

CITY OF AZTEC

ORDINANCE 2021-518

An Ordinance Amending Article III License and Creating Article XIII. Cannabis Businesses

WHEREAS, The City Commission establishes fees for various operations by the City; and

WHEREAS, a public workshop was held on August 24, 2021 to discuss the legalizing of cannabis and what options the City of Aztec has in regulating; and

WHEREAS, City Staff recommends adoption of the proposed cannabis business regulations to accommodate administrative processing of licensing; and

WHEREAS, the proposed ordinance will become effective October ____, 2021.

NOW, THEREFORE, BE IT RESOLVED that the Aztec City Commission approves of the amending of Article III. License and creation of Article XIII. Cannabis Businesses in Chapter 11 of the Aztec City Code as attached.

PASSED, APPROVED, SIGNED AND ADOPTED this ____ day of _____ 2021, by the Aztec City Commission, City of Aztec, New Mexico.

Mayor Victor C. Snover

ATTEST:

Karla Saylor, City Clerk CMC

APPROVE AS TO FORM:

City Attorney

Advertised Date of Final Adoption:

Effective Date of Ordinance:

ARTICLE III. LICENSE

Sec. 11-3-1. Purpose.

The City Commission finds and declares that the licensing and regulation of the businesses enumerated in this article are conducive to the promotion of the health, general welfare and safety of the public.

Sec. 11-3-2. Applicability.

All sections of Article II of this chapter, except Sections [11-2-3 through 11-2-5](#) and [11-2-7](#) and any other section which by its terms can apply only to businesses subject to registration fees and not subject to licensing pursuant to this article, shall apply in full force and effect to businesses which are licensed under this article.

Sec. 11-3-3. Required.

All persons engaged in the pursuits, businesses and occupations enumerated in this article shall, before commencing business and thereafter annually before March 15, secure a license from the city under the procedures set forth in this chapter and shall pay the license fees set forth in [Chapter 16 Fee Schedule](#) Article VIII, Business License and Registration Fees of the Aztec City Code in connection with each such pursuit, business or occupation.

Sec. 11-3-4. Effect of Other Licensing Provisions.

Whenever other licensing provisions of this Code differ from the provisions of this article, the provisions elsewhere in this Code applicable to the specific type of license addressed shall take precedence.

Sec. 11-3-5. Exemptions.

Outdoor sales during sidewalk sales, as defined in [Section 11-1-1](#), are exempt from the license fees provided in this article.

Sec. 11-3-6. Investigation of Applicant.

Upon receipt of an application for a business license under this article, the Business License Officer shall determine whether the proposed operation may be carried on without conflict with any city ordinance and may cause such investigation of the applicant and/or proposed business premises as may be necessary to protect the public health, safety and welfare. The Business License Officer shall investigate the nature of the proposed business to determine the degree that such business will affect the public health, safety and general welfare; the level of supervision such business may require; the degree to which such business may attract crowds or children; the accessibility of the proprietors of such business when complaints made to the city must be investigated; and the possibility of illegal activity transpiring at the proposed place

of business. If, as a result of such investigation, the Business License Officer determines that the issuance of a business license is in conflict with any ordinance or is not in the interest of the health, safety, general welfare of the public, the application shall be denied.

Sec. 11-3-7. License Fee Imposed on Listed Businesses.

License fees are imposed upon the following businesses when conducted within the city in lieu of and not in addition to the registration fee assessed pursuant to [Chapter 16 Fee Schedule](#) Article VIII, Business License and Registration Fees (fees are annual unless otherwise noted): If the license required by this division is granted by the Business License Officer, a license fee as provided in [Chapter 16 Fee Schedule](#) Article VIII, Business License and Registration Fees shall be paid.

License Fee

- Adult oriented businesses
- Alarm Service
- Armored cars
- Body Art Establishments
- Carnival, circus, except kiddie ride carnivals
- **Cannabis Businesses**
- Distress Sales
- Fireworks
- Food catering, vending & mobile food service units
- Junk or secondhand dealers
- Outdoor special events (vendor)
- Pawnbrokers
- Peddlers or Solicitors, per peddler/solicitor
- Private Detective & Private Patrol Operators
- Special events (license is required of sponsor only)
- Taxicabs

Subject to Regulations

- [Chapter 18](#) of the Aztec City Code
- [Chapter 3](#) of the Aztec City Code
- Article ~~XI~~**VIII** of this chapter
- Article ~~XIII~~**XI** of this chapter
- Article ~~XV~~**XII** of the chapter
- Article XIII of the chapter**
- Article IV of this chapter
- [Chapter 8](#) of the Aztec City Code
- Article ~~XI~~**IX** of this chapter
- Article ~~VI~~**V** of this chapter
- Article I of this chapter
- Article ~~VII~~**VI** of this chapter
- Article I of this chapter
- Article I of this chapter
- Article I of this chapter
- Article ~~X~~**VII** of this chapter

Sec. 11-3-8. Transferability.

No license issued pursuant to this article shall be transferable from one business to another.

Newly created Article XIII Cannabis Businesses is as follows:

ARTICLE XIII. CANNABIS BUSINESSES

DIVISION 1. IN GENERAL

Sec. 11-13-1. General Operational Requirements.

1. State and Local Laws.

Pursuant to the Cannabis Regulation Act, applicants and licensees shall comply with all applicable state and local laws that do not conflict with the Cannabis Regulation Act or the Lynn Erin Compassionate Use Act, including governing food and product safety, occupational health and safety, environmental impacts, natural resource protections, construction and building codes, operation of a cannabis establishment, employment, zoning, building and fire codes, water use and quality, water supply, hazardous materials, pesticide use, wastewater discharge, energy use, and business or professional licensing.

2. Age Requirements.

All applicants for licensure, including all controlling persons, must be at least twenty-one years of age. All employees of a commercial cannabis establishment must be at least twenty-one years of age.

3. No Guarantee of Licensure.

An applicant may not exercise any of the privileges of licensure until the Cannabis Control Division and the City of Aztec approves the license application and issues a license. The submission is in no way a guarantee that the application will be accepted as complete. A license shall be granted or denied within 90 days upon acceptance of a completed application. Information provided by the applicant and used by the City of Aztec for the licensing process shall be accurate and truthful.

4. Display of License.

A City of Aztec license shall be displayed in a conspicuous place on the licensed premises and must be made available upon request by state and local agencies. If the licensed premises is open to the public, the license shall be displayed in an area that is within plain sight of the public.

5. Reporting of Theft or Security Incident to the City of Aztec.

Licensees shall submit to the City of Aztec Police Department written notification of any attempted theft, theft, assault of employees or patrons, robbery or attempted robbery, break-in or security breach that occurs on the licensee's premises, no later than 24 hours after the licensee first becomes aware of the event. The notification shall include a description of any property that was stolen or destroyed, and the quantity of any cannabis plants, cannabis and cannabis products that were stolen. The licensee must provide video footage and any other supporting evidence requested by the City of Aztec Police Department. The premises must be secured prior to continuing operations, including replacement of locks, doors, windows, repair of damaged structures or access points with comparable or more secure replacement material.

6. Non-transferable or Assignable License.
A license shall not be transferable by assignment or otherwise to other persons or locations.
7. Complete Application and Fees Required.
Applicants must submit a completed application to the City of Aztec before it will be accepted by the City of Aztec as complete and considered for approval. License fees must be paid at the time application is submitted. The fee assessed is pursuant to Chapter 16 Fee Schedule.
8. Process for Incomplete Application.
In the event that an application for licensure is determined by the City of Aztec to be incomplete, the City shall notify the applicant by email and specify the information or materials that remain to be submitted. If the applicant does not submit the required information or materials within 90 days after the date of the deficiency is emailed, the application shall be closed as incomplete and the applicant will be required to submit a new application in order to resume the application process. All licensing or renewal fees are non-refundable and must be paid for each new application.
9. Provisional License Letter with Contingencies.
The applicant must include a provisional license letter issued by the Cannabis Control Division to the applicant with City of Aztec business license application. The provisional license letter must contain defined contingencies that the applicant must obtain documents from other state agencies or local jurisdictions, such as a City of Aztec business license, documentation from a water provider (City of Aztec) that the applicant has the right to use water from the provider, fire inspection report, zoning approval, certificate of occupancy for the application to be considered complete by the Cannabis Control Division.
10. Closure of a Licensed Cannabis Establishment.
A licensee that anticipates permanently ceasing its business operations shall notify the City of Aztec no later than 30 days prior to closure and follow state and local laws for closure of business establishment.

Sec. 11-13-2. Definitions.

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.

Cannabis Consumption Area

An area where cannabis products may be served and consumed as permitted by a conditional use permit.

Cannabis Control Division (CCD)

A division of the Regulation and Licensing Department created to implement the Cannabis Regulation Act.

Cannabis Courier

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

Cannabis Establishment

A cannabis testing laboratory, a cannabis manufacturer, a cannabis producer, a cannabis retailer, a cannabis research laboratory, a vertically integrated cannabis establishment, a cannabis producer microbusiness, or an integrated cannabis microbusiness.

Cannabis Manufacturer

A person that:

1. Manufactures cannabis products; or
2. Packages cannabis products; or
3. Has cannabis products tested by a cannabis testing laboratory; or
4. Purchases, acquires, sells or transport wholesale cannabis products to other cannabis establishments.

Cannabis Producer

A person that:

1. Cultivates cannabis plants; or
2. Has unprocessed cannabis products tested by a cannabis testing laboratory; or
3. Transports unprocessed cannabis products only to other cannabis establishments; or
4. Sells cannabis products wholesale.

Cannabis Producer Microbusiness

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

Cannabis Product

A product that is or that contains cannabis or cannabis extracts, including edible or topical products that may also contain other ingredients.

Cannabis Research Laboratory

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.

Cannabis Retailer

A person that sells cannabis products to qualified patients, primary care givers or reciprocal participants or directly to consumers;

Cannabis Server Permit

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.

Cannabis Testing Laboratory

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

Cannabis Training and Education Program

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.

Child Care Facility

A child care facility is any premises licensed under New Mexico Children, Youth and Families Department (CYFD), where children receive care, services, and supervision. A facility can be a center, home, program or other site where children receive childcare, per the definition given by Title 8, Chapter 16, Part 2 NMAC.

Commercial Cannabis Activity

The cultivation, production, possession, manufacture, storage, testing, researching, labeling, transportation, couriering, purchase for resale, sale or consignment of cannabis product. 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.

Consumer

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.

Controlling person

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.

Cultivation

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

Integrated Cannabis Microbusiness

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.

Manufacture

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

Retail Establishment

A location at which cannabis products are sold to qualified patients, primary caregivers and reciprocal participants and directly to consumers.

School

A school is defined as real property comprising of a public or private elementary, vocational, or secondary school or a public or private college, junior college or university, in which there is regularly conducted education functions.

Vertically Integrated Cannabis Establishment

A person that is authorized to act as any of the following:

1. A cannabis courier; or
2. A cannabis manufacturer; or
3. A cannabis producer; or
4. A cannabis retailer.

Sec. 11-13-3 through 11-13-19. Reserved.

DIVISION 2. LICENSE

Sec. 11-13-20. Application Requirements for All Types of Cannabis License.

All applicants wishing to engage in a cannabis business must submit the following documents and associated fees:

1. A completed and signed cannabis business license application to include legal name, date of birth, mailing address, physical address of business location, hours of operation, email address, telephone or cellular phone number, information for each controlling person.
2. Proof the applicant is at least 21 years of age, which shall include identification issued by a federal or state government that includes the name, date of birth, and picture of the applicant.
3. A Provisional License Letter from the State of New Mexico Cannabis Control Division related to the status of your Cannabis application.
4. A fully executed and dated documentation of the applicant's legal ownership or legal authority to use property, or premises for which application is made. If the property is leased, a Landlord's Consent Form must be completed by the owner of the property and notarized. The consent must be specifically for the proposed cannabis business.
5. A copy of the zoning approval letter from the City of Aztec Community Development Department providing proof that the applicant's may operate a cannabis establishment at the location as stated on the business license application.
6. A copy of the approved City of Aztec/San Juan County Building and Fire Inspection Report.
7. A list of all controlling person, home address, date of birth, telephone contact number and title, if applicable.
8. A complete, detailed, legible and accurate diagram and description of the proposed premises of the land or facility to be used for the cannabis establishment and method to be used to produce cannabis in a portable document format (pdf.) and if requested by the City of Aztec, digital photographic photos. The diagram shall show boundaries of the property, any equipment to be used, entrances and exits, interior partitions, location of lights in the canopy and the maximum wattage or wattage equivalent, if applicable, walls, rooms, windows and doorways. The diagram shall include a brief statement or description of the principal activity to be conducted in each area on the premises. The

diagram shall not contain any highlighting and the markings shall be black and white print.

9. Security and Limited Access Area Plan: A cannabis business shall comply with security requirements set forth by state and local laws to ensure that licensed premises and limited-access areas, including a vault are secure as set forth in New Mexico Administrative Code (NMAC) 16.8.2.10 in its entirety:
 - 1) Security Alarm System: Licensees shall installed and maintained at each premises an operational security alarm system. Procedures for operating and monitoring must be followed. Licensees shall provide a detailed security plan with the City of Aztec business license application and shall include information regarding the Security Alarm System and whether the system will be continuously monitored by a monitoring company or other means determined to be adequate by the Cannabis Control Division. If necessary, local law enforcement must be notified within 5 minutes after notification of an alarm or a security alarm system failure, by contacting the San Juan County Communication Authority.
 - 2) Lighting: Any perimeter entry point of a cannabis establishment must have lighting sufficient for observers to see, and cameras to record, any activity within 20 feet of the gate or entry; and a motion detection lighting system may be employed to light required areas in low-light conditions.
10. School and Child Care Facility: No License shall be issued for a cannabis business at a premises that is within three hundred feet of an existing school or child care facility, in which there is regularly conducted education functions or childcare. For the purpose of this section, all measurements taken in order to determine the location of licensed premises in relation to a school or child care facility shall be the straight line distance from the property line of the premises to the property line of the school or daycare.
11. An attestation of the following statement: Under penalty and perjury, I declare that the information on this application, along with required documents submitted with this application is complete, true and accurate. I understand and will follow all rules related to a cannabis business set forth by the State of New Mexico and the City of Aztec. I understand that a misrepresentation of fact or violation of these rules may result in denial of the license application or revocation of a license issued. I understand that it is my continuing obligation to update any information on this application including all documents and plans submitted with this application.
12. Payment to the City of Aztec for the associated fee (Aztec City Code, Chapter 16, Fee Schedule) related to the specific cannabis business type.

Sec. 11-13-21. Additional Provisions and Requirements for Cannabis Producer License

1. License Types.
 - 1) A cannabis producer; and
 - 2) A cannabis producer microbusiness;
 - 3) An integrated cannabis establishment microbusiness;
 - 4) A vertical integrated cannabis establishment;

2. License Required.

Unless licensed pursuant to the Cannabis Regulation Act or Cannabis Control Division rules, a person shall not cultivate cannabis, including planting, growing, and harvesting cannabis, except for personal use as provided by the Cannabis Regulation Act and the Lynn and Erin Compassionate Use Act and that are not in conflict with state and local laws including but not limited to zoning, occupancy, licensing, fire safety, food safety, worker protection and building codes;

3. Other Activities Prohibited.

No cannabis establishment licensee may manufacture cannabis products, courier cannabis products, or engage in the retail sale of cannabis or cannabis products unless the licensee has properly applied for, and the City of Aztec and Cannabis Control Division has approved the applicable license type required for those activities

4. Vertically Integrated Cannabis and Integrated Cannabis Establishment Microbusiness.

Applicants for vertically integrated cannabis and integrated cannabis establishment microbusiness must be approved and authorized by the Cannabis Control Division and the City of Aztec to conduct cannabis producer activities.

5. Fencing Requirements for Outdoor Areas or Greenhouses.

Any licensed premises that is an outdoor area or greenhouse shall also implement security measures to ensure that the outdoor area or greenhouse is not assessable to unauthorized individuals and is secure to prevent and detect diversion, theft, or loss of cannabis, which shall include:

- 1) A perimeter security fence designed to prevent unauthorized entry to any cannabis cultivation areas and signs shall be a minimum of 12" x 12" and which states: "Do Not Enter – Limited Access Area – Access Limited to Authorized Personnel Only" in lettering no smaller than one inch in height; and
- 2) A cover is required that obscures cannabis cultivation areas from being readily viewed from outside the fenced area;

6. Ventilation Plan.

A plan is required for ventilation that prevents any odor of marijuana from extending beyond the premises of the establishment. The plan must describes the ventilation system that will be used;

7. Water Supply.

A water assessment certification letter from the City of Aztec Water Department is required to demonstrate the quantity of water that the City of Aztec, along with the cannabis producer, determines to be needed for the cannabis production, cultivating or manufacturing business, as evidenced by written documentation from the applicant on expected daily, monthly and annual water consumption based on the best available information, including sufficient water to properly convey sewage of liquid disposable waste from the facility. If it is determined by the City of Aztec Public Works Director or designee that the City has the water capacity to service the applicant's business type and has the right to use water from the City of Aztec; the use of water by the cannabis business is compliant with the rules set forth by the City of Aztec, including any restrictions set forth through the City's Water Conservation Plan or Aztec City Code; the City of Aztec Public Works Director will provide a certification letter to the applicant that

the applicant has the right to use water from the City of Aztec and that the use of the water is compliant with the City of Aztec rules. The certification letter must be submitted to the City of Aztec as part the business application.

8. Cannabis Waste.

Applicant shall meet the requirements as set forth in 16.8.2.15 NMAC, Wastage of Cannabis or Cannabis Products; Permitted Methods. A plan must be provided for disposal of any cannabis product that is not sold or is contaminated in a manner that protects any portion thereof from being possessed or ingested by any person or animal; a description of all toxic, flammable or other materials that will be used, kept or created at the establishment, and the location where such materials will be stored shall be included. The cannabis establishment must use the current solid waste provider for disposal that the City of Aztec is under exclusive contract with to provide solid waste services;

9. Electric Supply.

Electric Load Calculation Certification must be provided to the City of Aztec in order to provide adequate electric supply to the cannabis establishment that will be required to operate. An electric load calculation certification letter from the City of Aztec Electric Department Director or designee that the applicant has sufficient electric capacity or must increase electric capacity to be able to operate the cannabis production business. The certification letter must be submitted to the City of Aztec as part of the business application.

10. Construction or Alterations of Cannabis Establishment Buildings.

If applicable, licensees shall ensure that all licensed premises are in compliance with the Construction Industries Licensing Act as well as applicable codes, standards, local zoning laws, licensing laws and fire codes. Licensees shall contact the City of Aztec Community Development Department before any construction or alterations of a building or premises occur.

Sec. 11-13-22. Licensure Period, Expiration and Renewal.

1. Initial License Period.

Shall be from the date license application is approved until December 31 of the same calendar year.

2. Initial License Fee.

May be prorated using the twelve month period January to December. A full month fee will be assessed if license is approved with at least 15 days remaining in the month. If less than 15 days, a per day proration amount will be used to calculate the remaining days left in the month based on the specific license fee.

3. License Renewal.

To timely renew a license, a completed license renewal application and annual license fee pursuant to Chapter 16, Fee Schedule, of the Aztec City Code shall be received by the City of Aztec Business License Office from the licensee no earlier than 15 days before the license expiration and no later than 30 days following the license expiration. Failure to receive a notice for license renewal from the City of Aztec does not relieve a

licensee of the obligation to renew all licenses required. Because the expiration date of the City of Aztec cannabis license may differ from the State of New Mexico Cannabis Control Division expiration date, licensee must submit the State Cannabis License to the City of Aztec Business License Office immediately upon receiving state license. Failure to provide State License to complete renewal process for the City of Aztec may result in suspension of City of Aztec Business License.

Sec. 11-13-23. State License Renewals.

If a cannabis establishment fails to successfully renew a cannabis license, the cannabis establishment shall suspend all business activities in the City Limits of Aztec until licensee can provide proof that the State of New Mexico has renewed or granted a valid cannabis license.

Sec. 11-13-24. Federal Law.

The activities described in this code may be considered a violation of federal law. Persons cultivating, manufacturing, collecting samples of, testing, selling, purchasing or otherwise receiving cannabis or cannabis products may be subject to federal sanctions for what may otherwise be considered authorized conduct in the State of New Mexico, and compliance with the rule does not exempt licenses, their employees or customers from possible federal prosecution. The City of Aztec is not responsible or liable for the actions of licensed cannabis establishments under this code.

Sec. 11-13-25. Severability.

If any part or application of this code is held to be invalid, the remainder or its application to other situations or persons shall not be affected. Any section of this code legally severed shall not interfere with the remaining protections and duties provided by this code.