



VILLAGE OF CORRALES

ORDINANCE NO. 19-005

AN ORDINANCE PROVIDING FOR A DEFINITION OF HEMP AS WELL AS EXCLUDING HEMP FROM THE DEFINITIONS OF CANNABIS AND CANNABIS DERIVED PRODUCT, AND AMENDING SECTION 24-23 AND 24-26 OF CHAPTER 24 OF THE VILLAGE CODE AS RELATED TO THE POSSESSION OF CANNABIS AND PENALTIES THEREFOR.

WHEREAS, Ordinance No. 18-002 adopted by the Village Council on January 23, 2018, defined *Cannabis* as “all parts of the plant *Cannabis sativa* or *Cannabis indica*, whether growing or not, and the resin extracted from any part of the plant”, which definition includes hemp; and

WHEREAS, changes to federal law contained in the Agriculture Improvement Act of 2018 (The 2018 Farm Bill) (P.L.115-334), signed into law on December 20, 2018, now define and exempt hemp from the Schedules of controlled substances under 21 U.S.C. §812, so that hemp no longer falls within the definition of marijuana, the latter which still remains a prohibited Schedule 1 controlled substance; and

WHEREAS, in the 2019 Legislative Session, the New Mexico Legislature subsequently amended various state statutes under Article 31 of Chapter 30 (Controlled Substances) to include a definition of hemp (NMSA 1978 30-31-2 M), and to amend the definitions of cannabis and cannabis-derived product under the Lynn and Erin Compassionate Use Act (NMSA 1978 §26-2B-1 through §26-2B-7) to exclude hemp, as well as to provide a new definition of hemp, as well as to amend the provisions of the Hemp Manufacturing Act (NMSA 1978 Chapter 76, Article 24); and

WHEREAS, these state law definitions for hemp are substantially the same as the new federal law; and

WHEREAS, as a consequence of these recent changes to federal and state law which are currently in effect, the definitions of cannabis and cannabis-related product under the Village Code are inconsistent with existing law inasmuch as they still prohibit the cultivation and sale of hemp products in the Village; and

WHEREAS, during the 2019 Legislative Session, the Legislature amended provisions of state law relating to the possession of controlled substances and sentencing to decriminalize the possession of one half ounce or less of marijuana and to provide that possession of such amount is subject to a penalty assessment enforced through the magistrate and metropolitan courts (L. 2019, Ch. 217 [S.B. 323]); and

WHEREAS, Sections 24-23 and 24-26 of Chapter 24 of the Village Code (Offenses and Miscellaneous Provisions) which relate to the possession of marijuana need to be amended so as not to be inconsistent with recent changes to state law and other provisions of state law;

NOW, THEREFORE, BE IT ORDAINED by the Village Council, the governing body of the Village of Corrales, that:

Section 1. Amendment to Definitions.

Section 18-29 of the Village Code, entitled “Definitions” is hereby amended by amending the definitions of *Cannabis* and *Cannabis-derived product*, respectively, to read as follows:

~~*Cannabis* means all parts of the plant *Cannabis sativa* or *Cannabis indica*, whether growing or not, and the resin extracted from any part of the plant shall have the same definition as set forth in Section 26-2B-3 B of the Lynn and Erin Compassionate Use Act, and shall not include hemp.~~

~~*Cannabis-derived product* means a product, other than cannabis itself, which contains or is derived from cannabis, not including hemp shall have the same definition as set forth in Section 26-2B-3 H of the Lynn and Erin Compassionate Use Act, and shall not include hemp.~~

Section 2. New Definition.

Section 18-29 of the Village Code, entitled “Definitions” is hereby amended by adding a new definition of *hemp* to be placed in appropriate alphabetical order to read as follows:

Hemp means the *Cannabis sativa L.* plant, or any part of the plant, and extracts of it, that contain no more than 0.3 percent Tetrahydrocannabinol (THC), as calculated on a dry weight basis, as defined under federal law and as exempted from the definition of “marijuana” as a Schedule 1 controlled substance as defined in 21 USC § 802(16) of the Controlled Substances Act (CSA).

Section 3. Changes to Section 24-23 of the Village Code to reflect recent amendments to state law.

Section 24-23 is amended to read as follows:

Section 24-23. - Controlled substance: possession of marijuana prohibited; less than eight ounces.

(a) It is unlawful for any person, while in the Village of Corrales, to intentionally possess a controlled substance, unless the substance was obtained pursuant to a valid prescription or order of a licensed medical professional while acting in the course of his/her professional practice or except as otherwise authorized by the Controlled Substance Act, NMSA 1978, Chapter 30, Article 31 Sections 1 through 42.

(b) Any person who violates this section with respect to:

(1) More than One-half ounce but up to and including one ounce ~~or less~~ of marijuana is, for the first offense, guilty of a petty misdemeanor and shall be punished by a fine of not less than fifty dollars (\$50) or more than one hundred dollars (\$100) and imprisonment for not more than fifteen days and for the second and subsequent offenses,

guilty of a petty misdemeanor and shall be punished by a fine of not less than one hundred dollars (\$100) or more than five hundred dollars (\$500) or by imprisonment for ~~a definite term~~ less not more than ninety days, or both.

(2) More than one ounce and less than eight ounces of marijuana is guilty of a petty misdemeanor and shall be punished in accordance with ~~Section 1-6~~ by a fine of not less than one hundred dollars (\$100) or more than five hundred dollars (\$500), or by imprisonment of not more than ninety (90) days, or both.

(c) Exceptions. The foregoing provisions do not apply to conduct which is declared to be lawful under Section 26-2B-4 of the Lynn and Erin Compassionate Use Act, nor to the cultivation or testing of hemp and hemp products as allowed by applicable law.

Section 4. Changes to Section 24-26 of the Village Code to reflect recent amendments to state law.

Section 24-26 is amended to read as follows:

Section 24-26. - Possession, delivery or manufacture of drug paraphernalia prohibited; exceptions.

(a) It is unlawful for a person to use or possess with intent to use drug paraphernalia, to plant, propagate, cultivate, grow, harvest, manufacture, compound, convert, produce, process, test, analyze, pack, repack, store, contain, conceal, inject, ingest, inhale or otherwise introduce into the human body a controlled substance in violation of the Controlled Substances Act (§ 30-31-1 NMSA 1978). The provisions of this subsection do not apply to a person who is in possession of hypodermic syringes or needles at the time he is directly and immediately engaged in a harm reduction program, as provided in the Harm Reduction Act (§ 24-2C-1 NMSA 1978).

(b) It is unlawful for a person to deliver, possess with intent to deliver or manufacture with the intent to deliver drug paraphernalia with knowledge, or under circumstances where one reasonably should know that it will be used to plant, propagate, cultivate, grow, harvest, manufacture, compound, convert, produce, process, prepare, test, analyze, pack, repack, store, contain, conceal, inject, ingest, inhale or otherwise introduce into the human body a controlled substance in violation of the Controlled Substances Act (§ 30-31-1 NMSA 1978). The provisions of this subsection do not apply to:

(1) Department of Health employees or their designees while they are directly and immediately engaged in activities related to the harm reduction program authorized by the Harm Reduction Act; or

(2) the sale or distribution of hypodermic syringes and needles by pharmacists licensed pursuant to the Pharmacy Act (§ 61-11-1 NMSA 1978).

(c) A person who violates this section with respect to Subsection (a) of this section is guilty of a petty misdemeanor and upon conviction shall be punished by a fine of not less than fifty dollars (\$50.00) nor more than one hundred dollars (\$100.00) or by imprisonment for a definite term ~~less of not more than one year~~ ninety (90) days, or both. A person who violates this section with respect to Subsection (b) of this section is guilty of a petty misdemeanor and subject to a fine of not more than five hundred dollars (\$500), or by imprisonment for a definite term of not more than ninety (90) days, or both.

(d) Exceptions. The foregoing provisions do not apply to conduct which is declared to be lawful under Section 26-2B-4 of the Lynn and Erin Compassionate Use Act, nor to the cultivation or testing of hemp and hemp products as allowed by applicable law.

Section 5. Compliance with applicable laws and regulations.

Section 18-30 of the Village Code is amended by the addition of a new subsection (o) thereto, to read as follows:

(o) Cannabis and hemp: compliance with applicable law and regulatory requirements.

(1) The cultivation, intentional growth, manufacture and distribution of cannabis and cannabis-derived products shall be in compliance with the provisions of the Lynn and Erin Compassionate Use Act, all regulations promulgated thereunder by the Department of Health, and all applicable Village Code requirements, including those relating to zoning and building.

(2) The cultivation, growth, manufacture and sale of hemp shall be in compliance with all provisions of applicable federal and state law and regulations thereunder, in addition to all applicable Village code requirements, including those relating to zoning and building.

SEVERABILITY CLAUSE: Should any section, paragraph, clause or provision of this Ordinance be held to be invalid or unenforceable for any reason, the invalidity or unenforceability of such section, paragraph, clause or provision shall not affect any of the remaining provisions of this Ordinance. The Governing Body of the Village of Corrales hereby declares that it would have passed this Ordinance and each section, subsection, sentence, clause, word or phrase thereof irrespective of any one or more sections, subsections, sentences, clauses, words or phrases being declared unconstitutional or otherwise invalid.

COMPILING CLAUSE: This Ordinance shall be incorporated in and compiled as a part of the Code of Ordinances of the Village of Corrales, as provided herein.

EFFECTIVE DATE AND PUBLICATION: This Ordinance shall become effective and be in full force and effect from and after its passage, publication and posting, according to law.

PASSED, APPROVED AND ADOPTED by the Governing Body of the Village of Corrales, New Mexico, this **12th day of November, 2019.**

PROPOSED CHANGES ARE SHOWN AS FOLLOWS:

New language indicated by underscoring.

Existing language to be deleted indicated by ~~striketrough~~.

APPROVED:



The Honorable Jo Anne Roake
Mayor

ATTEST:



Shannon Fresquez
Village Clerk