

**MORA COUNTY, NEW MEXICO
CANNABIS REGULATION ORDINANCE
ORDINANCE NO. _____**

**AN ORDINANCE REGULATING MEDICAL AND RECREATIONAL
CANNABIS ESTABLISHMENTS, OTHER CANNABIS BUSINESSES,
PRODUCTION OF CANNABIS AND CANNABIS PRODUCTS.**

WHEREAS, the Mora County Board of County Commissioners is the duly authorized governing body of Mora County, a political subdivision of the State of New Mexico; and

WHEREAS, §4-37-1 through §4-37-9, NMSA 1978 granted power to counties to regulate as necessary and proper to provide for the safety, health, and welfare of their inhabitants; and

WHEREAS, pursuant to the Cannabis Regulation Act, county governments are authorized to regulate cannabis cultivation, production, manufacturing, use and retail sales; 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, cannabis remains a controlled substance with the potential for misuse; and

WHEREAS, the Mora County Board of County Commissioners recognizes these factors enhance the risk of harm to their citizens, and

WHEREAS, the Cannabis Regulation Act has authorized a variety of uses related to the legalization of medical and recreational commercial cannabis activities, which legalization has the potential to greatly expand the legal cannabis market in Mora County; and

WHEREAS, the Mora County Board of County Commissioners recognizes the potential for the cannabis industry to increase revenue for the county and economic opportunities for its residents and business owners; and

WHEREAS, increased revenue necessitates increased traffic in areas where cannabis businesses shall be established; and

WHEREAS, the Mora County Board of County Commissioners recognizes economic opportunities are available to members of the local community and desires to promote and encourage such opportunities in rural, agricultural, and disadvantaged communities, to include those that are socio-economically disadvantaged, as set forth in the Cannabis Regulation Act; and

WHEREAS, the Mora County Board of County Commissioners intends to promote and encourage economic opportunity for racial, ethnic, gender and geographically diverse groups and those with established New Mexico residency among those licensees seeking to obtain a business license in Mora County as authorized by the Cannabis Regulation Act; and

WHEREAS, the Mora County Board of County Commissioners seeks to promote and encourage full participation in the cannabis industry by representatives of communities which have been disproportionately harmed by rates of arrest through the enforcement of cannabis prohibitions in law and policy as more fully described in the Cannabis Regulation Act; and

WHEREAS, the Board of County Commissioners of Mora County, New Mexico, seeks to ensure that regulating the use and manufacture of cannabis in Mora County is consistent with the need to protect environmental, cultural, historical, and water resources, as said resources are already protected under the Mora County's existing Zoning and Subdivision Code as adopted in 2019 and the Comprehensive Land Use Plan Update, 2018; and

WHEREAS, the Board of County Commissioners of Mora County, New Mexico finds that it will promote the public health, safety, and welfare by enacting provisions that regulate the use of cannabis in Mora County.

THEREFORE, BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF MORA COUNTY, NEW MEXICO:

SECTION 1. DEFINITIONS.

(A) 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;

(B) **Cannabis Consumption Area.** An area where cannabis products may be served and consumed;

(C) **Cannabis courier.** A person that transports cannabis products to qualified patients, primary caregivers or reciprocal participants or directly to consumers.

(D) **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) a cannabis consumption area.

(E) **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;

(F) **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;

(G) **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;

(H) **Cannabis product.** A product that is or that contains cannabis or cannabis extract, including edible or topical products that may also contain other ingredients;

(I) **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;

(J) **Cannabis Retailer.** A person that sells cannabis products to qualified patients, primary caregivers or reciprocal participants or directly to consumers;

(K) **Cannabis Testing Laboratory.** A person that samples, collects and tests cannabis products and transports cannabis products for the purpose of testing;

(L) **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;

(M) **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;

(N) **County.** The area lying within the corporate boundaries of the County of Mora and outside the boundaries of any incorporated municipality.

(O) **Cultivation.** Any activity involving the planting, growing, harvesting, drying, curing, grading or trimming of cannabis;

(P) **Cultural center.** An organization, building or complex that promotes culture and arts.

(Q) **Facility.** A building, space or grounds licensed for the production, possession, testing, manufacturing or distribution of cannabis, cannabis extracts or cannabis products;

(R) **Government Facility.** A facility, agency or area used for public purposes, and owned or operated by an instrumentality or agency of federal, state or local government.

(S) **Homegrown or Homemade.** Grown or made for purposes that are not dependent or conditioned upon the provision or receipt of financial consideration;

(T) **Household.** 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;

(U) **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;

(V) **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;

(W) **Manufacture.** To compound, blend, extract, infuse, package or otherwise prepare a cannabis product;

(X) **Medical Cannabis.** Cannabis products used by a qualified patient or reciprocal participant in accordance with the Lynn and Erin Compassionate Use Act;

(Y) **Medical Cannabis Program.** The program created pursuant to the Lynn and Erin Compassionate Use Act;

(Z) **Medical Cannabis Registry.** The system by which the department of health approves or denies applications and issues and renews registry identification cards for qualified patients;

(AA) **Mobile, Portable or Temporary Unit.** Any motorized or non-motorized vehicle, trailer, or other device designed to be portable and not permanently attached to the ground from which items are ordinarily vended, served, or offered for sale.

(BB) **Public Place.** 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;

(CC) **Qualified Patient.** A resident of New Mexico who holds a registry identification card pursuant to the Lynn and Erin Compassionate Use Act;

(DD) **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;

(EE) **Residence.** A place where someone lives.

(FF) **Retail Establishment.** A location at which cannabis products are sold to qualified patients, primary caregivers and reciprocal participants and directly to consumers;

(GG) **Smoke.** To inhale, exhale, burn or carry any lighted or heated device or pipe or any other lighted or heated cannabis products intended for inhalation, whether natural or synthetic, in any manner or in any form.

(HH) **Unprocessed.** Unaltered from an original, raw or natural state; and

(II) **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 2. REGULATION OF COMMERCIAL CANNABIS ACTIVITY

This Ordinance regulates commercial cannabis activity only, and does not regulate activities related only to cannabis training and education programs or to the personal cultivation or use of cannabis as authorized under the law;

SECTION 3. LOCATION

(A) **Minimum separation distance for schools and daycare centers.** A cannabis establishment must maintain a minimum separation distance of at least 300 feet from any school or daycare center that was in existence at the time the cannabis establishment was licensed by the state.

(B) **Measurement.** For the purposes of this Ordinance, distances shall be measured in a straight line, without regard to intervening structures or objects, from the nearest point on the property line of the lot on which the cannabis establishment is located, to the nearest point on any property line of a school or daycare center and the cannabis establishment.

(C) **Exception for Subsequent uses of Nearby Property.** A cannabis establishment, lawfully operating under this Ordinance, shall not be deemed to be in violation of the location restrictions set forth above solely because a specific use subsequently locates within the minimum required distance of the cannabis establishment, or when any other lot or tract within the required minimum distance of the cannabis establishment subsequently becomes a residence.

(D) **Mora County Zoning and Subdivision Code and Land Use Plan.** Applicants for a business license and/or land use permit must comply with the requirements for business licensure and zoning as set forth in the Zoning and Subdivision Code as adopted in 2019 and the Comprehensive Land Use Plan Update, 2018.

SECTION 4. OPERATING TIMES.

Cannabis retailers and cannabis consumption areas may only operate during the following hours:

(A) **Cannabis Consumption Areas.** Products may only be served and consumed in cannabis consumption areas between the hours of 7:00 a.m. and 10:00 p.m. Monday through Saturday and noon to 10:00 p.m. on Sundays.

(B) **Cannabis Retailers.** Cannabis retailers may only sell cannabis products for off-site consumption between the hours of 7:00 a.m. and 10:00 p.m. Monday through Saturday and noon to 10:00 p.m. on Sundays.

SECTION 5. CANNABIS CONSUMPTION AREAS

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 is in a designated smoking area or in 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 subject to the following:

(1) the smoking of cannabis products is only allowed within a licensed cannabis consumption area that occupies a designated smoking area or 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

(2) access to cannabis consumption areas open to consumers is restricted to persons twenty-one years of age and older.

SECTION 6. BUSINESS REGISTRATION AND LAND USE PERMIT

Any person engaged in commercial cannabis activities must comply with the Mora County's Business Registration and/or Land Use Permit requirements and any relevant

provision of the Mora County Zoning and Subdivision Code as adopted in 2019, which may be amended from time to time, and the Comprehensive Land Use Plan Update, 2018, as may be amended from time to time.

SECTION 7. CANNABIS ESTABLISHMENT PERMIT

Any person seeking to operate a cannabis establishment in the County may obtain a cannabis establishment permit under the following conditions:

(A) The permit shall be obtained from the Mora County Planning and Zoning Department in consultation with the Planning and Zoning Committee.

(B) The cost of the permit shall be \$250 for the initial permit, and \$100 for annual renewal of the permit. The annual renewal date shall be the anniversary date of when the permit was first obtained.

(C) The Planning and Zoning Director shall require the following information from the applicant:

(1) Complete application as provided by the Mora County Planning and Zoning Department.

(2) Certification from the New Mexico Secretary of State Office reflecting the business and/or corporate structure, if any, of the cannabis producer and/or retailer.

(3) The applicant shall provide Federal and State tax identification numbers, if organized as a business entity.

(4) The applicant, if an individual or sole proprietor, shall provide the last four digits of their social security number.

(5) The applicant shall provide a map which identifies the location of the production site and/or retail location and that sets forth compliance with the distance requirements set forth herein.

(6) The applicant shall comply with Mora County's Zoning and Subdivision Code which became effective on February 5, 2019, and may be amended from time to time, and the Comprehensive Land Use Plan Update, 2018.

(7) The applicant shall provide proof of compliance with all requirements set forth under state law and as required under by New Mexico's Regulation and Licensing Department (RLD) to obtain a license under the Cannabis Regulation Act. For producers, this includes but is not limited to identifying the source of water which will be relied upon to cultivate cannabis.

(8) The Planning and Zoning Department may issue a permit only upon receipt of the applicant(s) license from RLD or a certified copy of such license, and completion of the applicable Mora County permitting process.

(9) If the applicant fails to provide documentation or provides incomplete or otherwise insufficient documentation regarding the status of their license application through RLD, the Planning and Zoning Department shall inform the applicant of the deficiencies in writing and shall take no further action on the application until the deficiencies are remedied. If the applicant fails to correct the

deficiencies indicated in the letter deeming the application incomplete within sixty (60) calendar days of receipt of notice of deficiencies, the application shall be considered withdrawn, and it will be returned to the applicant.

(D) Prior to issuance of a permit, the Planning and Zoning Department shall confirm compliance with distancing requirements as provided in Section 3 (Location).

(E) Prior to issuance of a permit, the cannabis establishment must also pass an inspection.

(F) Prior to any issuance or annual renewal of a permit, the cannabis establishment shall be inspected by the Mora County Fire Administrator and/or its designee. The cannabis establishment shall comply with Chapter 38 (as it may be amended from time to time) of the National Fire Protection Association (NFPA). 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 Mora County Fire Administrator and/or its designee.

(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 issue to a mobile, temporary or portable building.

(I) No permit shall issue 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 Planning and Zoning Department, 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 Mora County Commission. 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 Commission 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 Board of 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 Board of County 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 Board of County 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 8. MOBILE UNITS

Cannabis sales from mobile, portable, or temporary units or drive-through locations are prohibited.

SECTION 9. SMOKING OF CANNABIS IN PUBLIC PLACE

Smoking of cannabis products in a public place, except as permitted by state law, is prohibited.

SECTION 10. 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 of Section 3. However, the owners of such businesses shall, within 90 days of the effective date of this Ordinance, submit an application for a permit.

SECTION 11. ENFORCEMENT.

A Mora County Code Compliance Officer (if any), a certified Mora County Sheriff's deputy, or designee may issue citations for violation of this Ordinance.

SECTION 12. PENALTIES.

With the exception of Section 9, which is punishable by State law, any violation of this Ordinance may be enforced in any court of competent jurisdiction. 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 Mora County from seeking injunctive relief, if appropriate.

SECTION 13. SAVING CLAUSE.

Should any portion of this Ordinance be declared unenforceable after a final, non-appeal decision of a court of competent jurisdiction, the remaining provisions of this Ordinance shall, to the extent feasible, remain in full force and effect.

SECTION 14. EMERGENCY CLAUSE AND EFFECTIVE DATE.

Because of the urgent need for regulation pursuant to this Ordinance, the Board of County Commissioners declares that it is necessary for the public peace, health and safety that this Ordinance take effect immediately after passage when it is recorded in the book kept by the County 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.

PASSED, APPROVED AND ADOPTED this ____ day of August, 2021.

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

By: _____
Veronica Serna, Chairwoman

ATTEST:

Carlos J. Arellano, County Clerk

APPROVED AS TO LEGAL FORM ONLY:

ERNESTINA R. CRUZ, ESQ.
Contract County Attorney