

DRAFT 8/31/21

Cannabis Ordinance

Purpose and intent:

- A. It is the purpose and intent of this chapter to provide for the orderly regulation of the commercial cannabis industry within the County of Rio Arriba with the intent of encouraging economic growth and job creation while protecting the public health, safety and welfare of the residents of the county. Based on NM State HB 002, the Rio Arriba Board of County Commissioners may adopt by resolution any regulations or policies that will further the purpose of this Ordinance, and that do not conflict with the provisions herein.
- B. All definitions, authority, scope, responsibilities, requirements, standards, conditions, exemptions, procedures and penalties described within state law are adopted and incorporated. The county manager or her/his designee shall administer and enforce the provisions of this chapter, applicable state law, and the rules and regulations promulgated by the Board of County Commission and any applicable state departments. This chapter and the regulations contained herein apply to the entire county.

Definitions:

- A. "Applicant" shall mean a person or entity that submits an application or an application for renewal of a commercial cannabis business license.
- B. "Cannabis Business District" (CBD) shall be defined as the area where cannabis dispensaries and retail markets partaking in the sale of cannabis and cannabis products will be allowed to locate in Rio Arriba County.
- C. "Couriers" shall be defined as the business of transporting cannabis through Rio Arriba County.
- D. "Growing operations" shall mean Outdoor commercial cannabis cultivation, including, but not limited to, cultivation in greenhouses, hoop structures, and by mixed light (part daylight/part artificial light).
- E. "Manufacturer" means a licensee that conducts the production, preparation, propagation, or compounding of cannabis or cannabis products either directly or indirectly or by extraction methods, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis at a fixed location that packages or repackages cannabis or cannabis products or labels or relabels its container.
- F. "Operator" shall mean any person or entity responsible for management of the cannabis operation, any person listed on the cannabis operation's articles of incorporation or articles of organization, any person or entity owning an interest in the cannabis operation, and any person that supervises another employee of the cannabis operation.

- G. "Owner" shall mean the person or entity in whom is vested interest and title to the cannabis operation.
- H. "Processing" means any method used to prepare cannabis or its byproducts for commercial sale, including, but not limited to: drying, cleaning, curing, packaging, and extraction of active ingredients to create cannabis related products and concentrates.
- I. "Producer" shall be defined as an individual that possesses a state and county license to grow, harvest, dry, trim, cure, and package cannabis.
- J. "Retail sale" shall mean any exchange between a retailer and a customer.
- K. "Retailer" means a facility where cannabis, cannabis products, or devices for the use of cannabis or cannabis products are offered, either individually or in any combination, for retail sale, including an establishment that delivers, pursuant to express authorization by local ordinance, cannabis and cannabis products as part of a retail sale.
- L. "State cannabis laws" shall be what is stated in HB 002 or any amendments thereof.
- M. "State license" shall mean a license from the state issued pursuant to ...
- N. "Testing laboratory" means a laboratory, facility, or entity in the county that offers or performs tests of cannabis or cannabis products.

Types of cannabis operations permitted:

- A. Cannabis operations including cannabis retailers, couriers, producers, manufacturing and testing laboratories shall be permitted to operate in the county pursuant to this chapter.
- B. Cannabis retailers shall be permitted to operate within the Cannabis Business District (CBD) as further defined.
- C. Cannabis testing laboratories shall be permitted to operate in any area within the county. Retailers, producers and manufacturers must locate 600 feet from residential structures, places of worship, schools, and uses for schools, daycare facilities, and treatment facilities.
- D. Outdoor commercial cannabis cultivation to include, but not limited to, cultivation in greenhouses, hoop structures, and by mixed light (part daylight/part artificial light).
- E. Production/growing operations require, at minimum, a 6 foot fence around the grow or production site that obscures the view of the site.
- F. Indoor commercial cannabis cultivation to include, but not limited to, cultivation in the confines of a structure permitted and approved by the Construction Industries of the State of NM.

Commercial cannabis business license and state license required:

- A. It is unlawful for any person conducting, operating, owning, or in control of any premises to sell, grow or manufacture cannabis or cannabis products, whether medical (medicinal) or adult use (recreational), within the County of Rio Arriba unless such person holds a valid commercial cannabis business license, pursuant to the provisions of this chapter. All retail sales of any type, including online and delivery service sales, are

included in this requirement and are unlawful without the required commercial cannabis business license. A separate commercial cannabis business license is required for each location.

- B. Operation of a cannabis operation shall not commence until a licensee has obtained a valid state license. Licensees shall maintain a valid state license at all times during operation of a cannabis operation and shall comply with any applicable state licensing requirements.
- C. A copy of the cannabis business license shall be displayed at all times in a place visible to the public.
- D. A commercial cannabis business license issued by the County of Rio Arriba shall be valid for one year or until June 31 each year, unless sooner revoked. No license granted herein shall confer any vested right to any person or for more than the above-referenced period.
- E. A commercial cannabis business license shall be issued to the specific person or persons listed on the business license application.
- F. A commercial cannabis business license is not transferable and does not run with the land or with the business. Any change to the business location, organizational structure, or ownership requires a new application with associated fees.

Commercial cannabis business license fees:

- A. Every application for a commercial cannabis business license or renewal of such license shall be accompanied by a State of NM license. The fee for such license shall be not more than \$5/mature plant permitted by the State of NM License. In cases of a CUP or SUP, the application must accompany a non-refundable license application fee in an amount set forth by separate resolution of the Rio Arriba Board of County Commission, which amount is calculated to recover the county's full cost of reviewing, issuing and administering said license. The adoption of such fees shall not prevent the county from recovering enforcement costs not specified in such resolution.
- B. A fee for renewal of a commercial cannabis business license will be due annually.

Commercial cannabis business License-Approval and Denial:

- A. The Rio Arriba County Board of County Commission may set additional rules and regulations regarding the approval of commercial cannabis business license applications and selection of commercial cannabis business operators. In addition to any such criteria established by resolution, to be considered for a commercial cannabis business license in Rio Arriba County, applicants must submit a completed commercial cannabis business license application that meets the following minimum criteria:
 - a. The Planning and Zoning Department has issued a zoning clearance and approved the proposed location of the commercial cannabis business operations.

- b. The Planning and Zoning Department has received evidence that the commercial cannabis business has sufficient control/approvals on the property on which they would like to conduct business in the form of a lease, property ownership, or signed letter from property owner.
 - c. The Sheriff's department has issued a security clearance and approved the proposed security plan of the commercial cannabis business operations.
 - d. The applicant has applied for and received a Conditional Use Permit via a public hearing before the Planning and Zoning Commission for grows over 200 plants or any location for retail services.
 - e. The applicant has not been convicted, cited, fined, or penalized by the state or any city, county, or enjoined by any court of law, in the five years immediately preceding the application for a commercial cannabis business license or commercial cannabis business renewal license, for any unauthorized cannabis activities.
 - f. The applicant has not been convicted, cited, fined, or penalized by the state or any city, county, or enjoined by any court of law, in the five years immediately preceding the application for a commercial cannabis business license or commercial cannabis business renewal license, for cultivation or production of a controlled substance on public or private lands.
 - g. The applicant has paid the non-refundable commercial cannabis business license application fee.
- B. Conditional Use Permit for Growing operations and Manufacturers:
- a. A Conditional Use Permit (CUP) shall be required to operate a growing operation of over 200 plants, Manufacturer, Producer or Testing Laboratory.
 - b. The CUP shall involve an application process in accordance with the CUP submittal requirements and public hearing requirements.
 - c. The public hearing will be held before the Planning and Zoning Commission.
 - d. The application will be site-specific for the proposed land use on a location that has been deemed appropriate in meeting the minimum criteria set forth of an agricultural use.
 - e. The applicant shall show proof of water availability from the State Engineer, Mutual Domestic Water Association, Acequia /Community Ditch, or any alternative method used for irrigating plants.
 - f. Grounds for granting a CUP are as follows:
 - i. The use will not have a significant adverse effect on the character and value of adjacent properties or the surrounding neighborhood.
 - ii. The use will not create a hazard, a public nuisance or be injurious to individuals or to the public.
 - iii. The use will not generate undue traffic congestion.
 - iv. The use will not cause noise which is excessive for the particular area.

- v. The use will not have a significant adverse effect on the natural environment and attractiveness of an area.
- vi. The use will not be contrary to the public interest.
- vii. The applicant will be able to meet any particular requirements specified for such a use in the Land Development
- viii. Standards and any additional conditions that the board may impose.
- ix. The applicant will be able to meet all requirements imposed by applicable state and federal laws and regulations.
- x. The use is consistent with the policies and recommendations of the adopted Comprehensive Plan.
- xi. Should the Planning & Zoning Commission deny your request, you have ten (10) days from the date of the public hearing to file your Notice of Appeal with the County Clerk for consideration before the Board of County Commissioners.

Expiration and renewal of commercial cannabis business licenses.

- A. Commercial cannabis business licenses shall expire one year after their issuance.
- B. Commercial cannabis business licenses must be renewed on an annual basis prior to expiration by filing a commercial cannabis business license application for renewal along with the renewal fee.
- C. The application for renewal and the renewal fee shall be filed at least thirty days, but not more than sixty days, prior to the expiration of the commercial cannabis business license.

Suspension and revocation by the county:

- A. A commercial cannabis business license issued under the terms of this chapter shall be suspended or revoked by the county if he or she concludes any of the following:
 - a. The cannabis operation has violated any of the requirements of this Ordinance.
 - b. The cannabis operation is being operated in a manner which violates the security plan required by this Ordinance.
 - c. The cannabis operation is being operated in a manner which constitutes a nuisance.
 - d. The applicant has been convicted, cited, fined, or penalized by the state or any city, county, or enjoined by any court of law, in the five years immediately preceding the application for a commercial cannabis business license or commercial cannabis business renewal license, for any unauthorized cannabis activities.
 - e. The applicant has been convicted, cited, fined, or penalized by the state or any city, county, or enjoined by any court of law, in the five years immediately preceding the application for a commercial cannabis business license or

commercial cannabis business license, for cultivation or production of a controlled substance on public or private lands.

- f. The cannabis operation is being operated in a manner which conflicts with or violates state cannabis laws.

Indemnification, insurance, limitations of county's liability:

- A. To the fullest extent permitted by law, the Rio Arriba County shall not assume any liability whatsoever with respect to having issued a commercial cannabis business license pursuant to this chapter or otherwise approving the operation of any commercial cannabis business pursuant to this chapter. As a condition of approval of any commercial cannabis business license issued pursuant to this chapter, the person to which a commercial cannabis business license is issued shall be required to meet all of the following conditions:
 - a. Execute an agreement indemnifying, defending (at its sole cost and expense), and holding the County of Rio Arriba and its officers, employees, representatives, and agents harmless from any and all claims, losses, damages, injuries or liabilities associated with the permitting or approving the operation of a commercial cannabis activity or the operation thereof or associated with the commercial cannabis business or its members' violation of any federal, state or local laws.
 - b. Maintain insurance at coverage limits and with conditions thereon determined – necessary by Rio Arriba County.
 - c. Reimburse the County of Rio Arriba for any and all costs and expenses, including attorney fees and costs and court costs that the County of Rio Arriba may be required to pay as a result of any legal challenge related to the county's approval of a commercial cannabis business license pursuant to this chapter or the County of Rio Arriba's approval of the operation of a commercial cannabis activity. The County of Rio Arriba may, at its sole discretion, participate at its own expense in the defense of any such action, but such participation shall not relieve the obligations imposed under this section.