

THE BOARD OF COUNTY COMMISSIONERS
OF SANTA FE COUNTY

ORDINANCE NO. 2021-_____

AN ORDINANCE
AMENDING THE SANTA FE COUNTY SUSTAINABLE LAND DEVELOPMENT
CODE (“SLDC”), ORDINANCE NO. 2016-9, TO ENACT COMPREHENSIVE,
COUNTYWIDE ZONING AND OTHER REGULATIONS FOR CANNABIS,
INCLUDING CANNABIS ESTABLISHMENTS, OTHER CANNABIS BUSINESSES,
AND PERSONAL CULTIVATION AND PRODUCTION OF CANNABIS AND
CANNABIS PRODUCTS; AMENDING AND RESTATING SECTIONS 10.6.2 AND 10.22
OF THE SLDC IN THEIR ENTIRETY; AND AMENDING APPENDIX A, PART 2,
DEFINITIONS, OF THE SLDC TO DELETE AND ADD CANNABIS RELATED
DEFINITIONS

BE IT ENACTED BY THE BOARD OF COUNTY COMMISSIONERS
 (“BOARD”) OF SANTA FE COUNTY (“COUNTY”):

1. Section 10.6.2 of the Santa Fe County Sustainable Land Development Code, Ordinance No. 2016-9, as amended (SLDC), is hereby amended and restated in its entirety to read as follows:

“**10.6.2. Permit Required.** Home occupations require a permit as specified in Table 10-1. A permit will not be issued for a home occupation where:

10.6.2.1. Code violations are present on the property;

10.6.2.2. adequate access is not available;

10.6.2.3. adequate infrastructure is not in place;

10.6.2.4. the proposed home occupation is a roofing or towing business, construction yard, port-a-potty leasing business, involves retail sales open to the public, vehicle leasing business, crematories, auto paint and body shop, heavy industrial uses, a cannabis establishment, cannabis consumption area, or cannabis courier.”

2. Section 10.22 of the SLDC is hereby amended and restated in its entirety to read as follows:

“**10.22. RECREATIONAL AND MEDICAL CANNABIS ZONING AND OTHER REGULATIONS.**

10.22.1. In addition to the applicable authority set forth elsewhere in the SLDC and State law, the zoning and other regulations in this section are enacted pursuant to the County’s authority in Section 12 of the Cannabis Regulation Act, Laws 2021 (1st S.S.), Chapter 4, and NMSA 1978, §§ 24-16-2 (1985) and 24-16-20 (2007).

10.22.2. The Board makes the following findings with regard to cannabis:

10.22.2.1. Cannabis establishments and cannabis consumption areas are uses not specifically enumerated in the Use Tables and Use Matrix in Appendix B of the SLDC.

10.22.2.2. The SLDC, however, previously established comprehensive zoning for certain cannabis-related uses authorized by the Lynn and Erin Compassionate Use Act, NMSA 1978, Chapter 26, Article 2B.

10.22.2.3. The Cannabis Regulation Act 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.

10.22.2.4. 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.

10.22.2.5. 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.

10.22.2.6. The smoking of cannabis products may create health risks due to exposure to secondhand smoke and vaporized cannabis concentrates.

10.22.2.7. 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.

10.22.2.8. 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.

10.22.3. For purposes of any Use Table in the SLDC and the Use Matrix in Appendix B and subject to the density and setback requirements in Sections 10.22.4 and 10.22.5:

10.22.3.1. Cannabis testing laboratories and cannabis research laboratories shall be treated the same as the following uses: Research and Development Services (scientific, medical, and technology).

10.22.3.2. Cannabis manufacturers shall be treated the same as the following uses: Food, Textiles, and Related Products.

10.22.3.3. A cannabis producer or cannabis producer microbusiness that cultivates cannabis plants indoors shall be treated the same as the following use: Commercial Greenhouse.

10.22.3.4. A cannabis producer or cannabis producer microbusiness that cultivates cannabis plants outdoors shall be treated the same as the following use: Dairy Farms.

10.22.3.5. A cannabis retailer shall be treated the same as the following use: Store or Shop.

10.22.3.6. Cannabis consumption areas are subject to the following:

1. 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.

2. Cannabis consumption areas that allow consumption by consumers shall be treated the same as the following uses: Bars, taverns and nightclubs. Cannabis consumption areas that are open to consumers are also subject to the following:

a. the smoking of cannabis products is not allowed outdoors;

b. 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

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

10.22.3.7. Cannabis couriers fall within the following use: Courier and messenger service facilities.

10.22.3.8. 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 an allowed use, whether as a permitted use or pursuant to an approved Conditional Use Permit. For example:

1. A vertically integrated cannabis establishment that is a cannabis manufacturer, cannabis producer that cultivates cannabis plants outdoors, and a cannabis retailer could not be located at a single licensed premises within an Industrial Light Zoning District, since the outdoor cultivation of cannabis plants is not allowed in the Industrial Light Zoning District.

2. An integrated cannabis microbusiness that is a cannabis manufacturer and a cannabis producer that cultivates cannabis plants outdoors would require conditional use permits for those uses to be located at a single licensed premises within the Rural Fringe Zoning District.

10.22.4. No cannabis establishment, cannabis consumption area, or cannabis courier may be located within 300 feet of a school or daycare center 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 measurements 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 the 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.

10.22.5. Cannabis retailers and cannabis consumption areas may not be located within 200 feet of another cannabis retailer or cannabis consumption area. For purpose of this section, all measurements taken in order to determine the location of a cannabis retailer or cannabis consumption area in relation to another cannabis retailer or cannabis consumption area shall be the shortest direct line measurement between the actual limits of the licensed premises of the existing cannabis retailer or cannabis consumption area and the actual limits of the proposed licensed premises of the proposed cannabis retailer or cannabis consumption area.

10.22.6. Unless further restricted in a Conditional Use Permit, cannabis retailers and cannabis consumption areas may only operate during the following hours:

10.22.6.1. 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.

10.22.6.1. 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.

10.22.7. 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.

10.22.8. Cannabis cultivation and production for personal use in quantities and as permitted by the Cannabis Regulation Act and 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 accessory structure (e.g., a controlled-environment agricultural structure).

10.22.9. Applicability of Other Laws.

10.22.9.1. All cannabis uses are subject to all other applicable sections of the SLDC and other County ordinances.

10.22.9.2. 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.”

3. Appendix A, Part 2, Definitions of the SLDC is hereby amended by (1) deleting the existing definitions of “cannabis” and “cannabis-derived product” and (2) adding the following new definitions applicable solely to Section 10.6.2 and Section 10.22 of the SLDC:

“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.

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) 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.

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.

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.”

4. The effective date of the amendments to the SLDC adopted by this Ordinance shall be 30 days after this Ordinance is recorded with the County Clerk.

PASSED, APPROVED AND ADOPTED THIS 30th DAY OF JULY, 2021.

**THE BOARD OF COUNTY COMMISSIONERS
OF SANTA FE COUNTY**

By: _____
Henry P. Roybal, Chairperson

ATTEST:

Katharine E. Clark
County Clerk

APPROVED AS TO FORM:

Gregory S. Shaffer
County Attorney

Draft - 7.8.2021