

VALENCIA COUNTY, NEW MEXICO

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VALENCIA COUNTY

VALENCIA COUNTY RECREATIONAL AND MEDICAL CANNABIS REGULATIONS

PASSED: January 5, 2022

EFFECTIVE: February 5, 2022

**VALENCIA COUNTY
ORDINANCE 22-01**

AN ORDINANCE AMENDING THE INTERIM COMPREHENSIVE ZONING CHAPTER OF VALENCIA COUNTY; PROVIDING FOR REGULATION OF LOCATION AND CONSUMPTION OF RECREATIONAL AND MEDICAL CANNABIS; PROVIDING A PENALTY; ESTABLISHING SEVERABILITY AND AN EFFECTIVE DATE

WHEREAS, NMSA 1978, Section 3-18-1 (1972) provides that municipalities, and also counties pursuant to NMSA 1978, Section 4-37-1 (1995), have the power to “protect generally the property of its municipality and its inhabitants” and to “preserve peace and order”; and,

WHEREAS, Section 4-37-1 et seq. NMSA 1978 provides that counties may adopt ordinances, not inconsistent with statutory or constitutional limitations placed on counties, to discharge those powers necessary and proper to provide for the safety, preserve the health, promote the prosperity and improve the morals, order, comfort and convenience of the county and its inhabitants; and,

WHEREAS, NMSA 1978, Section 26-2C-12 (2021), and NMSA 1978, Sections 24-16-2 (1985) and – 20 (2007) vests the County with the authority to 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,

WHEREAS, the Cannabis Regulation Act, NMSA 1978, Section 26-2C-1 *et seq.*, has authorized a variety of uses related to the legalization of commercial cannabis activities, which legalization has the potential to greatly expand the legal cannabis market; and,

WHEREAS, Cannabis cultivation, production, and manufacturing creates strong odors, can involve the use of significant amounts of energy and water, and requires security and other measures to reduce the risk of theft or other diversion to the illegal cannabis market, including possession and use by persons under the age of twenty-one; and,

WHEREAS, Cannabis is an intoxicating drug, making it appropriate to regulate the hours during which cannabis products may be sold and the areas in which cannabis products may be consumed; and,

WHEREAS, the smoking of cannabis products may create health risks due to exposure to secondhand smoke and vaporized cannabis concentrates; and,

WHEREAS, density limits are necessary to ensure that cannabis retailers and consumption areas are not unduly concentrated and do not crowd out other non-residential uses; and

WHEREAS, 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; and,

WHEREAS, the Valencia County Board of Commissioners finds it necessary to adopt this Ordinance to restrict the time, place, and manner of the sale and consumption of cannabis to protect residents from annoyance and injury resulting from such operations, and to prescribe penalties for violations of this Ordinance.

NOW, THEREFORE, BE IT ORDAINED by the Valencia County Board of Commissioners as follows:

**SECTION I
SHORT TITLE**

1.1 This Ordinance shall be known as the “VALENCIA COUNTY RECREATIONAL AND MEDICAL CANNABIS REGULATIONS”, and shall be referred to herein as “this Ordinance”.

**SECTION II
AUTHORITY**

2.1 This Ordinance is enacted pursuant to the authority granted to counties to provide for the safety and to preserve the health of the residents of the county as set forth in NMSA 1978 4-37-1 (1975); and pursuant NMSA 1978, Section 26-2C-12 (2021) and NMSA 1978, Sections 24-16-2 (1985) and 24-16-20 (2007).

**SECTION III
INTERPRETATION, CONFLICT AND WORD CONSTRUCTION**

3.1 **INTERPRETATION & CONFLICT.** The regulations provided herein are held to include the minimum standards necessary to carry out the purposes of this Ordinance. This Ordinance is not intended to interfere with, abrogate or annul any other valid Ordinance. Where the provisions of this Ordinance conflict with other rules, regulations, agreements or other County Ordinances or resolutions, the provisions of this Ordinance shall be controlling. Where this Ordinance imposes greater restrictions than those imposed by other rules, regulations, agreements or other County ordinances or resolutions, the provisions of this Ordinance shall be controlling.

3.2 **WORD CONSTRUCTION.** The words used in the present tense include the future tense; words in the masculine include the feminine; and words in the singular include the plural.

**SECTION IV
DEFINITIONS**

4.1 The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Cannabis: (1) 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.

Cannabis Consumption Area: an area where cannabis products may be served and consumed.

Cannabis Courier: a person that transports cannabis products to qualified patients, primary caregivers or reciprocal participants or directly to consumers.

Cannabis Establishment: (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.

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.

Cannabis Flowers: only the flowers of a cannabis plant.

Cannabis Manufacturer: 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.

Cannabis Producer: 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.

Cannabis Producer Microbusiness: a cannabis producer at a single licensed premises that possesses no more than two hundred total mature cannabis plants at any one time.

Cannabis Product: a product that is or that contains cannabis or cannabis extract, including edible or topical products that may also contain other ingredients.

Cannabis Research Laboratory: a facility that produces or possesses cannabis products and all parts of the plant genus Cannabis for the purpose of studying cannabis cultivation, characteristics or uses.

Cannabis Retailer: a person that sells cannabis products to qualified patients, primary caregivers or reciprocal participants or directly to consumers.

Cannabis Testing Laboratory: a person that samples, collects and tests cannabis products and transports cannabis products for the purpose of testing.

Commercial Cannabis Activity: (1) 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.

Consumer: a person twenty-one years of age or older who purchases, acquires, owns, possesses or uses a cannabis product for a purpose other than resale.

Cultivation: any activity involving the planting, growing, harvesting, drying, curing, grading or trimming of cannabis.

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.

E-cigarette: a product containing or delivering nicotine or another substance intended for human consumption that can be used by a person in any manner for the purpose of inhaling vapor or aerosol from the product, including a device, whether manufactured, distributed,

marketed or sold as an e-cigarette, e-cigar, e-pipe, e-hookah or vape pen or under another product name or descriptor.

Facility: a building, space or grounds licensed for the production, possession, testing, manufacturing or distribution of cannabis, cannabis extracts or cannabis products.

Integrated Cannabis Microbusiness: a person that is authorized to conduct one or more of the following: (1) production of cannabis at a single licensed premises; provided that the person shall not possess more than two hundred total mature cannabis plants at any one time; (2) manufacture of cannabis products at a single licensed premises; (3) sales and transportation of only cannabis products produced or manufactured by that person; (4) operation of only one retail establishment; and (5) couriering of cannabis products to qualified patients, primary caregivers or reciprocal participants or directly to consumers.

Licensed Premises: 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.

Manufacture: to compound, blend, extract, infuse, package or otherwise prepare a cannabis product. **Medical Cannabis:** cannabis products used by a qualified patient or reciprocal participant in accordance with the Lynn and Erin Compassionate Use Act, NMSA 1978, Chapter 26, Article 2B.

Medical Cannabis Program: the program created pursuant to the Lynn and Erin Compassionate Use Act, NMSA 1978, Chapter 26, Article 2B.

Public Place: a place to which the 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.

Public Property: any property owned or occupied by the County of Valencia.

Qualified Patient: a resident of New Mexico who holds a registry identification card pursuant to the Lynn and Erin Compassionate Use Act, NMSA 1978, Chapter 26, Article 2B.

Reciprocal Participant: 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.

Retail Establishment: a location at which cannabis products are sold to qualified patients, primary caregivers and reciprocal participants and directly to consumers.

Smoking: (1) inhaling from, exhaling from, burning, carrying or holding: (a) a lighted or heated cigar, cigarette, hookah or pipe; or (b) any other lighted or heated tobacco or plant product intended for inhalation, including cannabis, whether natural or synthetic; or (2) any use of an e-cigarette that creates an aerosol or vapor.

Standalone Building: a building whose heating, air conditioning and ventilation system services only that building.

Unprocessed: unaltered from an original, raw or natural state.

Vertically Integrated Cannabis Establishment: 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 V LOCATION

5.1 No cannabis establishment, cannabis consumption area, or cannabis courier may be located within 300 feet of a school or daycare center, church or religious assembly. For purpose of this section, all measurements for the purpose of determining the location shall be the shortest direct line measurement between the actual limits of the real property of the school or daycare center, church or religious assembly.

5.2 Cannabis retailers and cannabis consumption areas may only operate during the following hours: Cannabis products may only be served and consumed in cannabis consumption areas between the hours of 7:00 a.m. and 2:00 a.m. Monday through Saturday and noon to midnight on Sundays. Cannabis retailers may only sell cannabis products for off-site consumption between the hours of 7:00 a.m. and midnight Monday through Saturday and noon to midnight on Sundays.

5.3 Cannabis producers that cultivate cannabis plants indoors and cannabis manufacturers must use industry standard techniques to minimize odorous matter, toxic or noxious matter, such as activated carbon filtration and regular maintenance of HVAC systems.

5.4 Cannabis testing laboratories and cannabis research laboratories shall be a permitted use in a Community Commercial (C-2) Zoning District, and a Conditional Use in Neighborhood Commercial (C-1) Zoning District.

- 5.5 Cannabis manufacturers shall be a permitted use in Industrial Zones (I-1, I-2 and I-3) Zoning District and a Conditional use in a C-2 Zoning District.
- 5.6 A cannabis producer shall be a permitted use in I-1 and I-2 Zoning Districts.
- 5.7 A cannabis producer microbusiness that only cultivates cannabis plants outdoors shall be a permitted use in a Rural Residential (RR) Zoning District.
- 5.8 A cannabis producer or cannabis producer microbusiness that only cultivates cannabis plants outdoors shall be a permitted use in an Agricultural Preservation (AP) Zoning District.
- 5.9 A cannabis producer or cannabis producer microbusiness that only cultivates cannabis plants outdoors shall be a permitted use in an Outland District (OD) Zoning District.
- 5.10 A cannabis retailer shall be a permitted use in a C-1 or C-2 Zoning District.
- 5.11 Vertically integrated cannabis establishments and integrated cannabis microbusinesses may only be located in a Zoning District in which each of the authorized activities proposed for the licensed premises is a permitted use or pursuant to an approved Conditional Use permit.
- 5.12 The commercial cultivation of cannabis plants in a greenhouse will be subject to the requirements of the Valencia County Greenhouse Overlay District Ordinance.

**SECTION VI
CONSUMPTION**

- 6.1 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 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 are open to consumers are also subject to the following:
 - i. the smoking of cannabis products is not allowed outdoors;

- ii. the smoking of cannabis products is only allowed within a licensed cannabis consumption area that occupies a standalone building 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; and
 - iii. access to cannabis consumption areas open to consumers is restricted to persons twenty-one years of age and older.
- c. No person shall consume cannabis in a public place or on public property, or consume cannabis products in any place where the smoke is detectable from a public place or from public property.

**SECTION VII
APPLICABILITY OF OTHER LAWS**

7.1 Any person engaged in commercial cannabis activities and activities under the medical cannabis program other than personal production and use must obtain a County business license, and comply with all applicable State and local laws.

**SECTION VIII
ENFORCEMENT**

8.1 The Valencia County Code Enforcement is responsible for the enforcement of this chapter. All citations must be honored in a court of law subject to penalties as stated herein.

**SECTION IX
PENALTIES**

9.1 Any person who violates any of the provisions of the Recreational and Medical Cannabis Regulations shall be deemed guilty of a misdemeanor.

9.2 Each violation of this chapter shall be punishable by a fine of no more than \$300, and/or imprisonment for no more than 90 days, or both.

**SECTION X
SEVERABILITY**

10.1 If any article, section, subsection, paragraph, sentence, clause, phrase, provision or portion of any article, section, subsection, paragraph, sentence, clause, phrase or provision in this Ordinance is, for any reason, held to be unconstitutional, invalid or void, the remaining portion shall not be affected since it is the express intention of the Valencia County Board of County Commissioners to pass such article, section, subsection,


paragraph, sentence, clause, phrase or provision and every part thereof separately and independently from every other part.

**SECTION XI
EFFECTIVE DATE**

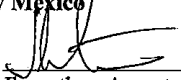
11.1 This Ordinance shall be recorded and authenticated by the Valencia County Clerk following adoption by the Board of County commissioners. This Ordinance shall take effect thirty days after adoption by the Board.

APPROVED, ADOPTED, AND ORDAINED on this 5th day of January, 2021

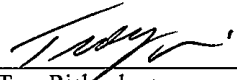
**Board of County Commissioners
Valencia County, New Mexico**



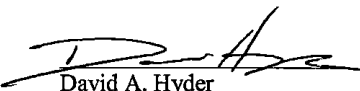
Gerard Saiz, Chair
District I



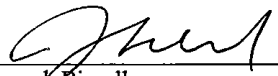
Jhonathan Aragon, Vice-Chair
District V



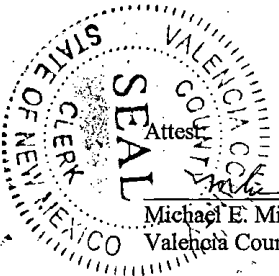
Troy Richardson
Commissioner, District II

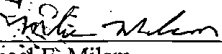


David A. Hyder
Commissioner, District III



Joseph Bizzell
Commissioner, District IV





Michael E. Milam
Valencia County Clerk