

**ORDINANCE NO 2024-02**

**THE AMENDMENT TO ORDINANCE 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 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.

**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;
- (8) an integrated cannabis microbusiness; or
- (9) Vertically Integrated Cannabis Establishment (VICE)

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;

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. Subject to conditions herein in this Ordinance, 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.
  - (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 Manager which also complies with the Dee 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.
  - (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 as attached hereto.
  - (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.
  - (4) This use shall be conditional within 600 feet of another Cannabis Retail Establishment. 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 order.
- 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 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, 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 NMCRA 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 (NMEVD)

- 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 as attached hereto.

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. Liability and Indemnification**

A. To the fullest extent permitted by law, any actions taken by a public officer or employee under the provisions of this chapter shall not become a personal liability of any public officer or employee of the County.

B. To the maximum extent permitted by law, the permittees under this section shall defend (with counsel acceptable to the county), indemnify and hold harmless the Colfax County, its Commissioners, and its respective officials, County Manager, officers, employees, representatives, agents and volunteers (hereafter collectively called County) from any liability damages, actions, claims, demands, litigation, loss (direct or indirect), causes of action, proceedings or judgment (including legal costs, attorneys' fees, expert witness or consultant fees, county attorney or staff time, expenses or costs (collectively called "action") against the County to attack, set aside, void or annul, any cannabis-related approvals and actions and comply with the conditions under which such permit is granted, if any. The County may elect, in its sole discretion, to participate in the defense of said action and the permittee shall reimburse the County for its reasonable legal costs and attorneys' fees.

C. Within ten (10) calendar days of the service of the pleadings upon the county of any action as specified in Subsection B., above, the permittee shall execute a letter of agreement with the county, acceptable to the County Manager's office, which memorializes the above obligations. These obligations and the letter of agreement shall survive termination, extinguishment, or invalidation of the cannabis-related approval. Failure to timely execute the letter of agreement does not relieve the applicant of any of the obligations contained in this section or any other requirements or performance or operating standards that may be imposed by the County.

D. To the fullest extent permitted by law, the County shall not assume any liability whatsoever, with respect to approving any operational permit pursuant to this ordinance, or the operation of any retailer or retail cannabis establishment approved pursuant to this section.

E. Within ten (10) calendar days from the issuance of any types of permits from the County, the permittees shall execute the indemnification agreement attached hereto as a specific pre-condition to obtain the permit from the County. If a permittee refuses to execute the indemnification agreement, it will result in non-issuance of a permit or revocation of the permit issued, and the permittee shall have any rights to appeal this decision to the Colfax County Commission.

### **Section 11. 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 12. 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 13. 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 14. Personal Production of Cannabis; Penalties**

Subject to NMSA § 26-2C-27 and its subsequent changes:

A. Unless otherwise provided in the Cannabis Regulation Act, it is unlawful for a person without a license to intentionally produce cannabis products except as provided in this section.

B. A person twenty-one years of age or older who intentionally produces:

(1) more than six and up to twelve mature or immature cannabis plants shall be issued a penalty assessment pursuant to Section 31-19A-1 NMSA 1978 and is subject to a fine of fifty dollars (\$50.00); and

(2) more than twelve mature or immature cannabis plants is guilty of a fourth-degree felony and may be sentenced as provided in Section 31-18-15 NMSA 1978.

C. A person who is eighteen years of age or older but less than twenty-one years of age who intentionally produces:

(1) up to six mature or immature cannabis plants shall be issued a penalty assessment pursuant to Section 31-19A-1 NMSA 1978 and is subject to a fine of fifty dollars (\$50.00);

(2) more than six mature or immature cannabis plants and up to twelve mature or immature cannabis plants is guilty of a misdemeanor and shall be sentenced pursuant to the provisions of Section 31-19-1 NMSA 1978; and

(3) more than twelve mature or immature cannabis plants is guilty of a fourth-degree felony and shall be sentenced pursuant to the provisions of Section 31-18-15 NMSA 1978.

D. A person who is less than eighteen years of age who intentionally produces cannabis products is guilty of a civil violation and shall be subject to:

(1) attendance at a four-hour evidence-based drug education and legal rights program at no cost to the minor; or

(2) four hours of community service.

E. Indoor or outdoor cultivation of live cannabis plants is permitted within a single private residence, upon the grounds of a private residence, or inside an accessory structure located on the grounds of a private residence, to the extent such cultivation is authorized by NMSA 1978, § 26-2C-27 and is in strict compliance with the following requirements:

(1) Possessing, planting, cultivating, harvesting, drying, manufacturing cannabis products, or transporting not more than six mature cannabis plants and six immature cannabis plants per

person; provided that despite a household having multiple residents, no more than twelve mature cannabis plants may be present in one household; and provided further that if the person does not exceed the maximum number of cannabis plants, the person may possess the cannabis produced by the cannabis plants notwithstanding any weight limits and shall be stored in such a manner not to be visible from public view.

(2) Cannabis cultivation is permitted within a private residence and shall not be visible from the exterior of that residence. In addition, cannabis cultivation is permitted within a fully enclosed accessory structure within the rear or side yard of a private residence such as a greenhouse, shed, or similar. Cultivation areas must be secured by lock and key or other security devices which prevent unauthorized entry and shall not be visible from a public right-of-way.

(3) Open-air cannabis cultivation is permitted within the rear or side yard of a private residence, provided there is a minimum of a ten-foot setback. Cultivation areas must be secured by lock and key or other security devices which prevent unauthorized entry and shall not be visible from a public right-of-way.

(4) Obtaining or manufacturing cannabis extract using nonvolatile solvents, alcohol or carbon dioxide, or solvents is not permitted.

(5) Cannabis cultivation, including, but not limited to, any lighting, plumbing, building, or electrical components used for cultivation, must comply with current requirements in the Colfax County Ordinance as it currently exists or is amended from time to time.

(6) The dwelling unit shall remain at all times a residence.

(7) With legal and functioning cooking, sleeping, and sanitation facilities with proper ingress and egress. These rooms may not be used for cannabis cultivation where cultivation will prevent their primary use for cooking meals, sleeping, and bathing. Chemicals used for cannabis cultivation shall not be stored inside habitable areas of the residence or within public view from neighboring properties or public right-of-way.

(8) Consumption of cannabis, whether smoking, vaporizing, or ingesting, is permitted within or upon the grounds of a private residence pursuant to the Dee Johnson Clean Indoor Air Act.

(9) Cultivation of cannabis shall not violate any other provisions of the Colfax County Ordinance.

### **Section 15. 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 16. Applicability of other laws.** All cannabis uses are subject to all other applicable sections of the County’s ordinances and its policies.

**Section 17.** 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 9<sup>th</sup> day of April, 2024.**

**BOARD OF COMMISSIONERS OF COLFAX COUNTY, NEW MEXICO**

By Si Trujillo  
Si Trujillo, Chairman

Mary Lou Kern  
Mary Lou Kern, Vice Chair

Bret Wier  
Bret Wier, Member



ATTEST:

Rayetta Trujillo  
County Clerk, Rayetta Trujillo

Monte Gore  
County Manager, Monte Gore



<https://www.nafahq.org/cannabis-facilities-air-filtration-uv-c-air-disinfection-and-odor-removal/>

Cannabis facilities: air filtration, UV-C air disinfection and odor removal By Keith Jordan, Sanuvox Technologies, Inc.

Cannabis legalization has been a passionate topic over the last few years and is engulfing many countries and states. In the beginning of the legalization movement, many Cannabis growers were only concerned with a few items such as plant nutrients, pH water balance or the type of halogen grow lights recommended. Very little, if any, thought was imparted to indoor air quality. Slowly, over the last 5 years, Cannabis growers are realizing that Indoor air quality provides as much value as any other technique in the growing process. Growers understand there are a large number of contaminants that can damage and wipe out an entire crop, thus learning about proper indoor air quality is quickly gaining prominence.

Cannabis growers operate in three methods - outdoor grow similar to a farm, greenhouse similar to vegetables, and fully enclosed warehouse with Heating, Ventilation, and Air Conditioning system (HVAC). Outdoor growers harvest once a year, greenhouse growers harvest roughly 4 times a year and warehouse growers harvest 6-8 times a year. The top of the line, best quality and quickest harvests occur with a warehouse grower. NAFA members can engage the role of educating the grower on the best and most efficient method of removing particulates, disinfecting molds, fungus, bacteria, and mitigating pungent cannabis odors.

#### Filtration

The warehouse grower has anywhere from 100 to 10,000 plants inside a large room or multiple rooms which are full of dirt pots, 1000 watt growing lamps creating a massive heat load, circular fans on the walls stirring up dust, and high numbers of air changes per hour through the HVAC system. Operating indoors with the above opposing systems can rapidly increase the particulate load to that of dust storm. These opposing forces will continually increase the level of particulates as well as circulate those particulates around the room, through the HVAC system spreading contamination and dust virtually on every surface of the room. The current level of filtration for the majority of warehouse growers consists of a 1" MERV 8 pleated filter. Several reasons for this stem from utilizing 5 ton HVAC systems, choosing the cheapest filters, or a recommendation from an HVAC contractor.

The warehouse grower that has retrofitted a warehouse typically has multiple 5 ton AHU per room. The new facility built from the ground up typically has 15 to 25 ton AHU. Most growers are so concerned with overcoming the heat load of their grow lights and reducing humidification levels, that they are hesitant to increase filtration because of pressure drop. The HVAC contractor sizes the system to provide the grower with anywhere from 10 to 18 air changes per hour and does not educate the grower on the vast array of filtration efficiencies or sizes, thus why 1" MERV 8 pleats are the most common with Cannabis growers currently. This is a perfect situation where NAFA members can be of crucial benefit to growers in educating them that a higher efficiency filter will not necessarily affect the heating/cooling loads when sized properly and can lower life cycle costs of the filter as well as the AHU.

#### Powdery Mildew and Botrytis UV-C air disinfection

The warehouse Cannabis grower is especially susceptible to the infection of Powdery Mildew and Botrytis which infiltrate the facility and continually infect the Cannabis buds causing a stunting of growth, distortion of quality, a reduction of terpenes and degraded product that must be discarded or used for oil extraction.

Commercial UV-C Air disinfection systems are being utilized with success in preventing the outbreak and spread of Powdery Mildew and Botrytis as well as assisting in the grower consistently passing the state mold CFU tests required at each harvest. The UV-C system is sized based on cubic feet per minute (CFM) of the HVAC system, return or supply duct dimensions, cubic feet of the room to be disinfected and the number of air changes achieved on an hourly basis. An effective UV-C system should be designed to achieve an average of 95% hourly disinfection of Powdery Mildew utilizing a recirculation rate of 8 air changes per hour. This ensures that all the air in the room will be processed through the UV-C air disinfection system multiple times.

Currently, the most efficient and economical approach is to utilize the HVAC system as a point of disinfection. As mentioned above, most growers are attaining on average 10-18 air changes per hour. By installing a commercial UV-C Air Disinfection system in the return or supply HVAC ductwork the air can be disinfected at a high level due to the high air exchange rate.

Stand alone or portable UV-C systems can be utilized if they are sized to achieve 8 or more air changes per hour with high intensity UV-C air disinfection lamps. UV-C air disinfection is a complimentary system to filtration necessary to provide a synergistic punch to quickly reduce mold, bacteria and virus contaminants within the warehouse grower.

#### Odor removal

The growing of Cannabis produces a pungent and dense odor. Many think of a skunk when they smell the Cannabis odors. Inside the growing facility, the odor is accepted and anticipated.

However; outside near neighborhoods and offices, many find the odor to be offensive and bothersome. In fact, many cities are issuing regulations regarding odor control and enacting fines when odors are smelled and reported outside of the facility. This poses another costly issue for the warehouse grower when maintaining negative pressure. Depending on the regulations, growers choose between a closed loop/non-exhaust system or a negative pressure system, very few if any have positive pressure set ups. The main reason is to keep CO<sub>2</sub> and odors inside the facility. Though, for the grower who actively exhausts indoor air, odor removal is mandatory, cumbersome and difficult.

Currently, can or tube carbon filters are most commonly used for the mitigation of the Cannabis odors. The majority of these filters are purchased through Cannabis growing supply stores (similar to garden stores). Due to the potency of the odor, removal of this odor requires a constant supply of can/tube filters or a commercial carbon filter set up. The commercial set up contains bulk fill carbon housings on the exhaust air which greatly increase the elimination of the cannabis odors being exhausted.

Lastly, it is important to understand these odor regulations are not consistent from state to state nor are always very clear. It is important when working with these facilities that you understand the regulations that have been imposed on this market.

#### Summary

As Cannabis legalization continues to progress throughout the world, it is extremely beneficial to NAFA members to reach out and educate Cannabis growers on proper indoor air quality.

Filtration, UV-C air disinfection, and odor mitigation will always be important topics for the Cannabis grower as they directly impact the growing space. NAFA is positioned as a leader and should enact recommendations and guidelines for indoor air quality within Cannabis industry. Currently, there are no

other organizations with the expertise of NAFA members poised to assist this progressive and expanding industry.

**COLFAX COUNTY CANNABIS PERMIT  
AUTHORIZATION LETTER**

**AUTHORIZATION**

Dear:

The County hereby provides the Permit to you.

Permit Number:

Term of the Permit

Name of the Business:

Address:

Phone Number:

\_\_\_\_\_   
Date

\_\_\_\_\_   
Authorized Agent from the Colfax County

## **Indemnification Agreement**

To the fullest extent permitted by law, the County of Colfax (County) shall not assume any liability whatsoever with respect to having issued a commercial cannabis business permit pursuant to Colfax County Cannabis Ordinance approving the operation of any commercial cannabis business or cannabis retail business.

In consideration for the submittal of an application for a commercial cannabis business permit application and/or issuance of a cannabis business permit, and to the furthest extent allowed by law, Applicant does hereby agree to indemnify, hold harmless and defend the County and each of its officers, officials, employees, agents and volunteers from any and all loss, liability, fines, penalties, forfeitures, costs and damages (whether in contract, tort or strict liability, including but not limited to personal injury, death at any time and property damage) incurred by County, Applicant or any other person, and from any and all claims, demands and actions in law or equity (including reasonable attorney's fees and litigation expenses), arising or alleged to have arisen directly or indirectly out of the issuance of a cannabis business permit, the process used by the County in making its decision the alleged violation of any federal laws by the cannabis business or any of its officers, employees, or agents.

Applicant's obligations under the preceding sentence shall not apply to any loss, liability, fines, penalties, forfeitures, costs or damages caused solely by the gross negligence, or caused by the willful misconduct, of County or any of its officers, officials, employees, agents or volunteers.

Applicant must, at the time of permit issuance, maintain insurance at coverage limits and with conditions thereon determined necessary and appropriate from time to time by the County.

Applicant shall conduct all defense at his/her/its sole cost. The fact that insurance is obtained by Applicant shall not be deemed to release or diminish the liability of Applicant, including, without limitation, liability assumed under this Agreement.

The duty to indemnify shall apply to all claims regardless of whether any insurance policies are applicable. The duty to defend hereunder is wholly independent of and separate from the duty to indemnify and such duty to defend exists regardless of any ultimate liability of Applicant. The policy limits do not act as a limitation upon the amount of defense and/or indemnification to be provided by Applicant. Approval or purchase of any insurance contracts or policies shall in no way relieve from liability nor limit the liability of Applicant, its officials, officers, employees, agents, volunteers or invitees.

County shall be reimbursed for all costs and expenses, including but not limited to legal fees and costs and court costs, which the County may be required to pay as a result of any legal challenge related to the county's approval of the applicant's commercial cannabis business permit. The County may, at its sole discretion, participate at its own expense in the defense of any such action, but such participation shall not relieve any of the obligations imposed hereunder.

This Indemnification and Hold Harmless Agreement shall survive the expiration or termination of the Application and/or Permit.

The undersigned acknowledges that he/she (i) has read and fully understands the content of this Indemnification and Hold Harmless Agreement; (ii) is aware that this is a contract between the County and Applicant; (iii) has had the opportunity to consult with his/her attorney, in his/her discretion; (iv) is

fully aware of the legal consequences of signing this document; and (v) is the Applicant or his/her/its authorized signatory.

\_\_\_\_\_

Applicant Signature

\_\_\_\_\_

Applicant Signature