

# **CITY OF RIO COMMUNITIES ORDINANCE NO. 2021 - 80**

## **AN ORDINANCE REGULATING CANNABIS PRODUCTION, CANNABIS MANUFACTURING, CANNABIS RETAILING AND OTHER CANNABIS RELATED ACTIVITIES**

- WHEREAS,** the Cannabis Regulation Act (NMSA 1978 §§ 26-2C-1 – 26-2C-42) 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; and
- WHEREAS,** Cannabis cultivation, production, manufacturing, and consumption creates strong odors, can involve the use of significant amounts of energy and water; and require 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,** N. M. S. A. 1978, § 3-17-1. The governing body of a municipality may adopt ordinances or resolutions not inconsistent with the laws of New Mexico for the purpose of providing for the safety, preserving the health, promoting the prosperity, and improving the morals, order, comfort and convenience of the municipality and its inhabitants.
- WHEREAS,** the City Council of the City of Rio Communities, New Mexico finds that it will promote the public health, safety, and welfare to enact provisions regulating the use of Cannabis.

### **BE IT THEREFORE RESOLVED AND ORDAINED BY THE GOVERNING BODY OF THE CITY OF RIO COMMUNITIES, AS FOLLOWS:**

The CITY OF RIO COMMUNITIES (City) ORDINANCE, titled “Commercial Cannabis Activity Application Requirements and Performance Standards” shall read as follows:

**ARTICLE 1 COMMERCIAL CANNABIS ACTIVITY APPLICATION REQUIREMENTS AND PERFORMANCE STANDARDS**

**SECTION 1 DEFINITIONS**  
**SECTION 2 CANNABIS PRODUCTION**  
**SECTION 3 CANNABIS MANUFACTURING**  
**SECTION 4 CANNABIS RETAILERS**  
**SECTION 5 HOURS OF OPERATION**  
**SECTION 6 CANNABIS CONSUMPTION AREAS**  
**SECTION 7 BUSINESS REGISTRATION**  
**SECTION 8 SECURITY/FENCING**  
**SECTION 9 MOBILE UNITS**  
**SECTION 10 SMOKING OF CANNABIS IN PUBLIC PLACE**  
**SECTION 11 EXISTING MEDICAL CANNABIS ESTABLISHMENTS**  
**SECTION 12 ENFORCEMENT**  
**SECTION 13 PENALTIES**  
**SECTION 14 SEVERABILITY CLAUSE**

- 1.1. Definitions.** All terms defined in the State of New Mexico Cannabis Regulation Act, as amended, are hereby adopted, and incorporated herein.
- 1.2. Cannabis Production.** This subsection shall apply to all applicants seeking a permit to allow for the growth of cannabis plants in quantities greater than six (6) mature and six (6) immature cannabis plants. The applicant shall provide:
- a. a certified survey plat depicting the proposed location for the growth of cannabis, including outdoor and indoor growing, which identifies the total area to be covered.
  - b. a map which identifies the nearest school or daycare and evidence that the nearest school or daycare is greater than three hundred feet (300') from the perimeter of the property proposed for cannabis production.
  - 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 Planning Director 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 City Council may issue a Special Use Permit only upon receipt of the applicant(s) license from RLD or a certified copy of such license, and completion of the applicable CITY OF RIO COMMUNITIES permitting process.
  - d. the production of cannabis for commercial manufacturing, sale, or consumption shall be limited to those areas of the City of Rio Communities zoned C-2

(Community Commercial and Retail Use) and C-3 (Heavy Community Commercial and Retail Use).

- e. the granting of a Special Use Permit by the City Council shall follow the process outlined in Article 7 (Section 4.7.4) of the Zoning Code (Ordinance 2021-76, 2021).

- 1.3. Cannabis Manufacturing.** 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. The applicant shall provide:
- a. a map which identifies the nearest school or daycare and evidence that the nearest school or daycare is greater than three hundred feet (300') from the perimeter of the property proposed for cannabis manufacturing activity.
  - b. the document(s) provided to the Regulation and Licensing Division (RLD) which applicant(s) utilized to apply for a manufacturing 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 Planning Director 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 Planning Director 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 CITY OF RIO COMMUNITIES permitting process.
  - c. the manufacturing of cannabis for retail sale or consumption shall be limited to those areas of the City of Rio Communities zoned C-2 (Community Commercial and Retail Use) and C-3 (Heavy Community Commercial and Retail Use).
  - d. the granting of a Special Use Permit by the City Council shall follow the process outlined in Article 7 (Section 4.7.4) of the Zoning Code (Ordinance 2021-76, 2021).

- 1.4. 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 room or area shall be allowed commercially only in a designated co-located area of a Cannabis Retailer.
- a. The applicant shall provide:
    - 1. a map which identifies the nearest school or daycare and evidence that the nearest school or daycare is greater than three hundred feet (300') from the perimeter of the property proposed for cannabis retail.
    - 2. the document(s) provided to the Regulation and Licensing Division (RLD) which applicant(s) utilized to apply for a cannabis retail license pursuant to the Cannabis Regulation Act, or a copy of the actual license issued to the applicant by the RLD.
      - i. 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 Director 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.

- ii. The Planning Director 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 CITY OF RIO COMMUNITIES permitting process.
3. an affidavit that the proposed cannabis retail location is not within six hundred (600) feet of any other cannabis retail location that was in operation at the time of the application submission to the City.
- b. A vertically integrated cannabis establishment or an integrated cannabis microbusiness must apply for a permit pursuant to the provisions of this subsection, provided the establishment or microbusiness intends to sell cannabis or cannabis products to qualified patients, caregivers, reciprocal patients, or consumers, regardless of an existing permit for cannabis production or cannabis manufacture.
- c. the sale of cannabis and cannabis products shall be limited to those areas of the City of Rio Communities zoned C-2 (Community Commercial and Retail Use) and C-3 (Heavy Community Commercial and Retail Use).
- d. the granting of a Special Use Permit by the City Council shall follow the process outlined in Article 7 (Section 4.7.4) of the Zoning Code (Ordinance 2021-76, 2021).

**1.5 Hours of Operation.** Provided that a license has been issued by the New Mexico Regulation and Licensing Division, and a Special Use Permit has been issued by the City Council, the licenses of retailers of cannabis products shall allow them to sell and deliver cannabis products, and the licenses of dispensers of cannabis products and club cannabis licenses shall allow them to sell, serve, deliver and permit the consumption of cannabis products on their licensed premises on Mondays from 7:00 a.m. until midnight, on other weekdays from after midnight of the previous day until 2:00 a.m., then from 7:00 a.m. until midnight, and on Sundays after midnight of the previous day until 2:00 a.m., then from noon until midnight. Dispenser, retail, and club licenses shall close their places of business during voting hours on the days of the biennial primary election of each even numbered year and the biennial general election held upon the first Tuesday in November of each even numbered year, and on the days of City elections for City officers, and on the days of such other elections as may be prescribed by rules and regulations promulgated by the State of New Mexico.

It is unlawful for any licensed retailer of cannabis products to sell or deliver cannabis products, or for any licensed dispenser or club to sell, deliver, serve, or permit the consumption of cannabis products, on their licensed premises during hours other than those prescribed by this section.

**1.6 Cannabis consumption areas.**

- 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:
  - 1. 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
  - 2. access to cannabis consumption areas open to consumers is restricted to persons twenty-one years of age and older.

**1.7 Business Registration.** Any person engaged in commercial cannabis activities must comply with the City of Rio Communities business registration process as outlined in City of Rio Communities Ordinance 2013-09.

**1.8 Security/Fencing**

- a. Each commercial **and non-commercial** cannabis producer, cannabis research laboratory, and cannabis testing laboratory is required to erect and maintain a lockable fence of sturdy construction measuring at least six feet (6') in height enclosing and screening from view the area where cannabis is located. The enclosure **at commercial locations** shall remain securely locked during non-business hours.
- b. Cannabis cultivation and production for personal use in quantities and as permitted by the New Mexico Cannabis Regulation Act and the Lynn and Erin Compassionate Use Act is allowed anywhere in the City, 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).

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

**1.10 Smoking of Cannabis in Public Place.** Smoking of cannabis products in a public place, except as permitted by state law, is prohibited.

**1.11 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 2.

- 1.12 Enforcement.** A Code Compliance Officer as designated by the City, or a certified Valencia County Sheriff’s deputy per agreement between the City of Rio Communities and Valencia County, New Mexico may issue citations for violation of this Ordinance.
  
- 1.13 Penalties.** With the exception of violations 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 five hundred dollars (\$500). Each day during the time in which a violation occurs shall be deemed a separate violation. Nothing herein shall prevent the City of Rio Communities from seeking injunctive relief, if appropriate.
  
- 1.14 Severability 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 remain in full force and effect.

**PASSED, APPROVED AND ADOPTED THIS 23<sup>rd</sup> DAY OF AUGUST 2021 BY THE GOVERNING BODY OF THE CITY OF RIO COMMUNITIES, NEW MEXICO.**

**City of Rio Communities Governing Body**

\_\_\_\_\_  
Mark Gwinn,  
Mayor

\_\_\_\_\_  
Joshua Ramsell,  
Councilor Mayor Pro-tem

\_\_\_\_\_  
Bill Brown,  
Councilor

\_\_\_\_\_  
Margaret (Peggy) Gutjahr,  
Councilor

\_\_\_\_\_  
Jimmie Winters,  
Councilor

ATTEST:

\_\_\_\_\_  
Elizabeth (Lisa) Adair,  
Municipal Clerk