TOWN OF KIRTLAND
ORDINANCE No: 2021-01

AN ORDINANCE RELATING TO THE ZONING ORDINANCE OF THE TOWN OF KIRTLAND, AMENDING SECTION 5- SCHEDULE OF DISTRICT REGULATIONS, CREATING NEW SECTION 5A CREATING THE CANNABIS REGULATION ORDINANCE RELATING TO THE TIME, PLACE AND MANNER REGULATION OF CANNABIS

SECTION 1: AMENDMENTS TO THE ZONING ORDINANCE

The Zoning ordinance of the Town of Kirtland is amended as follows:

Section 5. - Schedule of district regulations.

AR Agricultural *Residential District*

Permitted principal uses and structures:

1. One single-family, site-built structure for one housekeeping unit only; or

2. A multi-section manufactured home or modular home, that is a single-family dwelling constructed in a factory to the standards of the United States Department of Housing and Urban Development, the National Manufactured Housing Construction and Safety Act, or the Uniform Building Code, as amended to the date of the unit's construction, and installed consistent with the Manufactured Housing Act, and with the regulations made pursuant to the permanent foundation systems.
3. No more than two (2) residential units as described above in item 1 and 2 in addition to the primary principle residential unit for the purpose of boarding persons employed on the premises and their family members.

4. Agricultural use, farming, ranching including the planting, growing and harvesting of crops for consumption, provided that any cannabis related agriculture is conducted in compliance with the Cannabis Regulation Act and other applicable state law, and:
    a. Any diseased, dead, or dying agricultural products be disposed of promptly and appropriately,

    b. Agricultural activities conducted on the property do not create a nuisance.

5. One stand for display and sale of products raised on the premise, provided that the structure contains no more than four hundred (400) square feet.

6. One (1) unlighted sign.

7. The grazing, breeding, raising, or training horses, cattle, sheep, goats or other non-exotic animals.

8. Dog kennels or the breeding, boarding or the sale of dogs, cats or fur bearing animal farms.

Permitted accessory uses and structures:

Accessory uses and structure customarily incident to the aforesaid permitted uses, under conditions herein specified, provided that such accessory uses shall not involve in the conduct of any business or industry, or any driveway or walkway giving access thereto.

1. Private garages, storage sheds.

2. Barns.

3. In house, home occupations when conducted by member of the immediate family.

4. Public buildings or uses owned by the Town or any other political subdivision of the State.

Special Uses:

The following uses are allowed, provided that a special use permit has been granted by the Town Council. Before any special use permit is granted, it shall be shown that the proposed use will not be detrimental to the public health, safety, welfare or injurious to other property or improvements in the same vicinity;

1. Museums, and libraries.

2. Cemeteries.

3. Public and private schools.

4. Commercial livestock feed yards.

5. The killing or dressing of livestock, poultry, rabbits or any other animal for commercial purpose.

6. Institutions, nursing homes or assisted living centers, for the care of the aged, senile, mentally infirm or physically disabled.

7. Other uses not listed or described within this district.

Prohibited uses and structures:

1. No visible outside storage regarding home occupations not pertaining to the use of the property.

2. No swine, which shall include, without limitation, Vietnamese potbelly pig which is also known as Asian Shar-Pei or Chinese potbelly pig, and may include any other type or variety.

3. No commercial or industrial uses.

4. Single wide manufactured homes.

5. Multi-family residential units.

Minimum tract of land and setback requirements:

1. Each tract of land shall be a minimum of forty three thousand five hundred and sixty (43,560) square feet, one (1) acre, with a minimum front lot line of one hundred (100) feet.

2. Front setbacks shall be a minimum depth of twenty-five (25) feet from backside of sidewalk. Should no sidewalk be available at time of construction, said setback measurements shall start four (4) feet from the edge of existing roadway edge for a total of a minimum of twenty-nine (29) feet.

3. Side setbacks shall be a minimum of ten (10) feet from the property line for residential units.

4. Rear setbacks shall be a minimum of twenty (20) feet from the rear property line.

5. Setbacks for a barn, shed, or other structure for the purpose of raising, breeding or the feeding of poultry, rabbits or livestock, shall be a minimum of fifty (50) feet from all property lines.

6. A minimum of twenty thousand (20,000) square feet of open space land for each horse, cow or other large animal.

7. A minimum of ten thousand (10,000) square feet of open space land for each goat, sheep or other similar sized animal.

All setbacks shall be to include fascia boards, porches, covered patios, any additions to the basic structure of the furthest most projection of the structure. Said side yard setbacks shall be required for all accessory structures, such as garage, carports, storage units etc.

Maximum height of structures:

1. No structure shall exceed two and one-half (2½) stories or thirty five (35) feet whichever is less.

Off street parking requirements:

1. A minimum of three (3) parking spaces per each residential unit shall be required.

2. As determined and specified in section 6, item 12 of the zoning district regulations.

R-1 Residential District

Permitted principal uses and structures:

1. One-family, single, detached dwellings for one housekeeping unit only or;

2. A manufactured housing or modular home, that is a single-family dwelling with a heated area of at least thirty-six by twenty-four (36 × 24) and at least eight hundred sixty-four (864) feet, constructed in a factory to the standards of the United States Department of Housing and Urban Development, the National Manufactured Housing Construction and Safety Act, or the Uniform Building Code, as amended to the date of the units construction, and installed consistent with the Manufactured Housing Act, and with the regulations made pursuant to permanent foundation systems.

Permitted accessory uses and structures:

Accessory uses and structures customarily incident to the aforesaid permitted uses, under conditions herein specified, provided that such accessory uses shall not involve in the conduct of any business or industry, or any driveway or walkway giving access thereto.

1. Private garages.

2. Private storage sheds.

3. In house, home occupations, no outside storage provided there will be no display of products or commodities pertaining to it that is visible from any public street or right-of-way.
4. Public buildings or uses owned by the Town or any other political subdivision of the state and operated for public purposes.

5. Churches.

6. Public Schools.

Prohibited uses and structures:

1. No visible outside storage regarding home occupations.
2. No livestock.
3. No swine.
4. No domestic fowl.
5. No commercial or industrial uses.
6. No Single wide manufactured homes.
7. Cannabis establishments

Special Use:

The following uses are allowed, provided that a special use permit has been granted. Before any special use permit is granted, it shall be shown that the proposed use will not be detrimental to the public health, safety, welfare or injurious to other property or improvements in the same vicinity:

1. Museums, and libraries.
2. Cemeteries.
3. Private schools.

Minimum lot and setback requirements:

1. Each lot shall be a minimum of seven thousand (7,000) square feet, with a minimum front lot line of seventy (70) feet.
2. Front setbacks shall be a minimum depth of twenty-five (25) feet from backside of sidewalk. Should no sidewalk be available at time of construction, said setback measurements shall start four (4) feet from the edge of existing roadway, for a total of a minimum of twenty-nine (29) feet.

3. Side setbacks shall be a minimum of five (5) feet from the property line.

4. Rear setbacks shall be a minimum of five (5) feet from the rear property line.

All residential units shall face the addressed street. Any residential unit not facing the street from which it is addressed, a variance shall be obtained prior to any construction.

All setbacks shall be to include fascia boards, porches, covered patios, any additions to the basic structure or the furthest most projection of the structure. Said side yard setbacks shall be required for all accessory structures, such as garages, carports, storage units etc.

Maximum height of structures:

1. No structure shall exceed two and one-half (2½) stories or thirty-five (35) feet whichever is less.

Off-street parking requirements:

1. A minimum of three (3) parking spaces per each residential unit shall be required to be paved, cement or covered with crushed stone or other similar material.

R-2 Residential Zoning District

Permitted principal uses and structures:

1. One-family, single, detached dwellings for one housekeeping unit only or;

2. A manufactured housing or modular home, that is a single-family dwelling with a heated area of at least thirty-six by twenty-four (36 × 24) and at least eight hundred sixty-four (864) feet, constructed in a factory to the standards of the United States Department of Housing and Urban Development, the National Manufactured Housing Construction and Safety Act, or the Uniform Building Code, as amended to the date of the unit's construction.

3. Duplex unit constructed to house no more than two (2) single families.

Permitted accessory uses and structures:

Accessory uses and structures customarily incident to the aforesaid permitted uses, under conditions herein specified, provided that such accessory uses shall not involve in the conduct of any business or industry, or any driveway or walkway giving access thereto.

1. Private garages.

2. Private storage sheds.

3. In house, home occupations, no outside storage provided there will be no display of products or commodities pertaining to it that is visible from any public street or right-of-way.

4. Public buildings or uses owned by the Town or any other political subdivision of the state and operated for public purposes.

5. Churches.

6. Public schools.

Prohibited uses and structures:

1. No visible outside storage regarding home occupations.

2. No livestock.

3. No swine including domesticated swine (pot belly pigs).

4. No Domestic fowl.

5. No commercial or industrial uses.

6. Single wide manufactured homes.

7. Cannabis establishments

Special Use:

The following uses are allowed, provided that a special use permit is granted. Before any special use permit is granted, it shall be shown that the proposed use will not be detrimental to the public health, safety, welfare or injurious to other property or improvements in the same vicinity:

1. Museums and libraries.

2. Cemeteries.

3. Private schools.

Minimum lot and setback requirements:

1. Each lot for a single-family unit shall be a minimum of six thousand (6,000) square feet, with a minimum front lot line of sixty (60) feet.

2. Each lot for a duplex unit shall be a minimum of eight thousand (8,000) square feet with a minimum lot line of eighty (80) feet.

3. Front setbacks shall be a minimum depth of twenty (20) feet from backside of sidewalk. Should no sidewalk be available at time of construction, said setback measurements shall start four (4) feet from the edge of existing roadway, for a total of a minimum of twenty-four (24) feet.

4. Side setbacks shall be a minimum of five (5) feet from the property line.

5. Rear setbacks shall be a minimum of five (5) feet from the rear property line.

All residential units shall face the addressed street. Any residential unit not facing the street from which it is addressed, a variance shall be obtained prior to any construction.

All setbacks shall be to include fascia boards, porches, covered patios, any additions to the basic structure or the furthest most projection of the structure. Said side yard setbacks shall be required for all accessory structures, such as garages, carports, storage units etc.

Maximum height of structures:

1. No structure shall exceed two and one-half (2½) stories or thirty-five (35) feet whichever is less.

Off street parking requirements:

1. A minimum of three (3) parking spaces per each residential unit shall be required to be cement, paved or covered with crushed stone or other similar material.

R-3 Residential-3 Zoning District

Permitted uses and structures:

1. One-Family, single site built home.

2. Two-family units (duplex) with a minimum of seven hundred and fifty (750) square feet of living area each unit.

3. Townhouse units.

4. Apartment buildings, including triplex and four-plex's with a minimum of five hundred and fifty (550) square feet of living area for each unit.

5. Manufactured homes, mobile homes constructed to the standards of the United States Department of Housing and Urban Development, the National Manufactured Housing Construction and Safety Act, or the Uniform Building Code, as amended to the date of the unit's construction. Installed consistent with the Manufactured Housing Act.

   (a). Single-wide manufactured home or mobile home shall be a minimum of twelve (12) [feet] wide and a minimum of seven hundred and twenty (720) square feet of living area.

   (b). Multi-section manufactured home, mobile home shall be a minimum of (24 × 36) and a minimum of eight hundred and sixty-four (864) square feet of living area.

6. Public buildings or uses owned by the Town.

Permitted accessory uses and structures:

1. Private garages and or carports.

2. In-home offices, family home occupations, provided there will be no display of products or commodities pertaining to it that is visible from any public street or right-of-way.

3. Private storage sheds.

4. Churches.

5. Public Schools.

Prohibited uses and structures:

1. Office buildings.

2. Motels, inns or lodging houses.

3. No swine including domesticated swine (pot belly pigs).

4. Cannabis establishments

Special Use:

The following uses are allowed in the district provided that a special use permit has been approved by the Town council. Before any special use permit shall be granted, it shall be shown that the proposed use is essential or desirable to the public health, safety, or general welfare; that the proposed use or uses will not be detrimental to the public health, safety or welfare, injurious to other properties in the vicinity.

1. Libraries.

2. Cemeteries.

3. Private schools.

4. Livestock (cow, horse, sheep, goats, etc.) A minimum of twenty thousand (20,000) square feet of open space land for each large animal (cows, horses etc.). Ten thousand (10,000) square feet for each small animal (sheep, goats etc.) Excluding houses, storage units or barns.

Minimum lot requirements:

1. Each lot area for a site built home or multi-section manufactured home, mobile home shall be a minimum of six thousand (6,000) square feet with a minimum lot line of seventy (70) feet. A site built home or multi-section manufactured home shall be situated on the lot so the front door, (main entrance) is facing the public street or right-of-way.

2. Each lot area for a single-wide manufactured home, mobile home shall be a minimum of five thousand (5,000) square feet, with a minimum front lot line of fifty (50) feet.

3. Each lot area for townhouses or two-family (duplex) units, shall be a minimum of six thousand (6,000) square feet, with a minimum front lot line of seventy (70) feet.

4. An additional lot area of two thousand (2,000) square feet is required for each accessory building (laundry, recreation rooms etc.)

5. Each manufactured home or mobile home lot, duplex or townhouse units shall have a minimum one storage unit, with a minimum of one hundred and twenty (120) square feet for each family unit.

Minimum yard requirements setbacks:

1. Front yards shall be a minimum depth of fifteen (15) feet. All front yard measurements for front yard setbacks shall be measured from the backside of the sidewalk. Should no sidewalk be available, said measurement shall start four (4) feet from the existing street, making a total of nineteen (19) feet from the existing street line.

2. Rear yards shall be a minimum of ten (10) feet from the property line.

3. Side yards shall be a minimum of five (5) from the property line.

Note: All setbacks shall include the fascia board, porches, patios, any additions to the basic structure or the furthest most projection of the basic structure. Said setbacks shall also be required for any and all accessory structures, such as garages, carports, permanent storage buildings.

Maximum height requirements:

Buildings or accessory structures may be erected to a maximum height of two and one-half (2½) stories or thirty-five (35) feet whichever is less.

Off-street parking requirements:

1. A minimum of three (3) parking spaces per each family unit which shall be asphalt, concrete or covered with crushed stone or other similar material.

RR-1 Rural Residential-1 Zoning District

Permitted principal uses and structures:

1. One single-family, site-built structure for one housekeeping unit.

2. Multi-section manufactured home or modular home that is a single-family structure constructed in a factory to the standards of the United States Department of Housing and Urban Development, the National Manufactured Housing Construction and Safety Act, or the International Building Code or Uniform Building Code, as amended to the date of the unit's construction, and installed consistent with the Manufactured Housing Act, and with the regulation made pursuant to permanent foundation systems.

Permitted accessory uses and structures:

1. Private garages.

2. Private storage structures.

3. Home occupations provided there will be no display of products or commodities pertaining to it that is visible from any public street or right-of-way.

4. Public buildings or uses owned by the Town or any other political subdivision of the state and operated for public purposes.

5. Churches.

6. Public schools.

Special Use:

1. Cemeteries.

2. Private schools.

Prohibited uses and structures:

1. No visible outside storage regarding to home occupations.

2. No swine including domesticated swine (pot belly pigs).

3. No commercial or industrial uses.

4. No single wide manufactured homes.

5. Cannabis establishments

Minimum lot requirements:

1. Minimum lot width: Seventy (70) feet.

2. One-half (½) acre (21,780 square feet) where Town sewer is available; or

3. Three quarters (¾) acre (32,670 square feet) where Town sewer is not available.

4. Ten thousand (10,000) square feet of open space land for each small animal, sheep, goat etc.; and/or

5. Twenty thousand (20,000) square feet of open space for each large animal, cow, horse etc.

Minimum setback requirement:

Front yard: Twenty-five (25) feet.

Side yard: ten (10) feet.

Rear yard: twenty (20) feet.

Maximum height of structures:

1. No structure shall exceed two and one-half stories or thirty-five feet whichever is less.

Off Street Parking:

1. A minimum of three parking spaces which shall be asphalt, concrete or covered with crushed stone or other similar material.

R-4 Residential-4 Zoning District

Permitted principal uses and structures:

1. One manufactured home or modular home for one family, provided that any mobile home must comply with all the requirements set forth under "special provisions" this section and be setup within an approved mobile home park.

2. Mobile home parks, provided that they comply with all applicable requirements is Section 6 of the Town's zoning regulations.

3. Private garages.

4. Private storage structures.

5. Public buildings or uses owned by the Town or any other political subdivisions of the state and operated for public purposes.

6. Accessory uses and structures customarily incident to the aforesaid permitted use, under conditions herein specified, provided that such accessory uses shall not involve the any conduct except as otherwise provided for by ordinance.

7. Home occupations provided there will be no display of products or commodities pertaining to it that is visible from any public street or right-of-way

Prohibited uses and structures:

1. No domestic fowl.
2. No livestock.
3. No swine including domesticated swine (pot belly pigs).
4. Cannabis establishments

Special provisions:

Any mobile home placed on a lot must comply with the following conditions:

1. Be the only dwelling unit on the lot.
2. Be a minimum of twelve (12) feet wide, with a minimum of 720 square feet.
3. Comply with all construction requirements, be constructed in a factory to the standards of the United States Department of Housing and Urban Development, of the National Manufactured Housing Construction and Safety Act or the Uniform Building Code as amended to the date of the units construction and installed consistent with the Manufactured Housing Act, and all other applicable codes of the Town of Kirtland.
4. Be equipped with a mobile home stand adequate to support the mobile home. Mobile home stands, anchors, and tie-downs shall meet the standards set forth, the Manufactured Housing Act or and regulations promulgated by the manufactured housing committee or, if those standards have been superseded meet the current standards in force.
5. Be equipped with appropriate skirting, as determined by the Town staff.
6. Be provided with a minimum of three (3) off-street parking spaces which shall be asphalt, concrete or covered with crushed stone or other similar material.
7. Be connected to the water and sewer systems of the Town of Kirtland, if available. If these systems are not available in the area where the lot is located, private water

supply and sewage disposal systems must be provided which comply with all state and local requirements for such systems.

8. Areas underneath mobile homes shall be kept free from debris, insects, rodents, and items of storage.

Definitions:

Mobile home park (trailer court) means a tract of land under single or joint ownership used or offered for use in whole or in part for the placement of four (4) or more manufactured homes for living purposes.

Minimum lot requirements:

Every lot shall have a minimum lot area of five thousand (5,000) square feet for each dwelling unit with a minimum front lot line of fifty feet (50').

Minimum yard requirements setbacks:

1. Front yards shall be a minimum of fifteen (15) feet. All front yard measurements shall be measured from the backside of the sidewalk. Should no sidewalk be available, said measurement shall start four (4) feet from the existing street right-of-way, making a total of nineteen (19) feet from the existing street line.

1. Side yards shall be provided on every lot along each side lot line, five and one-half (5.5) feet.

2. Rear yards shall be a minimum of ten (10) feet from property line.

NOTE:

All setbacks shall include the fascia board, porches, patios, any additions to the basic structure or the furthest most projection of the basic structure. Said setbacks shall also be required for any accessory structures, such as garages, carports, storage buildings.

Maximum height of structures:

Buildings or structures may be erected to a maximum height of 35 feet, whichever is lesser, with the exceptions noted in Section 6, Item 5, of this ordinance.

NCD Neighborhood Commercial Zoning District

Principal uses and structures:

1. Professional or semi-professional offices occupations for the conduct of the following: accountant, architect, attorney, engineer, insurance, real estate, or any other office or profession which is the same general character as the foregoing.

Excluding, sale of alcoholic beverages, animal grooming, chiropractor offices, dentist offices, dog kennels, funeral homes, physician offices, veterinarian offices, veterinarian hospitals or any business that may be considered high traffic volume.

2. Barber, beauty shops, cosmetologist, hairdresser, with a structure no larger than 1,500 square feet.

3. Cafe, coffee shop within an enclosed a structure no larger than 1,500 square feet.

4. Churches.

5. Day nurseries.

6. Food and dairy markets within an enclosed structure no larger than 1,500 square feet.

7. Libraries.

8. Nursing homes, assisted living centers.

9. Public schools.

10. Permitted principal uses and structures within the Residential 1 district.

11. Public government structures.

12. Swimming pools.

Prohibited uses and structures:

1. Mobile home parks.

2. Travel trailer parks.

3. Industrial uses.

4. Cannabis establishments

Parking Regulations:

As specified in Section 6, Item 12 of the Zoning District Regulations, also to be asphalt, concrete or covered with crushed stone or other similar material.

Area setback regulations:

1. Front yard: twenty (20) feet.

2. Rear yard: ten (10) feet.

3. Side yard: five (5) feet six (6) inches feet.

4. Where a tract of land in this district, abuts any parcel of land in any other zoning district, a privacy fence or wall no greater than 96 inches shall be installed.

Height and area regulations:

1. Maximum height [thirty-five] (35) feet.

2. Lot coverage by building, driveways, and parking spaces shall be no greater than [seventy] (70) percent of the total lot area.

Non-conformities:

Any non-conforming use in existence at the time of the adoption of this ordinance, shall be considered a valid non-conforming use until such time of, change of ownership and or 51 percent or more of the estimated appraised value of the property for the replacement of damage, upgrades and or improvements to structure and or property. At that time, all structures and or property shall come into compliance with these regulations. Unless, a special exception has been approved by the Town council.

CCD Community Commercial Zoning District

Principal uses and structures:

1. Alcoholic beverage sales.

2. Allowances within the Neighborhood Commercial district.

3. Animal grooming salons, animal kennels.
4. Automobile sales, automobile/truck repair shops, automobile/truck gasoline/fueling stations.

5. Banks.

6. Cemeteries, crematories.
7. Chiropractor offices.
8. Dentist offices.
9. Government structures and uses.
10. Hotels, motels.
11. Hospitals.
12. Laundromats, cleaners.
13. Manufactured home sales.
14. Mortuary, funeral homes.
15. Movie theaters.
16. Nightclubs, dance halls.
17. Office buildings.
18. Self-storage buildings, self-storage yards.
19. Physician offices.
20. Retail stores.
21. Restaurants, café's that may or may not serve alcoholic beverages.
22. Second hand stores, (thrift shops, pawn shops etc.).
23. Travel trailers in an approved travel trailer park.
24. Veterinarian clinics and hospitals.
25. Cannabis Retailer

Special Use:

Any commercial business or service not included in any of the foregoing, provided that all such uses shall be completely within an enclosed building and are not noxious or offensive by reason of emission of odor, dust, gas fumes, noise, vibration or classified as a public nuisance and has been approved by the Town council.

1. Cannabis producer microbusiness
2. Cannabis research laboratory
3. Cannabis producer

Prohibited uses and structures:

1. Residential uses, except, one mobile home unit for a watchman or grounds caretaker on the same lot or tract of land, provided that such mobile home is not used as a commercial or office unit, and, provided that no other residential unit is located on the same lot or tract.
2. Mobile home parks.
3. Industrial uses.

Parking regulations:

As specified in Section 6, item 12 of the Zoning District Regulations and or all parking areas shall be asphalt, concrete or covered with crushed stone or similar material

Area setback regulations and yard requirements:

1. No setbacks are required.
2. Where a tract of land in this district, abuts a parcel of land in any residential zoning district, a privacy fence or wall a minimum of eight (8) feet in height shall be installed.

Height and area regulations:

1. Maximum height 35 feet.
2. Lot coverage by structure, driveways and parking spaces shall be no greater than 90 percent of total lot area.

Non-conformities:

Any non-conforming uses in existence at the time of the adoption of this ordinance, shall be considered a valid non-conforming use until such time of, change of ownership and or 51 percent or more of the estimated appraised value of the property in replacement of damage, upgrades and or improvements to structure and or property. At that time all structures and or property shall come into compliance with these regulations.

H-I Heavy Industrial Zoning District

Purpose: The purpose of this district is to provide for all types of industrial operations, except certain potentially hazardous industries, which may be permitted only as a special use to insure the protection of the public interest and surrounding property.

Permitted uses: A building or structure shall be used only for the following purposes, provided such users are not offensive or obnoxious by reason of emission of dust, smoke, odor, gas, noise or vibration.

1. Any permitted use in the Community Commercial District.
2. Any permitted use in the Limited Industrial District.
3. Commercial truck or heavy equipment repair shops.
4. Construction office, yard and shops.
5. Gasoline, natural gas, propane, and petroleum refineries.
6. General industry, warehousing of materials and products.
7. Manufactured housing fabrication plants.
8. Quarry pits, excavation of grave, sand and minerals ores, asphalt plants.
9. Automobile wrecking yards or junkyards.
10. Bulk storage of gasoline, diesel, propane or oil base products.
11. Landfills, garbage dumps.
12. Manufacture of acid, concrete, explosives, fertilizer and glue.
13. Storage of acids, cement, explosives, fertilizers and glue.

14. Stockyards, commercial feed lots or slaughter of livestock.

15. Adult Oriented Business

A. No adult oriented business shall be established within the town limits, from and after the effective date of this section unless approval by the town council has been obtained first. Adult oriented business shall have the meaning as follows: Adult oriented business: An adult oriented business shall include: adult bookstore, adult motion picture theater, adult motel, adult entertainment center, nude model studio, or sexual encounter center, or adult arcade.

B. Adult Oriented Business Regulations.

a. No adult-oriented business shall be located in any zoning district except within Heavy Industrial (H-I).

b. Distances: No adult-oriented business shall be located, operated or maintained within one thousand (1,000) feet of a residential district (whether or not a dwelling exists) church, state licensed day care facility, public library, public educational facility, private school, day care facility, kindergarten facility, public park, public swimming pool, or public athletic fields (baseball, softball, football, soccer, outdoor basketball or tennis courts).

c. Measurements: The distances outlined above shall be measured in a straight line from property line to property line.

d. Exterior display: No adult business shall be conducted as to permit observation of any material depicting, describing or relating to specified activities or anatomical areas from any public right-of-way. This provision shall apply to any display, decoration, show window or other opening.

e. Responsible parties: The owners, operators and manager(s) of the premises which constitutes an adult business under this ordinance are responsible for compliance with these regulations.

16. Cannabis manufacturer

17. Cannabis testing laboratory

18. Integrated cannabis microbusiness

Special uses: All special use requests shall be submitted in writing by the property owner to the planning and zoning departments on forms in sufficient detail to determine the location and nature of such use. In order to provide for certain uses because of their unusual characteristics, the Town council may, under provisions of this appendix, grant a special use for the following:

1. Any industrial uses not listed, that may be objectionable by reason of emission of dust, smoke, fumes, odor, gas, excessive glare, noise, vibration of other similar characteristics.

2. All industrial and special uses shall comply with applicable state and federal regulation as required by law, including but not limited to, United States Environmental Protection Agency, Occupational Safety and Health Administration, State of New Mexico Environment Department, Uniform Building and Uniform Fire Code. The determination of compliance shall be based upon measurements taken at the boundaries of the property in which such uses are proposed or at the boundaries of a residential district adjacent to or across any street from such proposed uses providing it is not otherwise specified by a governing regulation. All special uses shall be approved by the Town council prior to any constructions, storage or use.

Prohibited uses and structures:

1. Residential uses except for a single story manufactured home for a watchman or caretaker.

2. Structures used for normal human occupancy, greater than thirty-five (35) feet in height.

Parking regulations:

1. As specified in Section 6, item 12 of the Zoning District Regulations and/or shall be asphalt, concrete or cover with crushed stone or similar material.

2. *Setback regulations and yard requirements:*

3. No building setbacks are required in this zoning district however setbacks will be determined by the most current international construction codes.

4. Where a tract of land abuts a parcel of land in any Residential, Agricultural, Neighborhood Commercial zoning district, a privacy fence or wall with a minimum height of eight (8) feet shall be installed.

Minimum area requirements:

1. There are no minimum lot size requirements.

Height and area regulations:

1. Lot coverage by structure, driveways and parking spaces shall be no greater than 90 percent of total lot area.

Non-conformities: Any non-conforming uses in existence at the time of the adoption of this ordinance shall be considered a valid non-conforming use until such time of, change of ownership and/or fifty-one (51) percent or more of the estimated appraised value of the property in replacement of damage, upgrades and/or improvements to structure and/or property. At that time all structures and/or property shall come into compliance with these regulations.

L-I *Light Industrial District*

Permitted principal uses and structures: A building or premises shall be used only for the following purposes:

1. Any use permitted in the Community Commercial Zone CCD.

2. Laboratories, research, experimental or testing including cannabis testing laboratory.

3. Wholesale merchandising or storage warehouses including cannabis producer microbusiness and integrated cannabis microbusiness.

4. Compounding of cosmetics, toiletries, drugs, and pharmaceutical products.

5. Manufacture or assembly of medical and dental equipment, drafting, optical, and musical instruments, watches, clocks, toys, games and electrical or electronic apparatus including cannabis manufacturing.

6. Manufacture or assembly or boats, bolts, nuts, screws and rivets, ornamental iron products, firearms, electrical appliances, tools, dies, machinery and hardware products, sheet metal products, ornamental art and vitreous enameled metal products.

7. Manufacture or storage of food products, including candy manufacture, dairy products and ice cream, fruit and vegetable processing and canning, packing and

processing of meat and poultry products, but no distilling of beverages or slaughtering of poultry or animals.

8. Manufacture of rugs, mattresses, pillows, quilts, millinery, clothing, hosiery, fabrics and printing and finishing of textiles and fibers into fabric goods.

9. Manufacture of boxes, crates, furniture, baskets, veneer, and other wood products of a similar nature.

10. Generally, those light manufacturing uses similar to those listed in items (4) through (9) above, which do not create any more danger to health and safety in surrounding areas, and which do not create any more offensive noise, vibration, smoke, dust, lint, odors, heat, or glare than that which is generally associated with light industries of the type specifically permitted and which are approved by Town council.

11. Accessory buildings and uses including accessory signs and advertising structures related to the activity conduced on these premises.

12. Railroad siding.

13. Storage and warehousing of fuel and materials and contractors' yards, except the storage of wrecked and dismantled vehicles, junk, explosives, or inflammable gases or liquids in bulk quantities.

14. Truck transfer terminal or freight house.

15. Lumberyards and millwork plants.

16. Well drilling services.

17. Liquid natural gas filling stations where above ground bulk storage of liquid natural gas does not exceed twenty thousand (20,000) gallons in aggregate. Liquid natural gas shall be defined as containing 98.5 percent methane with less than 1.5 percent heavy carbon fuels. All such installations shall be in accordance with the most current edition of the Uniform Fire Code.

Prohibited uses and structures:

1. All above ground storage of flammable and/or combustible liquids except as provided herein or by the latest edition of the International Fire Code.

2. Residential uses except for a single story manufactured home for a watchman or caretaker.

3. Structures used for normal human occupancy, greater than thirty-five (35) feet in height.

Minimum yard requirements:

1. Where a tract of land in this district abuts a parcel of land in any Residential, Agricultural, Neighborhood Commercial zoning districts, a privacy fence or wall with a minimum height of eight (8) feet shall be installed.

Maximum height of structures and area regulations: The storage or display shall be setback from the street and/or public right-of-way so not to obstruct vehicle traffic and to allow visibility as may be determined by Town staff, to be necessary for visibility at intersection and/or driveway entrances.

PUD *Planned Unit Development District*

Intent and purpose: The purpose of a Planned Unit Development (PUD) is to accommodate associations of uses developed as integral land use, such as industrial parks, industrial districts, office buildings, commercial uses, residential developments or any combination of uses which may be planned, developed or operated whether by a single ownership or by a combination of owners:

1. To create a zoning district which encourages flexibility and variety in the development of land in order to promote the most appropriate, economical and efficient use as long as it does not endanger the public health, safety, of general welfare of the public;

2. Improve the design and quality of new development which may not be possible under other zoning districts;

3. Promote more complete planning and achieve land use relationships with surrounding area.

Development plan contents:

1. Description of the area or sub-area included in the development plan by dimensions and bearings drawn to scale;

2. General description of the surrounding area;

3. Provisions for roads, (public or private), waterlines, wastewater lines, storm drainage and utility easements;

4. Number and type of dwelling units to be constructed;

5. Number and location of any structures already located within the tract of land;

6. Anticipated construction schedule;

Development plan procedure: Submitting development plans for this district shall be in the same manner as required in Appendix B, Article V, Subdivision Regulations.

Minimum land requirements: This zoning district shall not be permitted for tracts of land not less than twenty (20) acres.

Parking requirements: As specified in Appendix C, Section 6, Item 12 of the zoning regulations.

SECTION 2: NEW MATERIAL: CANNABIS REGULATION

Adoption of a New section 5A of the Kirtland Zoning ORDINANCE

5A-1. RECITALS

WHEREAS, The Cannabis Regulation Act (CRA) was signed into law on April 12, 2021. The CRA contains provisions authorizing the production, 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. Pursuant to the guidelines contained in the CRA, the Town of Kirtland desires to adopt time, place, manner and other reasonable restrictions related to cannabis establishments, and

WHEREAS, The Town of Kirtland finds that the CRA authorizes cannabis 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 and other reasonable restrictions on cannabis production, manufacture, retail, and consumption. The Town of Kirtland 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.

5A-2. 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;

5A-3. PUBLIC PROPERTY RESTRICTIONS

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

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

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

D. It is unlawful for an individual to smoke tobacco or cannabis, or consume cannabis products in a public place in the Town, unless otherwise excepted by the Lynn and Erin Compassionate Use Act.

5A-4 LICENSE 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~~ license issued by the Town of Kirtland, permitting the specific cannabis-related activity or activities sought to be permitted on the premises. Cannabis ~~permits~~ licenses 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 license application. The application shall be returned to the Town Clerk accompanied by the ~~appropriate~~ application fee of $100.00 for the use(s) to be permitted, and must show, at a minimum:

(a) a valid New Mexico tax identification number; and
(b) evidence that the property is owned by the applicant or that the applicant has written authorization from the property owner to carry on a cannabis-related business; and
(c) compliance with existing fire and life safety requirements; and
(d) the cannabis-related activity or activities are appropriately subject to licensure by the State Regulation and Licensing Department pursuant to the Cannabis Regulation Act.

(3) Annual license Fee. The annual license fee for any cannabis-related activity is $250.00 for each separate location owned or operated by any person.

B. 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. 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.

C. Additionally, cannabis retailers and cannabis consumption areas may not be located within 300 feet of another cannabis retailer or cannabis consumption area. For purpose of this section, all measurements taken 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.

5A-5. 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.

5A-6. 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 the licensed property.
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 establishments shall be allowed to operate only during the hours of 9:00 a.m. to 8:00 p.m. local time.
H. Cannabis establishments shall not provide drive-thru services for delivery of cannabis products.
I. Cannabis related establishments shall comply with all existing sign regulations for the zoning district in which the cannabis-related establishment is located. See: Ordinance No. 2016-02.

5A-7. STANDARDS FOR DESIGNATED CANNABIS CONSUMPTION AREA

Cannabis establishments having a designated Cannabis Consumption Area on site shall meet the following standards to the satisfaction of the Town:

A. The designated Cannabis Consumption Area 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 Consumption Area shall have signage to identify established cannabis consumption areas.

C. The designated Cannabis Consumption Area shall have a separate heating, ventilation and air conditioning (HVAC) system such that none of the air in the designated Cannabis Consumption Area will be recirculated into other parts of the premises, pursuant to the Dee Johnson Clean Indoor Air Act.

D. The designated Cannabis Consumption Area shall be completely separated from the remainder of the premises, and all doors leading to the designated Cannabis Consumption Area shall be self-closing.

5A-8. 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. 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.

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

5A-9. 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 12th DAY OF October, 2021.

Larry Hathaway, Mayor Pro-Tem

Attest:

Gwen Warner, Town Clerk