

AGENDA ITEM# _____

An amendment to Chaves County Zoning Ordinance No.7 to be known as Revision #11

MEET DATE: August 19, 2021

STAFF'S SUMMARY REPORT

ACTION REQUESTED:

To approve an Amendment to the Chaves County, New Mexico Zoning Ordinance No. 7 to be known as REVISION #11. An amendment to include Article XXIII "Cannabis Establishments"

REQUESTED BY: Planning and Zoning Department

ITEM SUMMARY:

Regulations for Cannabis Establishments

ADVERTISEMENT:

A Notice of Public Hearing was advertised on August 4, 2021; 15 days prior to this public hearing as required per NMSA 3-21-6.

PROTEST SUMMARY: N/A

SUMMARY BY: Louis Jaramillo, P & Z Director

**AN AMENDMENT TO THE CHAVES COUNTY, NEW MEXICO ZONING
ORDINANCE NO. 7 TO BE KNOWN AS REVISION NO. 11. TO
INCLUDE ARTICLE XXIII CANNABIS ESTABLISHMENTS.**

WHEREAS, 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; and

WHEREAS, the smoking of cannabis products may create health risks due to exposure to secondhand smoke and vaporized cannabis concentrates; and

WHEREAS, the Cannabis Regulation Act permits local jurisdictions to consider regulations on place, time, density and manner for Cannabis Establishments; and

WHEREAS, the Chaves County Zoning Ordinance No. 7, Revision 10 does not address Cannabis Establishments; and

WHEREAS, Section 3-21-1 through 3-21-14 N.M.S.A., 1978 gives Chaves County zoning authority to regulate zoning districts, land uses, development standards, and structure design over territories within the unincorporated areas of Chaves County for the purpose of promoting health, safety, moral and the protection of the general welfare of the residents in Chaves County; and

WHEREAS, the Board of County Commissioners of Chaves County, New Mexico finds it necessary to protect the public health, safety, and welfare of the public by enacting provisions regulating Cannabis Establishments in Chaves County.

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

**ARTICLE XXIII
CANNABIS ESTABLISHMENTS**

Section 1 APPLICABILITY

This Article shall govern CANNABIS ESTABLISHMENTS, or parts thereof located within the boundaries of Chaves County, excluding lands within the limits of the Roswell-Chaves County Extraterritorial Zoning area and all incorporated municipalities within Chaves County.

Section 2 PURPOSE AND INTENT

The Board finds the need to reasonably regulate the location, operational hours and density of Cannabis Establishments within the unincorporated area of County in order to promote and protect the health, safety and welfare of all Chaves County citizens, to prevent criminal activities related to drug abuse, to prevent a negative impact on property values, to minimize any burden placed on law enforcement services, and to protect those who visit or otherwise live, work and stay within County. Also, these regulations are to preserve and protect the quality of life in residential neighborhoods, commerce in commercial and industrial districts, education in surrounding school and child care facilities, and use in park areas through effective land use planning and reasonable zoning regulations. State law, the zoning and other regulations in this article are enacted pursuant to the County's authority in Section 12 of the Cannabis Regulation Act, Laws 2021. These regulations shall not conflict with the Cannabis Regulation Act or the Dee Johnson Clean Indoor Air Act.

Section 3 DEFINITIONS

As used in Article XXIII in the Chaves County New Mexico Zoning Ordinance No.7

Adult care facility. A facility that provide care or assistant to adults due to medical reasons.

Cannabis 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 does not include:

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 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. Means:
a cannabis testing laboratory;
a cannabis manufacturer;
a cannabis retailer;
a cannabis research laboratory;
a vertically integrated cannabis establishment;
a cannabis producer microbusiness;
an integrated cannabis microbusiness; or
a cannabis consumption area.

Cannabis extract. A product obtained by separating resins, tetrahydrocannabinols or other substances from cannabis by extraction method approved by the Cannabis Control Division; and does not include the weight of any ingredient combined with cannabis extract to prepare topical or oral administrations, food, drink or another product.

Cannabis growth and educational store. A retail facility that sell items used to assist in the growth and cultivation of cannabis and/or the production of cannabis integrated product but shall not possess cannabis of any kind.

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

Cannabis manufacturer. A person or facility that:
manufactures cannabis products;
packages cannabis products;
has cannabis products tested by a cannabis testing laboratory; or
purchases, acquires, sells or transports wholesale cannabis products to other cannabis establishments;

Cannabis producer. A person or facility that:
cultivates cannabis plants;
has unprocessed cannabis products tested by a cannabis testing laboratory;
transports unprocessed or processed cannabis products only to other cannabis establishments; or
sells cannabis products wholesale;

Cannabis producer microbusiness. A cannabis producer at a single licensed premise that possesses no more than two hundred (200) total mature cannabis plants at any one time;

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 or facility 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: The cultivation, production, possession, manufacture, storage, testing, researching, labeling, transportation, couriering, purchase for resale, sale or consignment of cannabis products; and 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;

Community center- a place where people from a particular community can meet for social, educational, or recreational activities.

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;

County. The area lying within the corporate boundaries of the County of Chaves County and outside the boundaries of any incorporated municipality.

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

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

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.

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

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;

Immature cannabis plant. A cannabis plant that has not observable flowers or buds.

Integrated cannabis microbusiness. A person that is authorized to conduct one or more of the following:

production of cannabis at a single licensed premise; provided that the person shall not possess more than two hundred total mature cannabis plants at any one time;
manufacture of cannabis products at a single licensed premises;
sales and transportation of only cannabis products produced or manufactured by that person;
operation of only one retail establishment; and
couriering of cannabis products to qualified patients, primary caregivers or reciprocal participants or directly to consumers.

Licensed premises. A location that includes:

all enclosed public and private areas at the location that are used in the business and includes offices, kitchens, restrooms and storerooms;

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

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.

Liquor establishment. Premises which may be open to the general public, where alcoholic liquor is sold by the individual drink or package.

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

Medical facility. A place where sick or injured people are given care or treatment.

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.

Processed. Having been subject to a special process or treatment

Public Place or Event. 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;

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.

Religious Institution. A place or structure that is used primarily for religious worship, which may include onsite housing, as permitted, for religious leaders and similar staff, and which may include accessory facilities.

Residence. A place where someone lives.

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

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.

Standalone Building. A building whose, heating, air conditioning, electrical service, plumbing and ventilation system service 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:

- a cannabis courier;
- a cannabis manufacturer;
- a cannabis producer; and
- a cannabis retailer.

Section 4 CANNABIS RESTRICTIONS

- A.** Access to or possession of cannabis, in any manner, shall be restricted to persons twenty-one years of age or older.
- B.** Cannabis sales from mobile, portable, or temporary units and or drive-through locations shall not be permitted.
- C.** Cannabis sales from Agriculture-Residential, Zone A & B, zoning districts shall not be permitted.
- D.** Cannabis establishments shall not be permitted as a Home Occupation.
- E.** Cannabis establishments shall not be permitted as a Special Use Permit.
- F.** The smoking, vaping or ingesting of cannabis products shall not be permitted outdoors in public areas or events.
- G.** Residential growth and cultivation of cannabis shall be limited to a maximum of six mature and six immature plants per household.
- H.** Cannabis producers and/or cannabis producer microbusinesses, with sufficient agriculture water rights as determined by the NM Office of the State Engineer and presented to the Planning and Zoning Department, may be permitted in Zone A & B- Agriculture-Roswell District.

Section 5 GENERAL COMMERCIAL (ZONE C TYPE 1) OR INDUSTRIAL (ZONE D) REQUIREMENT

- A.** Cannabis Establishments within the unincorporated areas of the Chaves County shall be restricted to parcels zoned General Commercial, Zone C, Type I (Article XI), or Industrial, Zone D (Article XIII) with the exception of cannabis producers and cannabis producer microbusiness. A change in zoning district may be requested per Article I, Section 5.H of this ordinance.

- B.** The Chaves County Board of County Commissioners has determined that cannabis establishments may be allowed in those Zoning Districts where similar uses are permitted, 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 service. The following cannabis establishments shall be located in the following Zoning Districts, at a minimum:

Cannabis Establishment Facilities	Zoning District
Producer or producer microbusiness	Agriculture-Residential, Zone A and B
Consumption areas, couriers, research laboratories, growth and educational stores, retailers, and testing laboratories.	General Commercial, Zone C, Type I
Extraction/processing, manufacturers, and integrated product areas.	Industrial, Zone D

Section 6 LOCATION REQUIREMENTS

Applications for a Cannabis Establishments Permit shall be required to meet the following conditions:

- A.** Reasonable Place. Cannabis Establishments shall not be permitted within three hundred (300) feet of any school (private or public) or child care facility; measured from property line of the lot on which the cannabis establishment is located, to the nearest point on any property line of the school or child care facility; and
- B.** Reasonable Place. Cannabis Establishments shall not be permitted within one thousand (1,000) feet of any religious instructions, community center, government facility, adult care facility, medical facility, or public parks established prior to the cannabis establishment permit; measured from property line of the lot on which the cannabis establishment is locate, to the nearest point on any property line of the lot for which the religious instructions, community center, government facility, adult care facility, medical facility, or public parks is located; and
- C.** Reasonable Density. A licensed Cannabis retailers and consumption areas shall not be permitted within a one (1) mile radius of any other licensed cannabis retailers, cannabis consumption area and liquor establishment, including those within the Roswell-Chaves County Extraterritorial area and within any incorporated municipality; measured from property line of the lot on which the licensed cannabis retailers, cannabis consumption area and liquor establishment is located, to the nearest point on any property line of the cannabis retailer or consumption area is located; and
- D.** Reasonable Manner. The smoking, vaping or ingesting of cannabis products shall not be permitted outdoors but rather shall be permitted within a licensed cannabis consumption area that occupies a standalone building from which smoke and vaper fumes do not infiltrate other indoor workplaces or other indoor public places where smoking is otherwise

prohibited pursuant to the Dee Johnson Clean Indoor Air Act. A cannabis establishment shall be properly ventilated to filter the odor from cannabis so that the odor cannot be detected by a person with a normal sense of smell at the exterior of the cannabis or at any adjoining use or property.

- E. Reasonable Time.** Cannabis retailers and cannabis consumption area shall be permitted to operate from 7:00 a.m. to midnight. Monday through Saturday and noon to midnight on Sundays; and
- F. Reasonable Place.** Cannabis Establishments shall be permitted in Commercial and Industrial Zone Districts located along the following roads or highways as designated in the latest Chaves County Comprehensive Master Plan-Commercial and Industrial Corridors:

US Highway 70, US Highway 82, US Highway 285, US Highway 380, and

State Road 2.

Section 7 PERMIT APPLICATION FORM – INFORMATION REQUIRED

Application forms for obtaining approval for a Cannabis Establishment Permit shall be provided by the Planning and Zoning Director. The cost of the permit shall be \$500 for the initial permit, and \$250 for an annual renewal permit. A complete application shall contain the following information:

- A. Owners.** Name, address, and telephone number of: (1) the applicant; (2) all persons owning an interest of ten percent (10%) or more in the Cannabis Establishments including all individuals having a corporate or partnership interest in the property and/or operation of the business; (3) if it is a business entity, the officers and directors, and (4) any aliases of any of the above persons; and
- B. Type of Establishment.** The applicant shall identify the type or types of uses to be operated within the Cannabis Establishments by the prospective licensee. The applicant shall specify whether the land use will include a single-family dwelling unit on the same lot or parcel of land as the Cannabis Establishments; and
- C. Location and Related Information.** The applicant shall furnish the address and legal description of the parcel of land on which the land use is to be located, including section, township and range, parcel ID numbers, and acreage, together with the identification of the estate which the owner or operator holds in the land, and shall furnish the planned hours of operation during which the establishment will conduct any business; and
- D. A clear and precise site plan** showing the ingress and egress of the cannabis establishments to existing and proposed private or public roads. The site plan shall also include all existing and proposed building(s), the location of any greenhouses, utilities, the location of parking areas and the number of parking spaces, landscaping, lighting plans for parking areas and security fences; and

- E.** A current list, which includes the property the cannabis establishments is seeking for the Permit (the "Subject Property"), of all surrounding property owner's information, including mailing address, land use, and zoning located within one thousand (1,000) feet of the proposed cannabis establishment; and
- F.** Construction plans approved by the local Certified Building Inspector shall be required for all modifications, alterations or new buildings. The plans shall be drawn to scale and shall also include the applicable requirements contained in the latest approved commercial building, fire, electric, HVAC and plumbing code; and
- G.** Documentation of other businesses that are located within and/or operating in the same building, structure, or portion thereof of the building for which the cannabis establishment is attempting to locate. (Strip Malls or Shopping Centers)
- H.** Prior to issuance of a new or annual renewal permit, the cannabis establishment shall be required to pass an annual inspection by the Chaves County Building Inspector for any building or zoning code violations.
- I.** A temporary cannabis establishment permit may be issued for state licensing purposes pending completion of the fire, electrical, and building inspections, and upon satisfactory evidence that all other conditions have been met for a permit. A final permit shall be issued upon completion of the inspections and an issuance of a Certificate of Occupation by the Chaves County Building Inspector.

Section 8 PERFORMANCE STANDARDS AND REQUIREMENTS

Application of Standards. After the effective date of the ordinance codified in this article, any building, structure, or tract of land developed, constructed, or used for Cannabis Establishments purposes as defined in this article shall comply with the following performance standards. However, these standards are the minimum standards, and stricter standards may be required by other regulations, including building, electrical, plumbing, HVAC and fire codes.

- A.** Building Facade. A Cannabis Establishments building facades, exteriors, and exits shall generally resemble surrounding buildings. All window areas shall be covered or made opaque so as not to allow visibility from the outside.
- B.** Building Codes. A Cannabis Establishments being constructed and/or upgraded to comply with the latest building, electrical, plumbing, HVAC and/or fire code, and/or with the latest New Mexico Environmental Department and State Engineer's Office regulations shall be required to the apply for all necessary permits from either the New Mexico Construction Industries Division or the Chaves County Building Inspector.
- C.** Cannabis Control Division. All Cannabis Establishments shall comply with all Cannabis Control Division regulations and requirements set forth by this Article and in the Cannabis Control Division regulations.

- D. Signs.** All Cannabis Establishments signage shall be located on the same property or parcel of land as the establishment and shall require a building permit issued by the Chaves County Building Inspector.
- E. Parking and Lighting Regulations.** On-site parking is required and regulated in accordance with Article XVI. In addition, all parking areas and the building shall be illuminated from dusk until dawn with a lighting system which provides an average maintained horizontal illumination of one-foot candle of light on the parking surface and walkways. An on-premises exterior lighting plan shall be submitted to the Planning and Zoning Department with the site plan.
- F. Fencing.** Secure fencing surrounding the establishment, measuring at least six feet in height and constructed of sturdy material, shall be required in order to protect the facility and public.

Section 9 **ADMINISTRATION AND ENFORCEMENT**

- A. Administration.** All applications for permit approval under this article shall be made to the Planning and Zoning Department. It shall be the duty of the Planning and Zoning Director or his or her designee to process any application pursuant to this article, and to administer the provisions of this article. The Planning and Zoning Director shall prepare any forms necessary to administer the provisions of this article.
- B. Planning and Zoning Staff** shall have reasonable time to review all applications, site plans, construction plans, and any other documents necessary to approve the cannabis establishment permit. If denial of an application for a new or annual renewal permit is deemed necessary by the Planning and Zoning Director, written notice of the decision shall be provided to the applicant.
- C.** In the event a Cannabis Establishment is legally established in accordance with the requirements of this article and (1) an incompatible land use located within the required separation distance or (2) boundaries for residential zones in the county are modified, a pre-existing legally established Cannabis Establishments shall be considered conforming, but notwithstanding the provisions of Section 6.C no further Cannabis Establishments shall be located there. If the Cannabis Establishments ceases to be operational for a period exceeding sixty (60) days, then the use shall be considered non-conforming. Decisions as to the conformity of the Cannabis Establishment shall be rendered by the Planning and Zoning Director and may be appealed in accordance with the provisions contained in Article I, Section 5 (H) (9) of this ordinance.
- D. Enforcement.** It shall be the duty of the Chaves County Sherriff's Department, Planning and Zoning Staff and County attorney to see that this article is enforced through the proper legal channels. The Chaves County Building Inspector shall issue no permits for the construction, alteration, or repair of any building or part thereof, unless such plans and intended use of such building conforms in all respects with the provisions of this article and the required application fees have been paid.

Section 10 **PUBLIC NUISANCE**

Penalties. Violations of this article are subject to the provisions of Article I, Sections 5 and 6. Notwithstanding any other provisions of this Ordinance, any violation of any of the provisions of this article is declared to be a public nuisance per se, which shall be abated by the Prosecuting Attorney. The penalty for violating this article may include a maximum of three hundred (300) dollars and/or ninety (90) days in jail. Each day a violation exists is a separate violation. Payment of any penalty imposed for a violation does not relieve a person from the duty to comply with this article.

Section 11 **SEVERABILITY**

If any section, subsection, paragraph, sentence, clause, or phrase in this article or any part thereof is for any reason held to be unconstitutional or invalid or ineffective by any court of competent jurisdiction, such decision shall not affect the validity or effectiveness of the remaining portions of this article or any part thereof. The Chaves County Board of Commissioner hereby declares that it would have passed each section, subsection, subdivision, paragraph, sentence, clause, or phrase thereof irrespective of the fact that any one or more subsections, paragraphs, sentences, clauses, or phrases be declared unconstitutional, or invalid, or ineffective.

Section 12 **EMERGENCY CLAUSE AND EFFECTIVE DATE**

Because of the urgent need for regulation pursuant to this Article, the Chaves County Board of County Commissioners declare that it is necessary for the public health, safety and wellness that this Article take effect immediately after passage when it is recorded as part of the Chaves County New Mexico Zoning Ordinance No. 7, Revision No.11 in the Chaves County Clerk's office. In the event a court of competent jurisdiction finds that the passage of this Article did not constitute an emergency, then the effective date of this Article shall be thirty (30) days after the recording the Chaves County New Mexico Zoning Ordinance No. 7, Revision 11 in the Chaves County Clerk's office.

PASSED, APPROVED, ADOPTED AND SIGNED this _____ day of August, 2021.

BOARD OF CHAVES COUNTY COMMISSIONERS:

William E. Cavin, Chairman

Jeff Bilberry, Vice-Chairman

ATTEST:

Dara Dana, Member

T. Calder Ezzell Jr, Member

Cindy Fuller
County Clerk

Richard C. Taylor, Member