



VALENCIA COUNTY, NEW MEXICO
POST OFFICE BOX 1119
444 LUNA AVENUE
LOS LUNAS, NEW MEXICO 87031

VALENCIA COUNTY ORDINANCE

ORDINANCE 2021-03

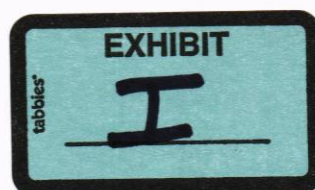
**AN ORDINANCE LICENSING & REGULATING CANNABIS GROWTH AND
PROHIBITING THE USE OF NON-FEMINIZED CANNABIS SEEDS & PLANTS AND
REGULATING THE PROXIMITY OF CANNABIS ESTABLISHMENT TO
ESTABLISHED SCHOOLS AND DAYCARE CENTERS**

Adopted by the Board of County Commissioners

On July 21, 2021

Effective on August 21, 2021

B: 105 P: 331





**VALENCIA COUNTY, NEW MEXICO
ORDINANCE 2021- 03**

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PROHIBITING THE USE OF NON-FEMINIZED CANNABIS SEEDS & PLANTS AND
REGULATING THE PROXIMITY OF CANNABIS ESTABLISHMENT TO
ESTABLISHED SCHOOLS AND DAYCARE CENTERS**

WHEREAS, the Valencia County Board of Commissioners met in a regularly scheduled meeting, on Wednesday, July 21, 2021 at 5:00 p.m., at the Valencia County Administration Building, 444 Luna Avenue, Los Lunas, New Mexico 87031; and,

WHEREAS, NMSA 1978, Section 3-18-1 (1972) provides that municipalities, and also counties pursuant to NMSA 1978, Section 4-37-1 (1995), have the power to "protect generally the property of its municipality and its inhabitants" and to "preserve peace and order"; and,

WHEREAS, NMSA 1978, Section 4-37-1 *et seq.* (1975) provides that counties may adopt ordinances, not inconsistent with statutory or constitutional limitations placed on counties, to discharge those powers necessary and proper to provide for the safety, preserve the health, promote the prosperity and improve the morals, order, comfort and convenience of the county and its inhabitants; and,

WHEREAS, the 10th Amendment to the Constitution for the United States is clear when stating, "The powers not delegated to the United States by the Constitution, nor prohibited by it to the states, are reserved to the States respectively, or to the people[]"; and,

WHEREAS, the states and their political subdivisions, the counties, have derived specific and reserved powers from the 10th Amendment of the Constitution for the United States, referred to as police powers of the State; and,

WHEREAS, under the 10th Amendment and subsequent state authorization, the counties have the duty to pass laws and regulations to protect the safety, health, welfare and morals for the benefit of their communities; and,

WHEREAS, the Valencia County Board of Commissioners has a fiduciary responsibility under its statutory police powers to protect the health, safety and welfare of its residents, and the County reserves the right to take whatever actions necessary to do so; and,



WHEREAS, NMSA 1978, Section 4-37-2 (1975) provides that county ordinances are effective within the boundaries of the county, including privately owned land, New Mexico State Land, or land federally administered by the United States; and;

WHEREAS, agriculture is and always has been a substantial and integral part of the economy of the County of Valencia; and,

WHEREAS, the County of Valencia has been found to have ideal growing conditions for cannabis; and,

WHEREAS, the Valencia County Board of County Commissioners intends with the adoption of this ordinance to support, sustain and regulate the growth of cannabis in the County of Valencia as an essential agricultural product; and,

WHEREAS, cross-pollination (or simply pollination), is economically damaging in cannabis farming as it manipulates the intended plant productions thus decimating the value of a crop; and,

WHEREAS, the possibility of cross-pollinating another farmer's crop provides the most critical reason for exclusively using feminized seed. Cannabis pollination can occur through both wind and insect mediated pollen transfer. Pollen can travel as far as 7.4 miles and reach altitudes of 66 – 98 feet. Honey bees are known to travel at least 2.5 miles from their hives. For crop pollens in general, 10-15 yards is most commonly cited as the distance to which pollen will be dispersed by wind. The amount of wind-carried pollen decreases with distance from the source.

NOW THEREFORE, BE IT ORDAINED, that the County Commissioners of Valencia County hereby adopts this Ordinance, an Ordinance Licensing & Regulating Cannabis Growth and Prohibiting the use of Non-Feminized Cannabis Seeds and Plant.

BE IT FURTHER ORDAINED, the Board specifies the following procedures in responding to requests for immediate assistance by persons as described above:

1. **Title:** The Ordinance may be cited as the "Valencia County Cannabis Production Ordinance."
2. **Scope:** All individuals, businesses, agencies, institutions, or other entities engaged in the production of cannabis in the unincorporated areas of Valencia County.
3. **OBJECTIVE:** To establish rules regulating the licensing of growers producing cannabis in Valencia County to support and sustain the growth of cannabis in the County as an essential agricultural product.
4. **DEFINITIONS:**



- A. **"Annual Production License"** means license issued for the production of a single crop that is destroyed within 240 days of planting.
- B. **"Applicant"** means individuals, businesses, agencies, institutions, or other entities that have submitted an application to the County of Valencia.
- C. **"Application"** means documents submitted to the County of Valencia by an applicant as part of the process for obtaining a cannabis production license for a single location within the unincorporated area of Valencia County.
- D. **"Business Day"** means normal business hours and days as defined by New Mexico State University policy.
- E. **"Cannabis"** means a plant of the genus cannabis.
- F. **"Continuous Production License"** means license issued for the production of cannabis as part of a plant nursery, greenhouse or similar operation in which viable cannabis plant(s) are produced or present throughout the year in a location.
- G. **"Crop"** means planting of one or more cannabis varieties within a two week (2 week) contiguous period within a location. Cannabis varieties, not planted within a two-week period within a location, shall be subject to a separate license and license fee.
- H. **"County"** the County of Valencia, a political subdivision of the State of New Mexico.
- I. **"Destroy(ed)"** meaning method approved by the New Mexico Department of Agriculture to ensure non-viability of a cannabis plant. Methods may include shredding, disking, burning, or other methods as prescribed by the director.
- J. **"Female Plant"** means the plant Cannabis sativa L. that does not produce pollen.
- K. **"Cannabis"** means the plant Cannabis sativa L. and any part of the plant, whether growing or not, containing a delta-9-tetrahydrocannabinol concentration of no more than three-tenths percent (.3 %) on a dry weight basis.
- L. **"License"** means document issued to an applicant by the County Manager on behalf of the County of Valencia authorizing a licensee to produce cannabis at a location.
- M. **"Licensee"** means individuals, businesses, agencies, institutions, or other entities that possess a valid Valencia County cannabis production license.
- N. **"Location"** means one contiguous growing area of any size, or multiple non-contiguous growing areas, totaling no more than 10 acres, within a 2.5-mile radius. Non-contiguous growing areas must be owned or leased by a single licensee.
- O. **"Male Plant"** means the plant Cannabis sativa L. that produces pollen.
- P. **"Manager"** means the individual appointed by the Board of County Commissioners of Valencia County responsible for the day to day operation and long-term planning of the County.
- Q. **"Marijuana"** means a psychoactive narcotic drug rendered from the leaves and flowering tops of a cannabis plant,
- R. **"THC"** means delta-9 tetrahydrocannabinol.
- S. **"Variety"** means cannabis cultivar or strain with known or unknown THC levels.

5. APPLICATION/LICENSE:

- A. **Annual Production License:** Applicants cultivating cannabis for annual production shall apply for an annual cannabis production license no less than 10 business days prior to planting of each crop at each location. The effective date of an application received by



the Manager shall be the date postmarked on a properly completed application received by mail. The effective date of application for documents submitted in person shall be the actual calendar date the applicant presents a properly completed application. Incomplete or improperly completed applications will be identified as invalid by the Manager and returned to the applicant for completion or correction. A separate application and application fee are required prior to planting of each new crop at each location. An annual cannabis production license is valid for 255 days after date of issuance, or until crop destruction, whichever occurs first, for specified cannabis varieties grown annually at the specified location identified in the application.

- B. **Continuous Production License:** Applicants cultivating cannabis for continuous production and propagation purposes shall apply for a continuous production license no less 10 business days prior to planting or prior to other propagative activities. Applicants producing cannabis in continuous production shall apply for a renewal of their continuous production license prior to February 1 of each year. A separate application and application fee are required for each licensed location. Incomplete or improperly completed renewal applications will be identified as invalid by the Manager and returned to the applicant for completion or correction. The effective date of a renewal application received by the Manager shall be the date postmarked on a properly completed application received by mail. The effective date of application for renewal application, submitted in person, shall be the actual calendar date the applicant presents a properly completed application. A continuous production license expires January 31 of each year.

6. LICENSEE REQUIREMENTS: Licensee shall:

- A. obtain and submit a to the Manager a valid cannabis production license issued by the New Mexico Department of Agriculture pursuant to NMRA 21.20.2 *et seq.* and/ or the Cannabis Control Division of the NM Regulation and Licensing as applicable.
- B. submit all required documents by due dates specified by the County;
- C. not reassign or transfer to another business, location, individual, or other entity a license;
- D. destroy male plants or non-feminized seeds;
- E. not sell, transport, process, or utilize non-feminized seeds or plants;
- F. remit payment to the County for fees associated with enforcement of this rule within;
- G. provide the County of Socorro any harvest certificate or destruction order received by the licensee from the New Mexico Department of Agriculture or Regulation and Licensing Division within 2 business days of receipt;
- H. 20 calendar days of receipt of notice; and
- I. follow all state and federal requirements relevant to cannabis production.

7. COUNTY OF VALENCIA FEES:

- A. Fees associated with the application for a license shall include but not exceed the following stated amounts for each license:
 - i. Annual production license: \$400 per location.
 - ii. Continuous production license: \$600 per location.
 - iii. Additional \$100 late fee for continuous production license renewal application received after February
- B. Annual inspection fees for continuous and annual licenses per location:



- i. Outdoor production: \$6.00 per acre; minimum \$6.00.
- ii. Indoor production: \$0.75 per 1,000 square feet; minimum \$5.00.
- iii. Additional varietal fee: \$25 per variety in excess of one variety.
- C. Annual inspection fees include only the cost of routine inspections and sampling visits as defined by County policy. Licensee shall be financially responsible for additional staff time and or fees directed at noncompliance issues, or additional sampling requirements, or other expenditures as required by the County and related to compliance requirements found in this rule and County policy. Reimbursable staff time or fees may be associated with mileage, per diem, and staff hours, as allowed by County rule or policy.

8. NON-FEMINIZED CANNABIS SEED AND PLANTS PROHIBITED

- A. The transfer, transportation, sale, processing, utilization, planting and/or cultivation of seeds or plants of non-feminized cannabis seed is prohibited.
- B. Licensees are limited to planting and growing female clones or using feminized seed.
- C. Since it is possible that 1 of 2,000 feminized seeds can produce a male plant, licensees are responsible for removing male plants as soon as they are identified. Male plants present pollen sacks after several weeks of growth, are tall and slender with few leaves surrounding the flowers, while female plants are short and stocky with many leaves at each terminal inflorescence.
- D. Plants with both male and female flowers, developed through breeding and selection are prohibited.
- E. Regardless of their plant prorogation strategy environmental stress may result in a higher concentration of male flowers, particularly during hot / wet spells, at the commencement of flowering, and nearing harvest. Accordingly, it is the duty of a licensees to monitor their crop and remove and destroy any male plants immediately upon detection. See Fig. 1.
- F. Any property with more than .05% male to female plant density shall be prohibited and all cannabis plants (the crop) on that property are required to be immediate destroyed by the license.
- G. As a condition of obtaining a license the licensee consents, agrees and understands that if he/she fail to immediately destroy the crop more than .05% male to female plant density the County of Valencia, after providing 48 hours' notice, is authorized to enter upon the licensee's land to do so and assess the cost to the licensee.

9. INSPECTION/SAMPLING/TESTING.

All locations are subject to inspections by County staff or its authorized agents, without prior notification, to verify application information and compliance with rule requirements.

10. EXEMPTION FOR SEED & PLANT PROPAGATION.

- A. The use of male seed and plants is exempted from this ordinance for the limited purpose of producing feminized seeds and seedlings.
- B. Use of male seeds or plants for this limited purpose shall only be authorized if the production is accomplished using an enclosed greenhouse equipped to prevent any transfer of pollen from the greenhouse to the air outside.



- C. In order for a person to produce seeds under this section the producer must apply for a license as set forth in Section 7 *supra*, with an additional \$100.00 fee for greenhouse inspection.

11. CANNABIS ESTABLISHMENT LOCATIONS

Pursuant to the authority granted by the Cannabis Regulation Act a cannabis establishment or integrated cannabis microbusiness, as defined by the Act, shall not be located less than 300 feet from a school or daycare center that was in existence at the time the establishment or microbusiness was licensed.

12. ENFORCEMENT.

- A. Each violation of this Ordinance, including failure to obtain a Valencia County Cannabis License, shall be punishable by a fine of no more than three hundred dollars (\$300) pursuant to NMSA 1978 Section 4-37-3 (1993).
- B. In the event the County of Valencia is required to destroy a crop found to be in violation of Section 8, above, the reasonable cost destruction shall be assessed to the licensee and owner of the real property. The Cost of destruction shall constitute a lien against the real property from which the crop was destroyed. The lien shall be foreclosed in the manner provided in NMSA §§ 3-16-1 *et seq.* and 4-37-1 *et seq.*
- C. Any violation of this ordinance will result in the cancellation of a license. The applicant may not re-apply for another license for a period of 3 years or at any time any assessed cost for destruction of a crop remains outstanding.


13. SEVERABILITY.

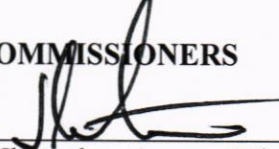
If any article, section, subsection, paragraph, sentence, clause, phrase, provision or portion of any article, section, subsection, paragraph, sentence, clause, phrase or provision in this Ordinance is, for any reason, held to be unconstitutional, invalid or void, the remaining portion shall not be affected since it is the express intention of the Valencia County Board of County Commissioners to pass such article, section, subsection, paragraph, sentence, clause, phrase or provision and every part thereof separately and independently from every other part.



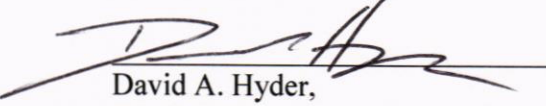
ORDAINED, ADOPTED, AND APPROVED on this 21st day of July 2021.

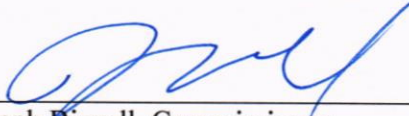
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Attest:

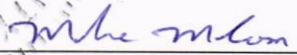

Mike Milam, County Clerk





Fig. 1 Example of Male Flower with Pollen Sacks on a Cannabis Plant

