	A	A								S	P	P	P	
Aquaculture		S				S							S				P	P	P	P	
Auction yard		S													P	P	P	P	P	P	
Cannabis Microbusiness		P	S	S	P	S	S	S	S				S	P	P	P	P				
Cannabis Microbusiness Producer		A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	P	P	P	P	P
Cannabis Producer		A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	P	P	P	P	P
Dairy and related operations																		S	P	P	
Feed lot																		P	P	P	
Farming and ranching		A	A	A	A	A	A	A	A	A	A	A	A	A	P	P	P	P	P	P	P
Grain storage		A				A	A	A	A									P	P	P	
Greenhouse and nursery, commercial		S	S	C	P	S	S	S	S				S	P	P	P	P				
Livestock pen		A	A			S	S	A	A									P	P	P	
Poultry raising, commercial		S																	P	P	
Poultry slaughtering and processing, commercial																			P	P	
Research and education		P	S			S	S	S	S				S					P	P	P	
Stable, commercial		S	S			S	S	S	S	S	S			S	S	S	S	S	S	S	S
Stockyard or slaughter house																			P	P	
Swine production																			P	P	
Wine tasting room or winery		S	S	C	P	S	S	S	S					P	P	P	P	P	P	P	P
Automotive																					
Automobile, SUV repair, sales or service		S	S		P													P	P	P	P
Automobile garages, painting or auto body work		S																P	P	P	P
Auto-related repair and service, but not auto painting or body work		S		C											P	P	P	P	P	P	P

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PRIMARY USE OF PROPERTY																	P	P	P	P
RV or truck repair, sales or service																	P	P	P	P
Truck stop																	P	P	P	P
Civic Support																				
Animal hospital, veterinary clinic, kennel, agricultural office, and training and medical research		P	S	C		S	S	S	S				S	P	P	P	P	P		
Cemetery		S		C												P	P	P		
Crematorium																	P	P	P	P
Funeral home and funeral chapel																P	P	P		
Health service, public or private		S		C	P			S	S						P	P	P	P		
Hospital																P	P	P	P	P
Education																				
Child and adult care, commercially operated		S	S	C	P	S	S	S	S	S	S	P	S	P	P	P	P	P		
Childcare, home occupation		P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P		
College or university					P										P	P	P			
Elementary school		S	S	C	P	S	S	S	S	S	S	S	S	S						
High school, Jr. high school, middle school		S	S	S	P	S	S	S	S	S	S	S	S	S						
Trade school					P											P	P	P	P	P
Other																				
Borrow pit, batching plant and asphaltic mix plant																			P	P
Cannabis Industry		S															P	P	P	P
Cannabis Research or Testing Laboratory				S	P										P	P	P	P	P	P
Wireless communications facility		S	S	S	S	S	S	S	S	S	S	S	S	S	S	P	P	P	P	P

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PRIMARY USE OF PROPERTY																					
Construction yard and equipment, related sales, services, storage and distribution facility, semi-truck parking		S	S													P	P	P	P	P	
Drilling of oil, gas well or other shaft mining																					P
Energy generation operation																					P
Explosive materials, manufacturing or storage																					P
Fat rendering plant																					P
Fertilizer plant																					P
Food and fiber processing		S																P	P	P	
Foundry																					P
Ground transportation terminal																P	P	P	P	P	
Junkyard and dismantling																					P
Laboratory facility				C	P										P	P	P	P	P	P	
Light manufacturing				C	P												P	P	P	P	
Major facility for distribution of electric, natural gas, water, sewer, cable		S													S	S	P	P	P	P	
Heavy manufacturing																					P
Mini-storage unit		S														P	P	P	P	P	
Petroleum refinery and storage																					P
Recycling center		S															P	P	P	P	
Renewable energy facility		S																P	P	P	
Utility building, wastewater lift station and substation, minor, private or public	S	S	S	S	P	S	S	S	S	P	P	P	P	P	P	P	P	P	P	P	
Warehouse																		P	P	P	

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PRIMARY USE OF PROPERTY																					
Wholesale sales and storage																	P	P	P		
Wrecking service		S															P	P	P	P	

§ 350-502. Regulations general to all zones.

- A. Purpose. The purpose of this section is to provide regulations general to all zones, including the classification and regulation of uses in all zones.
- G. Cannabis Establishments. In addition to the applicable authority set forth elsewhere in the UDC and State law, the zoning and other regulations in this section are enacted pursuant to the County's authority in Section 12 of the Cannabis Regulation Act, Laws 2021 (1st S.S.), Chapter 4, and the Dee Johnson Clean Indoor Air Act, NMSA 1978, Chapter 24, Article 16.
- (1) Cannabis consumption areas are subject to the following:
- (a) A cannabis consumption area, limited to consumption by qualified patients or reciprocal participants, may be located inside any cannabis retailer; provided, that smoking of cannabis products in such consumption areas is only allowed if the cannabis consumption area occupies a separate and distinct area inside the building from which smoke does not infiltrate other indoor workplaces or other 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] Smoking of cannabis products is not allowed outdoors; and
 - [2] Access to cannabis consumption areas open to consumers is restricted to persons twenty-one years of age and older.
- (2) No cannabis establishment, cannabis consumption area, or cannabis courier may be located within 300 feet of a school (K-12) or daycare center (excludes commercial schools and places of higher learning serving those 18 years and older) in existence at the time a license was sought for the cannabis establishment, cannabis consumption area, or cannabis courier. For purpose of this section, all measurements determining the location of a cannabis establishment, cannabis consumption area, or cannabis courier in relation to schools or daycare centers shall be the shortest direct line measurement between the actual limits of the real property of the school or daycare center and the actual limits of the real property of the proposed cannabis establishment, cannabis consumption area, or cannabis courier.
- (3) Cannabis retailers and cannabis consumption areas may not be located within 300 feet of another cannabis retailer, cannabis consumption area or residential area. For purpose of this section, all measurements taken in order to determine the location of a cannabis retailer or cannabis consumption area in relation to another cannabis retailer or cannabis consumption area shall be the shortest direct line measurement between the actual limits of the licensed premises of the existing cannabis retailer or cannabis consumption area and the actual limits of the proposed

licensed premises of the proposed cannabis retailer or cannabis consumption area. The shortest direct line measurement to a residential area may be reduced by applying for a Special Use Permit to be reviewed in a public hearing by the Planning and Zoning Commission.

- (4) Unless further restricted in a Special Use Permit, cannabis retailers and cannabis consumption areas may only operate during the following hours:
 - (a) Cannabis products may only be served and consumed in cannabis consumption areas between the hours of 7:00 a.m. and 2:00 a.m. the following day.
 - (b) Cannabis retailers may only sell cannabis products for off-site consumption between the hours of 7:00 a.m. and midnight.
- (5) Cannabis producers that cultivate cannabis plants indoors and cannabis manufacturers must use industry standard techniques to minimize odorous matter, toxic or noxious matter, such as activated carbon filtration and regular maintenance of HVAC systems.
- (6) Cannabis cultivation and production for personal use in quantities and as permitted by the Cannabis Regulation Act and Lynn and Erin Compassionate Use Act is allowed anywhere in the unincorporated areas of the County.
- (7) If a retail business legally exists in a T4 Zone, a Cannabis Retailer may be permitted without the application of an SUP, providing the County has issued a business registration at the time this Ordinance was adopted and complies with T4 Development Standards of this Chapter.
- (8) Applicability of Other Laws.
 - (a) All cannabis uses are subject to all other applicable sections of the UDC, other County ordinances and all applicable building, fire and life safety codes.
 - (b) Any person engaged in commercial cannabis activities and activities under the medical cannabis program other than personal production and use shall obtain a County business license.
- (9) The Zoning Administrator, Planning and Zoning Commission or Board of County Commissioners may apply conditions to a Special Use Permit in order to protect the public health, safety and welfare.

§ 350-510. Home occupation permits. [Amended 11-14-2017 by Ord. No. 294-2017]

The purpose of a home occupation permit is to allow limited commercial endeavors involving the manufacturing, purchase, sale, lease or exchange of goods, and/or the provision of services within a residential dwelling, or accessory building associated with a residential dwelling.

- L. The following activities shall be prohibited as home occupations: Cannabis establishments, cannabis consumption areas, adult bookstores/video stores, adult amusement establishments, health and exercise facilities, motor vehicle repair services, tattoo/body piercing parlors, auto or truck repair, motorcycle repair, lawn mower repair, large appliance repair, internal combustion engine repair and similar activities except as permitted in T4 per Table 5.1.

§ 350-702. Glossary

As used in this chapter, the following terms shall have the meanings indicated:

CANNABIS

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 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.

CANNABIS CONSUMPTION AREA

An area where cannabis products may be served and consumed.

CANNABIS COURIER

A licensed person that transports cannabis products to qualified patients, primary caregivers or reciprocal participants or directly to consumers.

CANNABIS CULTIVATION

Any activity involving the planting, growing, harvesting, drying, curing, grading or trimming of cannabis.

CANNABIS ESTABLISHMENT

A cannabis testing laboratory, cannabis manufacturer, cannabis producer, cannabis retailer, cannabis research laboratory, or cannabis microbusiness.

CANNABIS EXTRACT

- (1) 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.

CANNABIS INDUSTRY

A licensed 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; (4) sells cannabis products wholesale; (5) manufactures cannabis products; (6) packages cannabis products; (7) has cannabis products tested by a cannabis testing laboratory; (8) purchases, acquires, sells or transports wholesale cannabis products to other cannabis establishments; or (9) a cannabis industry facility may include a small-scale accessory retail area.

CANNABIS MANUFACTURE

To compound, blend, extract, infuse, package or otherwise prepare a cannabis product.

CANNABIS MANUFACTURER

A licensed 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.

CANNABIS MICROBUSINESS

A licensed 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, reciprocal participants or directly to consumers.

CANNABIS MICROBUSINESS PRODUCER

A cannabis producer at a single licensed premises that cultivates and possesses no more than two hundred total mature cannabis plants at any one time.

CANNABIS PRODUCER

A licensed 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.

CANNABIS RESEARCH LABORATORY

A licensed 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.

CANNABIS RETAILER

A licensed person that sells cannabis products to qualified patients, primary caregivers, reciprocal participants or directly to consumers.

CANNABIS TESTING LABORATORY

A licensed person that samples, collects and tests cannabis products and transports cannabis products for the purpose of testing.

COMMUNITY GARDEN

A piece of land cultivated by a group of people, utilizing either individual or shared plots on private or public land, excludes the cultivation of cannabis.

Section 3. Effective Date.

Pursuant to NMSA 1978, § 4-37-9(B), this Ordinance shall be effective thirty (30) days after being recorded in the Doña Ana County Clerk's Office.

ENACTED this 14th day of December, 2021.

**BOARD OF COUNTY COMMISSIONERS OF
DOÑA ANA COUNTY, NEW MEXICO**



[Signature]
Manuel A. Sanchez, District 5, Chairperson For/Against

[Signature]
Diana Murillo-Trujillo, District 2, Vice Chairperson For/Against

[Signature]
Lynn J. Ellins, District 1 For/Against

[Signature]
Shannon Reynolds, District 3 For/Against

[Signature]
Susana Chaparro, District 4 For/Against

ATTEST:

[Signature]
Amanda López Askin, Ph.D.
County Clerk

