

CHAPTER 115: CANNABIS

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(C) The Cannabis Control Division will be accepting and processing additional license applications other than producer licenses beginning January 1, 2022, followed by retail sales to begin April 1, 2022;

(D) Prior to this chapter, the following uses were not specifically permitted or zoned per Ruidoso Downs City Ordinance: medical cannabis, or recreational cannabis production which can include, but are not limited to, production, extraction, retail, cannabis consumption areas;

§ 115.01 FINDINGS AND PURPOSE.

The City of Ruidoso Downs makes the following findings regarding medical cannabis and recreational cannabis:

(A) Enacted by the legislature and signed into law by Governor Michelle Lujan Grisham in April 2021, New Mexico's HB 2, the Cannabis Regulation Act (CRA), Laws 2021 (1st S.S.), Chapter 4, legalized recreational cannabis for adults 21 years and older, including outdoor/indoor commercial production, extraction, retail and cannabis consumption areas;

(B) The Cannabis Control Division began accepting and processing license applications on September 1, 2021, for cannabis producers, cannabis producer microbusinesses, and persons properly licensed and in good standing as a licensed cannabis producers for medical use, pursuant to the Lynn and Erin Compassionate Use Act, legalizing production for medical use of cannabis;

(E) 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;

(F) Cannabis cultivation, production, and manufacturing create strong odors, can involve the use of significant amounts of energy and water and requires security and other measures to reduce the risk of theft or other diversions to the illegal cannabis market, including possession and use by persons under the age of 21;

(G) Density limits are necessary to ensure that cannabis establishments are not unduly concentrated and do not crowd out other non-residential uses;

(H) The smoking of cannabis products may create health risks due to exposure to secondhand smoke and vaporized cannabis concentrates;

(I) Cannabis is an intoxicating drug, making it appropriate to regulate the hours during which cannabis products may be sold and the areas in which cannabis products may be consumed; and

(J) It's necessary that regulation of medical and recreational cannabis growth, production, and personal use be implemented for public health, safety, and welfare of the City of Ruidoso Downs and its citizens.
(Ord. 2022-07, passed 7-11-2022)

§ 115.02 ZONING REQUIREMENTS.

The following five zoning districts allow for cannabis production and retail provided that a conditional use permit is approved by the Planning Commission. See Ruidoso Downs, Code of Ordinances, Title XV Land Usage sections below for exact usages: AR-1 Agricultural/Residential District (§ 155.045), C-1 Neighborhood Commercial District (§ 155.049), C-2 Community Commercial District (§ 155.050), C-4 Heavy Commercial District (§ 155.052), and I-1 Industrial District (§ 155.053).
(Ord. 2022-07, passed 7-11-2022)

§ 115.03 LOCATION.

(A) Any cannabis establishment, cannabis consumption area, or cannabis courier must maintain a minimum separation distance of 300 feet from any school, or child daycare center, that was in existence at the time the cannabis establishment was issued a license by the state.

(B) All measurements to determine the location of a cannabis establishment shall be the shortest direct line measurement between the actual limits of the real property to the actual limits of the real property of the proposed cannabis establishment. All other measurements will be structure to structure unless otherwise decided by conditional use or the City's Fire Department.

(C) Any medical cannabis establishment existing as of the date of the passage of this chapter shall not be required to comply with the location requirements of this section.
(Ord. 2022-07, passed 7-11-2022)

§ 115.04 OPERATING TIMES.

(A) Unless further restricted in a conditional use permit, cannabis retailers and cannabis consumption areas may only operate during the following hours: Monday through Sunday from 7:00 a.m. to 11:00 p.m.

(B) No alcohol or alcoholic products shall be located, sold, consumed, or served, in a cannabis consumption area and cannabis retail location.
(Ord. 2022-07, passed 7-11-2022)

§ 115.05 SECURITY/FENCING.

(A) Any licensed premise that contains outdoor cannabis growing area or approved greenhouse for cannabis production shall also implement all security measures mandated by the Cannabis Control Division to ensure that the outdoor area or greenhouse is not assessable to unauthorized individuals and is secure to prevent and detect diversion, theft, or loss of cannabis, which shall at a minimum include:

(1) A perimeter security fence designed to prevent unauthorized entry to any cannabis cultivation areas and signs that shall be a minimum of 12-inches by 12-inches and which state: "Do Not Enter - Limited Access Area - Access Limited to Authorized Personnel Only" in lettering no smaller than one inch in height.

(2) A cover to obscure cannabis cultivation areas from being readily viewed from outside of the fenced area.

(3) Licensees shall ensure that limited-access areas can be securely locked using commercial grade locks that meet applicable building and fire codes. Licensees shall also use commercial grade locks that meet applicable building and fire codes on all points of entry and exit to the licensed premises and access points to areas where cannabis and cannabis products are stored.

(B) Any entity providing a cannabis consumption area shall have full-time in-person security to prevent access for those under the age of 21 years and others who are not permitted in a cannabis consumption area.

(C) The most current security measures mandated by the Cannabis Control Division will be required in accordance with any other county ordinances and fire inspections.

(Ord. 2022-07, passed 7-11-2022)

§ 115.06 SMOKING CANNABIS IN PUBLIC SPACES.

(A) Smoking of cannabis products in a public place, except as permitted by state law IS prohibited.

(B) Access to cannabis consumption areas open to consumers is restricted to persons 21 years of age and older.

(Ord. 2022-07, passed 7-11-2022)

§ 115.07 CANNABIS CONSUMPTION AREAS.

(A) A cannabis consumption area may be located inside any cannabis retailer; provided, however, that smoking of cannabis products in such consumption areas is only allowed if the cannabis consumption area occupies a designated area or standalone building from which smoke does not infiltrate other indoor workplaces or other indoor public places where smoking is otherwise prohibited pursuant to the Dee Johnson Clean Indoor Air Act, NMSA 1978, Ch. 24, Art. 16.

(B) Cannabis consumption areas that are open to consumers are also subject to the following:

(1) The smoking of cannabis products is not allowed outdoors.

(2) Applicability of other laws.

(3) Outdoor cannabis consumption areas shall be prohibited.

(Ord. 2022-07, passed 7-11-2022)

§ 115.08 APPLICATION PROCESS.

(A) All persons processing medical cannabis, or recreational adult-use cannabis applications with the appropriate state agency seeking operation in Lincoln County, including all persons currently properly licensed to operate medical cannabis establishments, pursuant to the Lynn and Erin Compassionate Use Act, must submit a Cannabis Establishment Application with the Planning and Zoning Department and pay the non-refundable establishment registration fee of \$350.

(B) The establishment registration fee shall be for a full 12-month period, to be renewed annually per calendar year, and may not be prorated for business conducted for a portion of the year.

(C) (1) The Planning Services Director shall require the following information from the applicant but not limited to:

(a) An entirely filled out Cannabis Establishment Application acquired by the Planning and Services Department; an individual application is required per each separate location.

(b) Current state-issued license, driver's license of the applicant, and any other property owners/business partners; expired driver's licenses will not be accepted.

(c) Certification from the New Mexico Secretary of State Office reflecting the business and/or corporate structure, LLC, if any, of the cannabis producer and/or retailer.

(d) Current CRS registration card from New Mexico Taxation and Revenue Department.

(e) The applicant shall provide the most recent recorded survey of the property and updated warranty deed; if the proposed property does not possess a sufficient recorded deed or survey, these steps must be completed prior to being issued an application by the Planning and Zoning Department.

(f) Document from the County Assessor's office confirming property taxes are currently paid up to date; the payment of taxes for the previous year will also be required.

(g) Account number and map parcel ID number to the property (can be obtained from the County Assessor's office).

(h) If not the owner of the property, the applicant must have a fully executed lease giving legal authority for the use of buildings, property, and water rights, and allowing any alteration to the property; owners of the property will also have to sign the Cannabis Establishment Application and be present for any public hearings.

(i) Proof of compliance with all requirements set forth under state law and as required by New Mexico's Regulation and Licensing Department (RLD) to obtain a license under the Cannabis Regulation Act; must include receipts of all payments made to CCD/RLD.

(j) A site map that identifies the location of the production site and/or retail location and that sets forth compliance with the distance requirements set forth herein.

(k) Certificate of occupancy from the Construction Industry Division (CID); needed prior to fire inspection.

(l) Fire inspection by the NM State Fire Marshal's Office and/or Ruidoso Downs Fire Department.

(m) Approved water plan.

1. Approved water rights for irrigation, commercial, or agriculture by the Office of the State Engineer.

2. Notarized statement from any board of a Mutual Domestic Water Association if the applicant's water rights consist of such.

3. Plan for water savings etc.

(n) Approved septic plan.

1. Written approval is needed from the NM Environment Department.

(o) Approved plan to reduce odor by the State of New Mexico. (May be dependent on the location of the proposed facility.)

(p) Plan for disposal of waste products.

1. Written approval may be needed from the NM Environment Department and Ruidoso Downs Public Works Department.

2. Cannabis establishments shall provide for proper and secure disposal of cannabis, cannabis remnants, or by-products discarded by the establishment. All cannabis, cannabis remnants, and cannabis by-products shall be disposed of in a manner that renders them unusable.

(2) The Planning and Zoning Department shall require additional information than the proposed list if it is found to be for the public health, safety, and welfare of Ruidoso Downs and its citizens.

(D) Upon information provided by the applicant, the Planning Services Director will choose to proceed with any application as a conditional use, requiring public hearings with the Planning Commission.

(E) The application will undergo a full internal departmental review with city departments which include, but are not limited to:

(1) Planning and Zoning Department.

(2) Fire Department.

(3) Public Works Department.

(F) The City does reserve the right to request an external review if it may be necessary for the public health, safety, and welfare of the City of Ruidoso Downs.

(G) The Planning Services Director will review and contact the applicant no later than 45 days after acceptance of the application, determining whether the application is approved for processing, denied, or will remain pending, requiring additional information.

(H) The Planning and Zoning Department may issue a permit only upon receipt of the applicant(s) license from CCD or a certified copy of such license, and completion of the applicable City of Ruidoso Downs permitting process; a provisional license may be considered but shall not be accepted if found insufficient by the Planning Services Director.

(I) If the applicant provides inaccurate information, refuses, or fails to be transparent during the application process, the Planning Services Director may decline the application upon a written letter to the applicant and the Cannabis Control Division of the occurrence. Findings of facts and conclusions of law will be presented with the decision. The applicant can appeal the final written decision within 15 calendar days of its issuance.

(J) If the applicant fails to provide documentation or provides incomplete or otherwise insufficient documentation regarding the status of their license application through the Cannabis Control Division, the Planning and Zoning Department shall inform the applicant of the deficiencies in writing and shall take no further action on the application until the deficiencies are remedied.

(K) If the applicant fails to correct the deficiencies indicated in the letter deeming the application incomplete within 60 calendar days of receipt of notice of deficiencies, the application shall be considered withdrawn, and it will be returned to the applicant, therefore, denied.

(L) A submittal of an application does not guarantee approval. If an application is denied, the applicant can reapply or appeal the decision within six months of the determination.

(Ord. 2022-07, passed 7-11-2022)

§ 115.09 FEES.

(A) All persons, firms, corporations, or associations of any character engaged in any of the various pursuits, businesses, and occupations within the area of Ruidoso Downs, shall, before commencing business, and annually thereafter, before the first day of January, secure a business registration license for \$35 per which includes all hemp and cannabis operations to obtain a city business license to remain in compliance, per City of Ruidoso Downs Ordinance, City Code Chapter 111, General Business Licensing.

(B) Each entity licensed by the Cannabis Control Division (CCD) or the New Mexico Environment Department (NMED), after obtaining licensure, shall obtain a city cannabis establishment license annually per calendar year, pay the cannabis registration fee of \$350 annually per calendar year, \$150 enforcement fee and the additional fee for the appropriate license acquired by the CCD or NMED for each appropriate license which will be implemented as such.

(C) If a cannabis producer microbusiness or an integrated cannabis microbusiness enters into a business arrangement with another licensee with the purpose or having the effect of evading the limitations of the licensee's license, such licensee shall not be eligible for the lower fee.

(D) Ruidoso Downs can incorporate any additional fees not mentioned in the above list at a minimum of 10% of the original fees incorporated by the Cannabis Control Division for medical or recreational cannabis producers or the fees for production incorporated by the New Mexico Environment Department.

(E) Upon issuance, the cannabis establishment registration license shall be displayed side-by-side with the city business license and must be visible to the public upon entering the facility. The applicant for a cannabis business registration, its principals, registered manager, and all employees must be at least 21 years of age, meet all requirements under New Mexico law, and hold valid occupational licenses and registrations as required by the State of New Mexico, including all applicable cannabis licenses.

(Ord. 2022-07, passed 7-11-2022)

§ 115.10 ENFORCEMENT.

(A) A Community Service Officer, as designated by the City of Ruidoso Downs Police Department, and the City's Fire Department may issue citations for violation of this chapter in the City of Ruidoso Downs.

(B) Operation of a cannabis establishment without a permit is a violation of this chapter which is punishable by state law pursuant to the provisions of § 31-18-15 NMSA 1978.

(C) Any violation of this chapter may be enforced in any court of competent jurisdiction. The penalty per violation shall be no more than \$500 per occurrence. Each occurrence will be considered an additional violation resulting in additional fees.

(D) The City reserves the right to terminate any city-issued licenses or registrations upon a second violation.

(E) Nothing herein shall prevent the City of Ruidoso Downs from seeking injunctive relief, if appropriate.
(Ord. 2022-07, passed 7-11-2022)