CANNABIS REGULATION

SECTION 1: SHORT TITLE

Sections 1 through 11 may be cited as the “Cannabis Regulation Ordinance”

SECTION 2: RECITALS

WHEREAS, The Cannabis Regulation Act (CRA) was signed into law on April 12, 2021. The CRA contains provisions authorizing the possession, consumption, purchase, processing, manufacturing or transporting of cannabis by an individual who is at least twenty-one (21) years of age. Further, the CRA provides for the licensing and operation of cannabis establishments which are authorized to engage in the medicinal sale, retail sale, cultivation, and manufacturing of cannabis; and

WHEREAS, The (CRA) authorizes local jurisdictions to adopt time, place and manner rules, including rules that reasonably limit the density of licenses and operating times that are consistent with neighborhood uses; and

WHEREAS, The Town of Kirtland("Town") desires to adopt such time, place, manner and other restrictions related to cannabis establishments, and

WHEREAS, The Town finds that the CRA authorizes marijuana establishments to use chemical extraction or chemical synthesis, including butane and other flammable gasses, to extract marijuana concentrate, which poses a threat to the health, safety and welfare of the community and increases the responsibilities of law enforcement and Town departments to respond to violations of state and local laws, including building, electrical and fire codes, and

WHEREAS, This ordinance is adopted to protect the health, safety, and welfare of the community as it relates to the regulation and use of cannabis by imposing certain time, place, manner restrictions on cannabis and cannabis establishments. The Town requires compliance with all applicable laws regarding the retail sale, cultivation and manufacturing of cannabis. Nothing in this Ordinance is intended to promote or condone the sale, cultivation, manufacture, transport, production, distribution, possession, or use of cannabis or cannabis products in violation of any applicable law.

SECTION 3: DEFINITIONS

As used in the Cannabis Regulation Ordinance

A. "cannabis" or “marijuana”:

(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" means an area where cannabis products may be served and consumed;

C. "cannabis courier" means 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; or

(8) an integrated cannabis microbusiness;

E. "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;

F. "cannabis flowers" means only the flowers of a cannabis plant;

G. "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;

H. "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;

I. "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;

J. "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;

K. "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;

L. "cannabis retailer" means a person that sells cannabis products to qualified patients, primary caregivers or reciprocal participants or directly to consumers;

M. "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;

N. "cannabis server permit education provider" means a person that provides cannabis server education courses and examinations;

O. "cannabis testing laboratory" means a person that samples, collects and tests cannabis products and transports cannabis products for the purpose of testing;

P. "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;

Q. “chemical extraction” means the process of removing a particular component of a mixture from others present, including removing resinous tetrahydrocannabinol from cannabis;

R. “chemical synthesis” means production of a new particular molecule by adding to, subtracting from or changing the structure of a precursor molecule;

S. "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;

T. "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;

U. “Department” means the Regulation and Licensing Department of the State of New Mexico

V. "homegrown" or "homemade" means grown or made for purposes that are not dependent or conditioned upon the provision or receipt of financial consideration;

W. "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;

X. "immature cannabis plant" means a cannabis plant that has no observable flowers or buds;

Y. "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;

Z. "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;

AA. "manufacture" means to compound, blend, extract, infuse, package or otherwise prepare a cannabis product;
"manufacture" means to compound, blend, extract, infuse, package or otherwise prepare a cannabis product;

BB. "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;

CC. "retail establishment" means a location at which cannabis products are sold to qualified patients, primary caregivers and reciprocal participants and directly to consumers;

SECTION 4: PUBLIC PROPERTY RESTRICTIONS

A. The use, sale, cultivation, manufacture, production, storage or distribution of marijuana or marijuana products is prohibited on property that is occupied, owned, controlled or operated by the Town.

B It is unlawful for an individual to smoke marijuana or consume marijuana products on property that is occupied, owned, controlled or operated by the Town.

C. It is unlawful for an individual to smoke marijuana or consume marijuana products in any designated open space in the Town.

D. It is unlawful for an individual to smoke in a public place in the Town.

SECTION 5: PERMIT PROCEDURES FOR CANNABIS RELATED ACTIVITIES.

A. Cannabis related activities, approval and permit required.

(1) No person(s) or entity shall engage in the production, manufacture, or sale of cannabis or cannabis products in any zones without a valid Cannabis permit issued by the Town of Kirtland, permitting the specific cannabis-related activity or activities sought to be permitted on the premises. Cannabis permits are issued to the applicant(s) and are not assignable or transferable.

(2) Application and fee. Anyone wishing to conduct cannabis-related activity must submit a completed application. The application shall be returned to the Town Clerk accompanied by the appropriate application fee for the use(s) to be permitted, and must show, at a minimum:

(a) the cannabis-related activity or activities are appropriately licensed by the State Regulation and Licensing Department pursuant to the Cannabis Regulation Act.

(b) applications for permits submitted prior to receiving a license from the RLD will be refused on the basis of an incomplete application.

B. Density Restrictions

(1) 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 permit was sought for the cannabis establishment, cannabis consumption area, or cannabis courier.

(a) 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.

(2) Cannabis retailers and cannabis consumption areas may not be located within 300 feet of another cannabis retailer or cannabis consumption area.

(a) 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.

SECTION 6: LOCATION OF CANNABIS ESTABLISHMENTS

A. Cannabis establishments are restricted to property where commercial cannabis activity is permitted by the Town of Kirtland Zoning Ordinance.
B. Cannabis establishments shall not be permitted within 300ft of an existing school, pre-school, daycare, trade school, higher education facility, church, religious institution, place of worship, or rehabilitation center.
C. Cannabis establishments shall not be permitted within 300ft of a playground or public park containing playground equipment or other equipment intended for use by children.
D. Cannabis establishments shall not be permitted within 300ft of any other existing cannabis establishment.

SECTION 7: TYPES OF CANNABIS ESTABLISHMENTS

A. **Cannabis Production**. This section This subsection shall apply to all applicants seeking a permit to allow for the growth of cannabis plants in quantities greater than twelve (12) mature cannabis plants. Any individual growing more than 12 mature cannabis plants must obtain a permit pursuant to this subsection.

1. The applicant shall provide:

(a) a certified survey plat depicting the proposed location for the growth of cannabis, and that identifies the total area to be covered.

(b) a map that identifies existing schools, pre-schools, daycares, trade schools, higher education facilities, churches, religious institutions, places of worship, or rehabilitation centers.

(c) the document(s) provided to the Regulation and Licensing Division (RLD) which applicant(s) utilized to apply for a producer's license pursuant to the Cannabis Regulation Act, or a copy of the actual license issued to the applicant by the RLD.

1. If the applicant fails to provide documentation or provides incomplete or otherwise insufficient documentation regarding the status of their license application through RLD, the Town Clerk 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.

2. The Town Clerk 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 Taos County permitting process.

B. **Cannabis Manufacturing**. This section This subsection shall apply to all applicants seeking a permit to allow for the manufacture of cannabis products, packaging of cannabis products, and the purchase, acquisition, sale or transport of wholesale cannabis products to other cannabis establishments.

1. The applicant shall provide:

(a) a certified survey plat depicting the proposed location for the manufacture of cannabis, and that identifies the total area to be covered.

(b) a map that identifies existing schools, pre-schools, daycares, trade schools, higher education facilities, churches, religious institutions, places of worship, or rehabilitation centers.

(c) the document(s) provided to the Regulation and Licensing Division (RLD) which applicant(s) utilized to apply for a manufacturer's license pursuant to the Cannabis Regulation Act, or a copy of the actual license issued to the applicant by the RLD.

1. If the applicant fails to provide documentation or provides incomplete or otherwise insufficient documentation regarding the status of their license application through RLD, the Town Clerk 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.

2. The Town Clerk 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 Taos County permitting process.

C. **Cannabis Retailers** This subsection shall apply to all applicants seeking a permit to allow for the sale of cannabis and cannabis products. to qualified patients, primary caregivers, reciprocal participants or directly to consumers. Cannabis consumption Rooms or Areas shall be allowed commercially only in a designated, co-located area of a Cannabis Retailer.

1. The applicant shall provide:

(a) a certified survey plat depicting the proposed location for the manufacture of cannabis, and that identifies the total area to be covered.

(b) a map that identifies existing schools, pre-schools, daycares, trade schools, higher education facilities, churches, religious institutions, places of worship, or rehabilitation centers.

(c) a map that identifies other existing Cannabis Retail locations within six hundred (600) feet of the proposed use that was in operation at the time of the application submission to the Town.

(d) the document(s) provided to the Regulation and Licensing Division (RLD) which applicant(s) utilized to apply for a manufacturer's license pursuant to the Cannabis Regulation Act, or a copy of the actual license issued to the applicant by the RLD.

1. If the applicant fails to provide documentation or provides incomplete or otherwise insufficient documentation regarding the status of their license application through RLD, the Town Clerk 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.

2. The Town Clerk 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 Taos County permitting process.

SECTION 8: OPERATIONAL REQUIREMENTS

A. Cannabis establishments must operate within a fully enclosed and stationary building or structure, capable of being locked and secured.
B. Cannabis establishments may not display products, engage consumers or consummate sales outside of a fully enclosed building or structure.
C. There shall be no outdoor cultivation, processing, curing, drying, selling, storage, or other display of cannabis or cannabis products at a cannabis establishment.
D. Cannabis establishments shall have recorded video surveillance covering all plants and the entire exterior. The recorded video surveillance shall be operating 24 hours a day, seven days a week. Records of surveillance shall be kept for a minimum of 30 days.

E. The odor of cannabis must not be perceptible at any adjoining use of the property or on other parcels.
F. Cannabis establishments must provide for off-site disposal of cannabis products and other solid waste in compliance with state, federal and local law.
G. Cannabis Retailers shall have business hours no longer than 7:00 a.m. until 2:00 a.m. on the following day, Mon.-Sat., and 7:00 a.m. until midnight on Sunday
H. Cannabis and cannabis products may be sold by a dispenser or a retailer in unbroken packages, for consumption off the licensed premises and not for resale from 7:00 a.m. until midnight.
I. Cannabis and cannabis products for consumption on the premises may be sold between 7:00 a.m. and 2:00 a.m.the following day.
J. Cannabis establishments shall not provide drive-thru services for delivery of cannabis products.

SECTION 9: STANDARDS FOR DESIGNATED CANNABIS SMOKING ROOMS

Cannabis establishments having a Designated Cannabis Smoking Room on site shall meet the following standards to the satisfaction of the Town:

A. The Designated Cannabis Smoking Room shall be located in a non-work area that employees are not required to enter as a condition of their employment.
B. The Designated Cannabis Smoking Room shall have signage to designate established cannabis smoking areas.
C. The Designated Cannabis Smoking Room shall have a separate heating, ventilation and air conditioning (HVAC) system such that none of the air in the Designated Cannabis Smoking Room will be recirculated into other parts of the Cannabis establishment premises .
D. The Designated Cannabis Smoking Room shall be completely separated from the remainder of the premises, and all doors leading to the Designated Cannabis Smoking Room shall be self-closing.

SECTION 10: VIOLATIONS AND PENALTIES

A. It is unlawful and a violation of this article for a person to sell, cultivate, process, manufacture, store, or transport marijuana or marijuana products, if the person fails to meet all requirements in this ordinance or the Cannabis Regulation Act NMSA 1978 Sections 26-2C-1 through 42.

B. The sale of homegrown or homemade cannabis and cannabis products without a valid license issued by the State Regulation and Licensing Department is prohibited.

C. Any person found in violation of this ordinance is subject to a fine of up to $500 or imprisonment for a period of up to 90 days in jail or both.

D. Each day any violation of any provision of this article shall continue shall constitute a separate offense.

SECTION 11: SEVERABILITY

If any section, subsection, paragraph, phrase, or other portion of this ordinance shall be declared invalid for any reason whatsoever by a court or competent jurisdiction, then such decision shall not affect the validity or enforceability of the remaining portions of this ordinance.

PASSED, APPROVED AND ADOPTED THIS _____ DAY OF _____, 2021.

_____
Mayor

Attest:

_____
City Clerk