

ORDINANCE NO.: 2021-03

AN ORDINANCE ADOPTING THE LEGISLATIVE INTENT, FINDINGS, AND PURPOSE RELATING TO THE REGULATION OF CANNABIS.

WHEREAS, the New Mexico Cannabis Regulation Act (“NMCRA”), NMSA §§ 26-2C-1 to 26-2C-42, allows the establishment and operation of certain cannabis dispensaries in the County of Colfax according to a prescribed statutory and regulatory process, and

WHEREAS, the County of Colfax finds that the NMCRA section 26-2C-12 authorizes the County of Colfax to:

(1) adopt time, place and manner rules that do not conflict with the Cannabis Regulation Act or the Dee Johnson Clean Indoor Air Act, including rules that reasonably limit density of licenses and operating times consistent with neighborhood uses; and

(2) allow for the smoking, vaporizing and ingesting of cannabis products within an indoor or outdoor cannabis consumption area if:

(a) licensed pursuant to the Lynn and Erin Compassionate Use Act, and access to the cannabis consumption area is restricted to persons twenty-one years of age and older; and

(b) the cannabis establishment or integrated cannabis microbusiness is located at a minimum distance from a school or daycare center as determined by the local jurisdiction, but which minimum distance shall not be set at any more than three hundred feet from a school or daycare center that was in existence at the time the establishment or microbusiness was licensed.

However, the NMCRA directs the County shall not:

(1) prevent transportation of cannabis products on public roads by a licensee that transports cannabis products in compliance with the Cannabis Regulation Act;

(2) completely prohibit the operation of a licensee;

(3) prohibit or limit signage attached to or located on licensed premises that identifies the premises as a cannabis establishment;

(4) require a licensed premises or a cannabis consumption area to be any more than three hundred feet from a school or daycare center that was in existence at the time the cannabis establishment or integrated cannabis microbusiness was licensed;

(5) require an existing licensee at a licensed premises to relocate; or

(6) prohibit a person from producing homegrown cannabis as provided for in the Cannabis Regulation Act.

WHEREAS, County of Colfax seeks to protect public health, safety, and welfare by enacting reasonable regulations on cannabis establishments in unincorporated areas of the County.

Recording (Date - Time) 10/25/21 - 12:00:09 AM
COLFAX COUNTY, NM - Rayeta Trujillo - County Clerk
DOC# ORD-2021-003

PAGE: 1 of 14

RT

WHEREAS, County of Colfax referenced and incorporated the County of Santa Fe's Comprehensive Zoning Plan, and seeks to develop or amend the currently available zoning plan for the County.

WHEREAS, this ordinance is subject to change or amendment as the New Mexico Cannabis Regulation Act ("NMCRA")'s rules and regulations are amended and adopted, and it shall comply with NMCRA and its regulations.

NOW THEREFORE, the County of Colfax adopts the following ordinance for the regulation of cannabis consistent with the NMCRA and its Comprehensive Zoning Plan available, and this ordinance shall be amended should the County of Colfax amend or adopt its own zoning ordinance or comprehensive zoning plan.

Section 1. Purpose

This Ordinance is adopted to protect the health, safety, and welfare of the community. Except as allowed by NMCRA and its pertinent laws or regulations for personal or private use, the County of Colfax enacts reasonable regulations and requires compliance with the NMCRA and its pertinent laws or regulations.

Section 2. Definitions

The below words and phrases, wherever used in this article, shall be construed as defined in the NMCRA or pertinent laws and regulations with their subsequent amendments.

A. "advertisement":

(1) means a statement or a depiction that is intended to induce the purchase of cannabis products and that is displayed in printed material or on a sign or other outdoor display or presented in a radio, television or other media broadcast or in digital media; and

(2) does not include:

(a) a sign or outdoor display or other statement permanently affixed to a licensed premises that is intended to induce the sale of a cannabis product produced or sold on the premises;

(b) a label affixed to a cannabis product or the covering, wrapper or container of a cannabis product; or

(c) an editorial or other material printed in a publication when the publication of the editorial or material was not paid for by a licensee and was not intended to promote the sale of cannabis products by a particular brand or company;

B. "cannabis":

(1) means 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

(2) 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;

C. "cannabis consumption area" means an area where cannabis products may be served and consumed;

D. "cannabis courier" means a person that transports cannabis products to qualified patients, primary caregivers or reciprocal participants or directly to consumers;

E. "cannabis establishment" means:

- (1) a cannabis testing laboratory;
- (2) a cannabis manufacturer;
- (3) a cannabis producer;
- (4) a cannabis retailer;
- (5) a cannabis research laboratory;
- (6) a vertically integrated cannabis establishment;
- (7) a cannabis producer microbusiness; or
- (8) an integrated cannabis microbusiness;

F. "cannabis extract":

(1) means 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;

G. "cannabis flowers" means only the flowers of a cannabis plant;

H. "cannabis manufacturer" means a 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;

I. "cannabis producer" means a 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;

J. "cannabis producer microbusiness" means a cannabis producer at a single licensed premises that possesses no more than two hundred total mature cannabis plants at any one time;

K. "cannabis product" means a product that is or that contains cannabis or cannabis extract, including edible or topical products that may also contain other ingredients;

L. "cannabis research laboratory" means 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;

M. "cannabis retailer" means a person that sells cannabis products to qualified patients, primary caregivers or reciprocal participants or directly to consumers;

N. "cannabis server permit" means 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;

O. "cannabis server permit education provider" means a person that provides cannabis server education courses and examinations;

P. "cannabis testing laboratory" means a person that samples, collects and tests cannabis products and transports cannabis products for the purpose of testing;

Q. "cannabis training and education program" means 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;

R. "commercial cannabis activity":

(1) means the cultivation, production, possession, manufacture, storage, testing, researching, labeling, transportation, couriering, purchase for resale, sale or consignment of cannabis products; and

(2) 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;

S. "consumer" means 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;

T. "contaminant" means pesticides and other foreign material, such as hair, insects or other similar adulterants, in harvested cannabis;

U. "controlling person":

(1) means 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; and

(2) does not include a bank or licensed lending institution;

V. "cultivation" means any activity involving the planting, growing, harvesting, drying, curing, grading or trimming of cannabis;

W. "department" means the regulation and licensing department;

X. "director" means the director of the division;

Y. "division" means the cannabis control division of the department;

Z. "dry weight basis", when used in the context of regulation of commercial cannabis activity, means a process by which delta-9-tetrahydrocannabinol concentration is measured relative to the aggregate weight of all parts of the plant genus *Cannabis*, whether growing or not, including the leaves of the plant, the flowers and buds of the plant, the seeds of the plant, the resin of the plant and the stalks of the plant at the point of harvest by a licensee and with no moisture added to the harvested plant;

AA. "facility" means a building, space or grounds licensed for the production, possession, testing, manufacturing or distribution of cannabis, cannabis extracts or cannabis products;

BB. "financial consideration" means value that is given or received, directly or indirectly, through sales, barter, trade, fees, charges, dues, contributions or donations;

CC. "homegrown" or "homemade" means grown or made for purposes that are not dependent or conditioned upon the provision or receipt of financial consideration;

DD. "household" means a housing unit and includes any place in or around the housing unit at which an occupant of the housing unit produces, manufactures, keeps or stores homegrown cannabis or homemade cannabis products;

EE. "immature cannabis plant" means a cannabis plant that has no observable flowers or buds;

FF. "industry standards" means the prevailing customary standards of business practice in the cannabis industry in jurisdictions within the United States;

GG. "integrated cannabis microbusiness" means 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;

HH. "licensed premises" means a location that includes:

- (1) all enclosed public and private areas at the location that are used in the business and includes offices, kitchens, restrooms and storerooms;
- (2) all areas outside of a building that are specifically included in the license for the production, manufacturing, wholesale sale or retail sale of cannabis products; and
- (3) with respect to a location that is specifically licensed for the production of cannabis outside of a building, the entire unit of land that is created by subsection or partition of land that the licensee owns, leases or has a right to occupy;

II. "local jurisdiction" means a municipality, home rule municipality or county;

JJ. "manufacture" means to compound, blend, extract, infuse, package or otherwise prepare a cannabis product;

KK. "medical cannabis" means cannabis products used by a qualified patient or reciprocal participant in accordance with the Lynn and Erin Compassionate Use Act;

LL. "medical cannabis program" means the program created pursuant to the Lynn and Erin Compassionate Use Act;

MM. "medical cannabis registry" means the system by which the department of health approves or denies applications and issues and renews registry identification cards for qualified patients;

NN. "primary caregiver" means a resident of New Mexico who is at least eighteen years of age and who is responsible for managing the well-being of a qualified patient with respect to the medical use of cannabis pursuant to the Lynn and Erin Compassionate Use Act;

OO. "public place" means a place to which the general public has access and includes hallways, lobbies and other parts of apartment houses and hotels that do not constitute rooms or apartments designed for actual residence; highways; streets; schools; places of amusement; parks; playgrounds; and places used in connection with public passenger transportation;

PP. "qualified patient" means a resident of New Mexico who holds a registry identification card pursuant to the Lynn and Erin Compassionate Use Act;

QQ. "reciprocal participant" means a person who is not a resident of New Mexico and who holds proof of enrollment by a governmental regulatory authority to participate in the medical cannabis program of another state of the United States, the District of Columbia or a territory or commonwealth of the United States in which the person resides or a person who holds proof of enrollment by a governmental regulatory authority of a New Mexico Indian nation, tribe or pueblo to participate in its medical cannabis program;

RR. "retail establishment" means a location at which cannabis products are sold to qualified patients, primary caregivers and reciprocal participants and directly to consumers;

SS. "superintendent" means the superintendent of regulation and licensing;

TT. “unprocessed” means unaltered from an original, raw or natural state; and

UU. “vertically integrated cannabis establishment” means a person that is authorized to act as any of the following:

- (1) a cannabis courier;
- (2) a cannabis manufacturer;
- (3) a cannabis producer; and
- (4) a cannabis retailer.

Section 3. Allowable land use zoning:

The Board has determined that cannabis establishments and cannabis consumption areas should be allowed in those zoning districts where similar uses are allowed, such similarity determined by the Board in an exercise of legislative discretion based upon, among other factors, off-site impacts, compatibility, and the need for services.

- A. In Residential Zoning areas, Private property consumption, and cultivation of up to 12 mature and 12 immature plants; or consumption or cultivation allowed by NMRCRA and New Mexico laws will be allowed.
- B. Cultivation in agricultural areas will be allowed, but if cultivation is for industrial uses, the following conditions should be met:
 - (1) Cannabis cultivation for industrial uses is allowed, provided that the establishment complies with all New Mexico State law requirements, including but not limited to any required spacing from other uses or facilities. For the purposes of this Article, all measurements for Cannabis Cultivation shall be from the licensed premises as defined by NMCRA.
 - (2) All licensed premises as defined by the NMCRA are prohibited within 300 feet of any school, or child day care facility or residence, religious assembly or church, library, cultural center, community center, public park, or government facility.
 - (3) Except as specified in Subsection (4) below, all activities in this use must be conducted within the fully enclosed portions of a building unless a Conditional Use Approval is obtained to conduct specific activities outside of the fully enclosed portions of a building.
 - (4) An incidental storage area is allowed outside of the fully enclosed portions of a building, but must be screened from view from each neighboring property line in which a permit is required.
 - (5) An air filtration plan approved by the County’s Health Department or County Manager is required which complies with the Dec Johnson Clean Indoor Air Act.
 - (6) Customer visits and deliveries are prohibited between 12:00 a.m. and 8:00 a.m. for any Cannabis Cultivation Facility.
- C. Cannabis testing laboratories, Cannabis producers, Cannabis retail, Microbusiness, vertically integrated cannabis establishments, Cannabis training

- and education shall be treated as the same as Research and Development Services such as scientific, medical and technology.
- D. Cannabis manufacturers or Cannabis-derived products manufacturers shall be treated the same as Food, Textiles and Related Products, and safe and secure extraction shall be the only manufacturing technique allowed. With regard to Cannabis-derived products manufacturing,
- (1) Cannabis-derived products manufacturing is allowed, provided that the establishment complies with all New Mexico State law requirements, including but not limited to any required spacing from other uses or facilities. For the purposes of the article, all measurements for Cannabis-derived Product Manufacturing shall be from the licensed premises as defined by NMCRA.
 - (2) All licensed premises, as defined by NMCRA, are prohibited within 300 feet of any school, or child day care facility or residence, religious assembly or church, library, cultural center, community center, public park, or government facility.
 - (3) Except as specified in Subsection (4) below, all activities in this use shall be conducted within the fully enclosed portions of a building unless a Conditional Use Approval is obtained to conduct specific activities outside of the fully enclosed portions of a building.
 - (4) An incidental storage area is allowed outside of the fully enclosed portions of a building but shall be screened from view from each property neighboring line.
 - (5) An air filtration plan approved by the County is required.
 - (6) Customer visits and deliveries are prohibited between 12:00 a.m. and 8 a.m. for any Cannabis-derived Products facility.
- E. A cannabis producer or cannabis producer microbusiness that cultivates cannabis plants indoors shall be treated the same as Commercial Greenhouse.
- F. A cannabis producer or cannabis producer microbusiness that cultivates cannabis plants outdoors shall be treated the same as Dairy Farms.
- G. A cannabis retailer shall be treated the same as Store or Shop.
- (1) Cannabis retail is allowed, provided that the establishment complies with all New Mexico State law requirements, including but not limited to any required spacing from other uses or facilities. For the purposes of this article, all measurements for Cannabis Retail shall be from the licensed premises as defined by NMCRA.
 - (2) This use shall not include a storage or display area outside of fully enclosed portions of a building.
 - (3) A licensed premises, as defined by NMCRA, is prohibited within 300 feet of any school or child day care facility or residence, religious assembly or church, library, cultural center, community center, public park, or government facility.
 - (4) Nothing herein prohibits multiple licenses from operating from a single premise.

- (5) Customer visits and deliveries are prohibited between 12:00 a.m. and 8:00 a.m.
- H. Cannabis couriers fall within Courier and messenger service facilities.
- I. Vertically integrated cannabis establishments and integrated cannabis microbusiness may only be located in a zoning area in which each of the authorized activities proposed for the licensed premises is an allowed use, whether as a permitted use or pursuant to an approved conditional use permit.
- J. Cannabis consumption areas are subject to the following:
- a. A cannabis consumption area in which consumption is limited to consumption by qualified patients or reciprocal participants may be located inside any cannabis retailer; provided, however, that smoking of cannabis products in such consumption areas is only allowed if the cannabis consumption area occupies a standalone building and/or room sealed from the rest of the building with separate air filtration system, from which smoke does not infiltrate other indoor workplaces or other indoor 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 allow consumption by consumers shall be treated the same as Bars, taverns and nightclubs. Cannabis consumption areas that are open to consumers are also subject to the following:
 - 1) The smoking of cannabis products is only allowed as defined by the Ordinance and NMCRA;
 - 2) The smoking of cannabis products is only allowed within a licensed cannabis consumption area that occupies a standalone building and/or room sealed from the rest of the building with separate air filtration system, from which smoke does not infiltrate other indoor workplaces or other indoor public places where smoking is otherwise prohibited pursuant to Dee Johnson Clean Indoor Air Act, NMSA 1978, Chapter 24, Article 16; and
 - 3) Access to cannabis consumption areas open to consumers is restricted to persons twenty-one years of age and older.
- K. Allowable Land Use Zoning
- a. Cannabis cultivation and production for personal use in quantities and as permitted by the NMCRA, and the Lynn and Erin Compassionate Use Act is allowed anywhere in the County subject to the following; Cannabis cultivation and production for personal use must be conducted inside an enclosed and locked dwelling unit or an appropriate structure. (e.g. a controlled-environment agricultural structure).
 - b. No cannabis establishment, cannabis consumption area, or cannabis courier may be located within 300 feet of a school, or day care center or residence, religious assembly or church, library, cultural center, community center, public park, or government facility 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 measurement for the purpose of determining the location of a the cannabis establishment, cannabis consumption area, or cannabis courier in relation to schools or daycare centers shall be 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.

- c. Cannabis producers that cultivate cannabis plants indoors and cannabis manufactures must use industry standard techniques to minimize odorous matter, toxic or noxious matter, such as activated carbon filtration and regular maintenance of HVAC systems.
- d. A cannabis establishment must maintain a minimum separation distance of 300 feet from any residence, religious assembly or church, library, cultural center, community center, public park, or government facility. The 300 feet separation distance does not apply to a residence on the same lot or parcel as the cannabis establishment. For purpose of this section, distances shall be measured in a straight line, without regard to intervening structures or objects, from the nearest point of the security fence of the cannabis establishment to the nearest improved area of any park or the nearest point of any structure of the residence, religious assembly or church, library, cultural center, community center, or government facility.
- e. The County Manager and/or Director of Planning and Zoning and/or the County Manager's designee, at their discretion, may reasonably control the density of cannabis establishments consistent with the County's custom and practice, precedent and policies consistent with NMCRA and New Mexico laws.

Section 4. Delivery permit restrictions.

The following restrictions shall be placed on cannabis delivery permits: only medical or retail cannabis transporters who qualify under NMCRA definitions and who hold a valid license and a delivery permit issued by the County manager may deliver regulated cannabis to private residences of customers and patients, subject to the provisions the NMRCA and its pertinent regulations and rules.

Section 5. Fees

- A. Planning and Building Cannabis application/inspection Fee \$581.00
- B. Planning and Building preliminary site plan review Fee \$556.00
- C. Planning and Building records management Fee \$100.00
- D. For Cultivation cottage or nursery Planning and Building/inspection Fee \$838.00
- E. Hazardous Materials Inventory Statement Plan Review Fee \$50
- F. Cannabis Transporter Permit Fee \$225
- G. Hazardous Materials and Flammable Liquids Permits – Use, Storage fee \$100
- H. A cannabis waste plan review Fee \$50

- I. Compliance requirement Fee with relevant County Ordinance and the International Fire Code (IFC) 2018 edition, chapter 38. (Fees will be assessed if necessary).

Section 6. Renewal annual application fee for all cultivation permit types

- A. Planning and Building cannabis application/inspection Fee \$581.00
- B. Planning and Building records management Fee \$100.00
- C. Planning and Building site inspection (not charged unless required).

Section 7. Renewal annual application fee for all other permit types

- A. Planning and Building cannabis application/inspection Fee \$581.00
 - B. Planning and Building records Management Fee \$100.00
 - C. County issued Business License Fee \$35.00
 - D. Cannabis Transporter Permit Fee \$225
 - E. Any other necessary licenses permitted by the NMCRA Fee \$250.00
- Licensee shall ensure that all licensed premises are in compliance with Construction Industries Licensing Act, and comply with the Occupational Health and Safety Act.

Section 8. Business Registration

Any person engaged in commercial cannabis activities must comply with the County's Business Registration Ordinance.

Section 9. Cannabis Establishment Permit

Subject to Sections 5 through 7 in this ordinance, any person seeking to operate a cannabis establishment in the County shall obtain a cannabis establishment permit under the following conditions:

- A. The permit shall be obtained from the County's Manager or designee.
- B. The application fee cost for the initial permit and the annual renewal fee shall be established by the Colfax County Commissioners. The annual renewal date shall be the anniversary date of when the permit was first obtained.
- C. The County Manager shall require the following information from the applicant:
 - (1) The name, address, and business organization of the applicant and location the applicant intends to transact business, as well as the specific business to be transacted.
 - (2) If the applicant is an individual, the residence address of the applicant as well as the applicant's birthdate and social security number.
 - (3) If the applicant is a partnership, the names, residence addresses, birthdates, and social security numbers of all partners.
 - (4) If the applicant is a Limited Liability Company, the state of organization, address of the resident agent in New Mexico sufficient for service of process, the name of the managing member together with residence address, birthdate, and the name, residence address, birthdate and social security number of each member of the company.

(5) If the applicant is a corporation, the state of incorporation, the name and address of the registered agent in New Mexico sufficient for service of process, the name, residence, birthdate of each officer or director of the corporation.

(6) Prior to the issuance of a permit, any Limited Liability company or corporation shall provide a certificate of good standing.

(7) The applicant shall provide Federal and State tax identification numbers.

(8) The applicant shall provide proof of compliance with the County's ordinance including the Business Registration Ordinance.

D. Prior to issuance of a permit, the Code enforcement Officer or County Manager shall confirm compliance with distancing requirements as provided in this Ordinance (Location).

E. Prior to issuance of a permit, the cannabis establishment must also pass the County's Building Code inspection.

F. Prior to any issuance or annual renewal of a permit, the cannabis establishment shall be inspected by the County's Fire Marshall. The cannabis establishment shall comply with Chapter 38 (as it may be amended from time to time) of the National Fire Protection Association (NFPA) 1 Fire Code and pertinent County's Fire Protection Ordinance. Cannabis manufacturers, cannabis research laboratories, and cannabis testing laboratories shall receive semiannual inspections. All other cannabis establishments shall receive an annual inspection, at the discretion of the County's Fire Marshall.

G. A temporary permit may be issued for state licensing purposes pending completion of the fire and building inspections upon satisfactory evidence that all other conditions have been met for a permit. A final permit shall be issued upon completion of the fire and building inspections.

H. No permit shall be issued to a mobile, temporary or portable building.

I. No permit shall be issued to a drive-through cannabis establishment.

J. Failure to meet the conditions above will result in non-issuance of a permit.

K. If denial of an application for a new permit or renewal permit is deemed necessary by the County Manager, written notice of the decision shall be provided to the applicant.

L. Any person or entity denied a permit may, within ten (10) days of the receipt of notice of the denial, file an appeal with the Colfax County Commissioners. The Notice of Appeal shall be delivered to the County Manager and a hearing shall be scheduled within thirty (30) days of receipt of the Notice. The appeal shall be de novo and the burden of proof shall be on the applicant to establish entitlement to a permit. The Colfax County Commissioners shall make written findings of fact and conclusions of law supporting its decision. Any further appeal shall be to the District Court, in accordance with NMSA 1978, Section 39-3-1.1 and Rule 1-074 NMRA.

M. Any person or entity denied a permit may apply to the Colfax County Commissioners for a variance from any portion of this Ordinance caused by unusual conditions not caused by the actions of the Applicant. In granting variances, the Commissioners may require such conditions as will substantially secure the objectives of this Ordinance and not adversely affect the health, safety, and general welfare of the public, if otherwise consistent with the general purpose and intent of this Ordinance and if not injurious or detrimental to the surrounding area. Each request for a variance shall be submitted in writing. Each request shall be considered at the same time as the application for the permit. The Commissioners shall make separate written findings of fact and conclusions of law on each requested variance. The decision and order shall be prepared,

signed, and filed within a reasonable time following the public meeting at which the variance is considered.

N. Operation of a cannabis establishment without a permit is a violation of this Ordinance.

Section 10. Cannabis Consumption Prohibited on Public Property

- A. Public property means any property owned or occupied by the County.
- B. The use, sale, cultivation, manufacture, production, storage or distribution of Cannabis or Cannabis products is prohibited on public property.
- C. No person shall smoke cannabis products in a public place, except in a cannabis consumption area, or on any County public property.
- D. No person shall smoke cannabis products in any place where the smoke is detectable from a public place or on public property

Section 11. Existing Medical Cannabis Establishments

Any medical cannabis establishment existing as of the date of the passage of this Ordinance shall not be required to comply with the location requirements in this Ordinance. However, the owners of such businesses shall, within 90 days of the effective date of this Ordinance, submit an application for a permit.

Section 12. Enforcement

A. County Code Compliance Officer/County Manager, County Sheriff or its designee or the County's Fire Marshall or designee may issue citations for violation of this Ordinance. With the exception in this Ordinance, which is punishable by State law, any violation of this Ordinance may be enforced in any court of competent jurisdiction.

B. The maximum penalty per violation shall be \$300. Each day during the time in which a violation occurs shall be deemed a separate violation. Nothing herein shall prevent County from seeking injunctive relief, if appropriate.

C. Any person found guilty of violating any provision of this ordinance shall be found guilty of a misdemeanor and fined not more than three hundred dollars (\$300.00) or imprisoned for a period of not more than ninety (90) days, or both fine and imprisonment.

D. Violations of this ordinance in addition to any other violation mandated under other pertinent County Ordinances or Code shall not limit any other allowed penalties. Any abatement procedures which may be taken by the County for any violation of this article shall be considered as a violation of County Ordinance. The Civil judgment or criminal conviction under this Ordinance or CRA shall not relieve such individuals or entities from their responsibility of correcting unlawful conditions, or removing unlawful structures or improvements under this Ordinance, and the County shall retain its authority to order any corrective actions related thereto.

E. The remedies provided in this Ordinance shall be cumulative and in addition to any federal, state, or local remedy, which may be available. Nothing contained herein shall be construed to preclude prosecution under any other applicable laws except as otherwise punishable by State law.

Section 13. Emergency Clause and Effective Date

Because of the urgent need for regulation pursuant to this Ordinance, the Colfax County Commissioners declare that it is necessary for the public peace, health and safety that this Ordinance takes effect immediately after passage when it is recorded in the book kept by the Board for that purpose and authenticated by the signature of the County Clerk. In the event a court of competent jurisdiction finds that the passage of this Ordinance did not constitute an emergency, then the effective date of this Ordinance shall be 30 days after this Ordinance is recorded with the County Clerk.

Section 14. Providing for Severability.

If any section, subsection, sentence, clause, phrase or portion of this Ordinance or any part of the Code adopted herein by reference, is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions thereof.

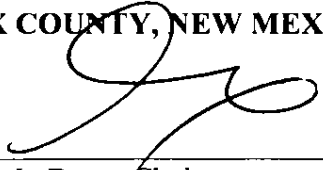
Section 15. Applicability of other laws. All cannabis uses are subject to all other applicable sections of the County's ordinances and its policies.

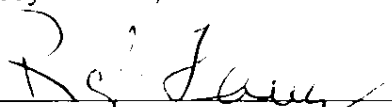
Section 16. Due to the nature of the NMRCA's continuing development of rules and regulations, the County Manager or his or her designee may implement all necessary and proper measures to comply with the NMCRA and its regulations including but not limited to fee adjustments.

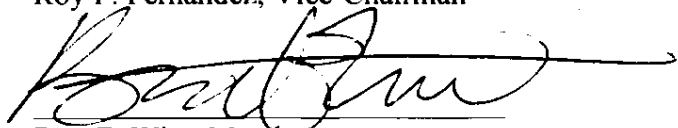
PASSED, ADOPTED AND APPROVED this 25th day of October 2021.

BOARD OF COMMISSIONERS OF COLFAX COUNTY, NEW MEXICO

By


Bobby LeDoux, Chairman


Roy P. Fernandez, Vice-Chairman


Bret E. Wier, Member



Rayetta M. Trujillo
Rayetta M. Trujillo, County Clerk

Mary Lou Kern
Mary Lou Kern, County Manager