



City of Bayard
CITY COUNCIL REGULAR MEETING
August 24, 2021 at 1:30 PM
Bayard City Hall

AGENDA

WORK SESSION

CALL TO ORDER: Mayor Chon S. Fierro

PLEDGE OF ALLEGIANCE

ROLL CALL

APPROVAL OF THE AGENDA

PUBLIC INPUT

CONSENT AGENDA

1. Approval of the Minutes of Regular Meeting on August 9, 2021.
2. Approval of the Accounts Payable Report for August 24, 2021
3. Approval of the Police Report for July 2021.

OLD BUSINESS

4. Complaint by residents of Virginia Street area - requesting code enforcement for clean-up of vehicles, hazardous waste, sharp debris, abandoned mobile homes, clutter.

ORDINANCES/RESOLUTIONS

5. Intent to Adopt - Discussion and Action for Cannabis Regulation Act

CLOSED SESSION

6. Closed Executive Session pursuant to 10-1-15 (H-2 and H-8) for limited personnel matters and real property and water rights

Administrative Employees

Police Department Employees

ACTION ITEMS RESULTING FROM CLOSED SESSION

7. Closed Executive Session pursuant to 10-1-15 (H-2 and H-8) for limited personnel matters and real property and water rights

Administrative Employees

Police Department Employees

MAYOR AND COUNCILORS REPORTS

NEXT MEETING DATE:

ICIP Work Session - Monday, August 30, 2021

Regular Meeting - September 13, 2021

ADJOURNMENT



**City of Bayard
CITY COUNCIL REGULAR
MEETING**

August 09, 2021 at 1:30 PM

Bayard City Hall

MINUTES

WORK SESSION

CALL TO ORDER: Mayor Chon S. Fierro

PLEDGE OF ALLEGIANCE

ROLL CALL

PRESENT

Mayor Chon Fierro
Mayor Pro-tem Raul Villanueva
Councilor Charles Kelly
Councilor Eloy Medina

ABSENT

Councilor Adrian Ortiz

Others in attendance were Steve GAbaree, Lori Gavaree, Melissa Rackel, Braxton Heise, Tobie Gabaree, Hannah Dumas, Aaron Burg, Tighe Burg and Kristina Ortiz.

APPROVAL OF THE AGENDA

Motion made by Mayor Pro-tem Villanueva, Seconded by Councilor Medina.
Voting Yea: Mayor Fierro, Mayor Pro-tem Villanueva, Councilor Kelly, Councilor Medina

PUBLIC INPUT

Lori Gabaree spoke about the problems with the area on Railroad St. She would like to see the M&M Auto cleaned up. She knows Bayard needs business but does not need trash.

Melissa Rackel property owner in Bayard stated Bayard may need to contact NMED for review of property and actions. If Bayard would put together a action committee she would be happy to serve.

Dwayne Gray pastor of the church. Concerned about the junk cars parked in front of the church. He would like both the stop signs to be removed. No one is stopping at the stop signs.

Toni Gabaree she is concerned for her parents. Power tools are running till 1 am. People are sleeping in the vehicles. Her parents don't feel safe in there home. She recemented Bayard searches for Federal codes to help with the problems.

Aaron Burg business owner here in Bayard stated there is federal regulations regarding junk yards M&M Auto have a salvage yard not a auto repair shop.

Euphemio Gonzalez stated he relied on the previous Police Chief to take action as code enforcement. Mr. Gonzalez will over see safety violations.

CONSENT AGENDA

Motion made by Mayor Pro-tem Villanueva, Seconded by Councilor Kelly.

Voting Yea: Mayor Fierro, Mayor Pro-tem Villanueva, Councilor Kelly, Councilor Medina

The following items are included in the consent agenda:

1. Approval of the Minutes of Regular Meeting on July 26, 2021
2. Approval of the Accounts Payable Report for August 9, 2021
3. Approval of the Wastewater Report for July 2021
4. Approval of the Fire Report for July 2021
5. Approval of Fire Service Conference on September 23-26, 2021 in Ruidoso as assigned by Chief Gonzales.

OLD BUSINESS

6. The City of Bayard awarded the IT contract on May 10, 2021 after award of the initial contract Clerk Ortiz realized that the contract was proposed on a monthly cost and not an annual cost. Both parties have worked together to reestablish the information technology needs of the city, and mutually agreeable terms have been negotiated. Basic services under the agreement are for a total of \$27,736 annually; with the balance of \$65,000 to be allocated to back-up servers, back-up software, cyber security set-up, and various licensing provisions and network set-up and repair of existing infrastructure.

Motion made by Mayor Pro-tem Villanueva, Seconded by Councilor Kelly.
Voting Yea: Mayor Fierro, Mayor Pro-tem Villanueva, Councilor Kelly, Councilor Medina

NEW BUSINESS

7. Shawn Russell has provide a quote of \$4,500 to cut down and remove the large oak tree that has caused damage to the water channel on Erie Street. The tree would be cut down to the height requested by the city but he will not provide stump removal due to the drainage infrastructure.

Motion made by Councilor Kelly, Seconded by Mayor Pro-tem Villanueva.
Voting Yea: Mayor Fierro, Mayor Pro-tem Villanueva, Councilor Kelly,
Councilor Medina

8. Approval to adjust property boundary lines for Coffey Addition; Block 5, Lots 1, 2, 3, & 4. The northwest corner will be moved east; north east corner will be moved east. This adjustment will remove one dwelling unit from encroaching on public property. The property adjustment is of equal size.

Clerk Treasurer stated that the land swap would align the existing property use and property boundaries.

Motion made by Councilor Kelly, Seconded by Mayor Pro-tem Villanueva.
Voting Yea: Mayor Fierro, Mayor Pro-tem Villanueva, Councilor Kelly,
Councilor Medina

9. Adoption of Operating Procedures for the Bayard Police Department

Clerk Treasurer Ortiz presented two Police Policies for adoption: Body Worn Camera and Response to Resistance noting the changes that reflect Grant County Sheriffs Department.

Motion made by Councilor Kelly, Seconded by Mayor Pro-tem Villanueva.
Voting Yea: Mayor Fierro, Mayor Pro-tem Villanueva, Councilor Kelly,
Councilor Medina

ORDINANCES/RESOLUTIONS

10. Adoption of Resolution 15-2021 Open Meeting Resolution

Motion made by Mayor Pro-tem Villanueva, Seconded by Councilor Kelly.
Voting Yea: Mayor Fierro, Mayor Pro-tem Villanueva, Councilor Kelly,
Councilor Medina

RESOLUITON 15-2021
OPEN MEETINGS NOTICE

A RESOLUTION CONCERNING GOVERNING BODY MEETINGS AND PUBLIC NOTICE REQUIRED

WHEREAS, Section 10-15-1B, NMSA 1978 provides that all meetings of a quorum of members of any board, commission or other policy-making body of any state agency, or any agency or authority or any county, municipality, district or any political subdivision held for the purpose of formulating public policy, discussing public business or for the purpose of taking any action within the authority of or the delegated authority of such board, commission or other policy-making body, are declared to be public meetings open to the public at all times, except as otherwise provided in the constitution or the provisions of the Open Meetings Act; and,

WHEREAS, Section 10-15-3A, NMSA 1978 provides that no resolution, rule, regulation, ordinance or action of any board, commission, committee or other policy-making body shall be valid unless taken or made at a meeting held in accordance with the requirements of Section 10-15-1 NMSA 1978"; and,

WHEREAS, Section 10-15-4, NMSA 1978 provides that any person violating any of the provisions of Section 10-15-1 NMSA 1978 is guilty of a misdemeanor and upon conviction shall be punished by a fine of not more than five hundred dollars (\$500) for each offense; and,

WHEREAS, Section 10-15-1D requires that any meeting at which the discussion or adoption of any proposed resolution, rule, regulation or formal action occurs, and at which a majority or quorum of the body is in attendance, and any closed meetings, shall be held only after reasonable notice to the public. The affected body shall determine at least annually in a public meeting what notice for a public meeting shall be reasonable when applied to such body.

NOW, THEREFORE BE IT RESOLVED by the governing body of the municipality of Bayard, New Mexico that:

1. Notice shall be given at least ten days in advance of any regular meeting of a quorum of the members of the governing body or any board, commission, committee, agency, authority or other policy-making body held for the purpose of discussing public business or taking any formal action within the authority of such body.

2. The regularly scheduled meetings of governing body will be held at 2:00 P.M. on the second and fourth Monday of each month in the governing body meeting room of the municipal building, located at 800 Central Avenue in Bayard, New Mexico. Other municipal committees and or boards shall dedicate the location and meeting dates annually. In the event that the regular meeting date falls on a legal holiday, the governing body shall designate an alternate meeting date and/or time at the regular meeting prior to the holiday and shall cause advance notice of the changed meeting date and/or time to be published as provided in this Resolution. In the event that a regular meeting of the governing body is changed to a different location, advance notice of the meeting location shall be published as provided in this Resolution.

3. Work sessions may be held by the governing body at 1:30 P.M. prior to regular monthly meetings or as determined by the governing body. Method of publication for work sessions shall be as required for regular meetings. Work sessions will be held for the purpose of discussing public business and formal action will not be taken at any work session.

4. Notice shall be given at least three days (seventy two hours) in advance of any special meeting of a quorum of the members of the governing body, board, commission, committee, agency,

authority or other policy making body held for the purpose of discussing public business or taking any formal action within the authority of such body.

5. The notice requirements of Section 1, 2, 3 and 4 of this Resolution are complied with if notice of the date, time, place and subject matter of any regular or special meeting are published. Additionally, the notice shall contain information on how the public may obtain a copy of the meeting agenda, said agenda to be available seventy-two hours prior to the meeting. "Publish" means printing in a newspaper which maintains an office in the municipality and is of general circulation within the municipality. If such newspaper is a non-daily paper which will not be circulated to the public in time to meet publication requirements, or, if no such newspaper exists, "publish" shall mean posting in five public places within the municipality, and one of the public places where posting shall be made is the office of the municipal clerk, who shall maintain the posting for public inspection within the time limits specified. The five public places notice shall be posted are:

- The Office of the Clerk;
- The United States Post Office;
- The Bayard Public Library
- The First American Bank;
- The Bayard Community Center

The clerk may, in addition to posting, publish one or more times in a newspaper of general circulation within the municipality, even though it does not maintain an office within the municipality. In addition, written notice of such meetings shall be mailed or hand delivered to federally licensed broadcast stations and newspapers of general circulation in the municipality which have provided a written request for such notice.

6. In addition to the information specified above, all notices shall include the following language: If you are an individual with a disability who is in need of a reader, amplifier, qualified sign language interpreter, or any other form of auxiliary aid or service to attend or participate in the hearing or meeting, please contact the city clerk at 800 Central Avenue (575-537-3327) at least one week prior to the meeting or as soon as possible.

7. Notwithstanding any other provisions of sections 1 through 5 of this Resolution, the governing authority may establish such additional notice requirements as may be deemed proper and advisable to comply with the provisions of the Open Meetings Act.

8. If any meeting is closed pursuant to exclusions contained in Section 10-15-1, subsection H, NMSA 1978, such closed meeting called by a policy making body shall not be held until public notice, appropriate under the circumstances, and in compliance with Sections 1 through 4 of this Resolution, has been given. In addition, such notice shall state the exclusion or exclusions in Section 10-15-1, Subsection H, NMSA 1978 of the Open Meetings Act, under which such closed meeting is permitted.

9. Notwithstanding any other provision of sections 1 through 8 of this Resolution, the governing authority of the municipality of Bayard, New Mexico may call emergency meetings of the governing body, any board, commission, committee or other policy-making body of the municipality. Emergency meetings will be called only under unforeseen circumstances which demand immediate action to protect the health, safety and property of citizens or to protect the municipality from substantial financial loss. The municipality of Bayard, New Mexico will avoid emergency meetings whenever possible. Emergency meetings may be called upon twenty-four (24) hours notice, unless a threat of personal injury or property damage requires less notice. The notice for all emergency meetings shall include an agenda for the meeting or information on how the public may obtain a copy of the agenda.

10. Public input will generally be permitted and will be limited between three (3) to five (5)

minutes, unless the Mayor (Chairman) deems that additional time is necessary.

PASSED ADOPTED AND APPROVED THIS 9th DAY OF JANUARY, 2021.

//S// _____
Chon S. Fierro
Mayor

ATTEST:

//S// _____
Kristina Ortiz, MMC
Clerk-Treasurer

- 11. Resolution 16-2021 SAP 21-F2327-STB New Mexico Environment Department, Water Storage Tank Project

Motion made by Mayor Pro-tem Villanueva, Seconded by Councilor Kelly.
Voting Yea: Mayor Fierro, Mayor Pro-tem Villanueva, Councilor Kelly, Councilor Medina

Resolution 16-2021

Whereas, the City Council of the City of Bayard of Grant county of the State of New Mexico shall enter into a Grant Agreement with the State of New Mexico Environment Department, and

Whereas, the Agreement is identified as SAP Project #SAP 21-F2327-STB Grant Agreement.

NOW THEREFORE, BE IT RESOLVED by the named applicant that:

Chon S. Fierro, Mayor, is authorized to sign the agreement for this project, and

Kristina Ortiz, Clerk Treasurer or Marlana Valenzuela, Deputy Clerk or her successor is the GRANTTEE REPRESENTATIVE(s) who is(are) authorized to submit any documents pertaining to the project and act as the point of contact, and

Kristina Ortiz, Clerk Treasurer or Marlana Valenzuela, Deputy Clerk or her successor is the SIGNATORY AUTHORITY who is authorized to sign reimbursement requests and other documents requiring a signature for submittal to the New Mexico Environment Department.

PASSED, APPROVED AND ADOPTED this 9th day of August 2021.

//S// _____
Chon S. Fierro
Mayor

ATTEST:

//S// _____
Kristina Ortiz, MMC
Clerk Treasurer

CLOSED SESSION

Pursuant to State Statues 10-15-1(H-7) pertaining to threatened or pending litigation

Pursuant to State Statues 10-15-1(H-7) pertaining to threatened or pending litigation

Motion made by Mayor Pro-tem Villanueva, Seconded by Councilor Kelly.

Voting Yea: Mayor Fierro, Mayor Pro-tem Villanueva, Councilor Kelly, Councilor Medina

Motion made by Mayor Pro-tem Villanueva, Seconded by Councilor Kelly.

Voting Yea: Mayor Fierro, Mayor Pro-tem Villanueva, Councilor Kelly, Councilor Medina, certifying the only discussion held was pertaining to threatened or pending litigation

MAYOR AND COUNCILORS REPORTS

Mayor Pro-tem Raul stated the issues we received today we need to move on it soon rather than later. Now with school had started with the Seniors have more time during school. He would like to see if a few students come work for the City.

Mr. Kelly asked when pot holes around Bayard will be repaired and trash around City Hall be picked up. Special council for the issues that were brought up today is a good idea.

NEXT MEETING DATE:

Regular Meeting - August 24, 2021

ADJOURNMENT

Motion made by Mayor Pro-tem Villanueva, Seconded by Councilor Kelly.

Voting Yea: Mayor Fierro, Mayor Pro-tem Villanueva, Councilor Kelly, Councilor Medina

MEETING ADJOURNED AT 3:54 P.M.

Chon Fierro
Mayor

ATTEST:

Kristina Ortiz, MMC
Clerk Treasurer

ACCOUNTS PAYABLES**August 23 2021****GENERAL FUND - 10**

Amazon	Disposable Face Masks	\$	322.80
Amazon	Training books for Kristy	\$	223.59
Ace Hardware	Repair parts for PD and Parks&Rec	\$	63.45
Carrot-Top Industries	New Stands & Flags for meeting room	\$	465.54
TOTAL:		\$	1,075.38

JNT W/S O&M FUND - 150

Ace Hardware	Repair Supplies for Maintenance Dept.	\$	1,271.13
TOTAL:		\$	1,271.13

JNT WASTEWATER FUND - 170

Polydyne	Polymer for WWTP	\$	5,265.00
Ace Hardware	Repair Parts for WWTP	\$	85.68
TOTAL:		\$	5,350.68

COMMUNITY CENTER FUND - 200

Ace Hardware	Repair parts for Community center	\$	285.31
Ace Hardware	Plumbing lines and fixtures Cemetary 180-93	\$	52.17
TOTAL:		\$	337.48

LIBRARY FUND - 210

TOTAL:		\$	-
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MUNICIPAL STREET FUND - 240

TOTAL:			\$0.00
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MUNICIPAL COURT FUND - 20

TOTAL:		\$	-
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FIRE FUND- 30

Suntreat	Water and Gatorade for Fire Fighters	\$	142.50
Ace Hardware	Repair parts for Fire Department	\$	36.52
TOTAL:		\$	179.02

LAW ENFORCEMENT FUND - 60

TOTAL:		\$	-
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TOTAL:		\$	8,213.69
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ACCOUNTS PAID**August 23 2021****GENERAL FUND - 10**

Abilia	Accounting software for City Hall	\$ 2,949.53
City of Bayard	Petty Cash	\$ 26.83
Grant County Dispatch	Software for CAD system for PD	\$ 13,134.40
Krystal Mountain Water	Purified cold drinking water	\$ 41.20
Lopez Dietzel & Perkins	legal council attending close session	\$ 108.00
New Mexico Self Insururers	Insurance	\$ 18,164.13
PNM	Monthly Electrical usage Animal Shelter	\$ 19.45
W&N Enterprises	Gasoline Usage for PD and city vehicle	\$ 779.97
Silver City Daily Press	Advertise work session/Regular meeting	\$ 33.05
Silver City Daily Press	Advertising Police patrol man needed	\$ 92.68
AT&T	Monthly Wireless service	\$ 116.67
Century Link	Phone Services For CH/PD	\$ 623.78
Comcast	Xfinity Cable Service City Hall	\$ 19.81
Comcast	Business Internet for CH and PD	\$ 95.18
TOTAL:		\$ 36,204.68

JNT W/S O&M FUND - 150

Interactive Controls	Well #3 Meter Calibration	\$1,671.37
Krystal Mountain Water	Purified cold drinking water	\$ 19.01
New Mexico Self Insururers	Insurance	\$ 9,613.52
City of Bayard	Petty Cash	\$ 13.43
W&N Enterprises	Monthly Gasoline usage for Maintenance	\$ 217.66
AT&T	Monthly Wireless service	\$ 56.39
Century Link	Phone Services	\$ 74.98
Comcast	Business Internet	\$ 52.08
TOTAL:		\$11,718.44

JNT WASTEWATER FUND - 170

Hall Enviornmental	Routine Plant sample testing	\$ 596.55
Interactive Contorols	Meter Calibration	\$ 1,000.00
Krystal Mountain Water	Purified cold drinking water	\$ 29.60
New Mexico Self Insururers	Insurance	\$ 10,428.58
PNM	Monthly Electricity usage	\$ 10,974.12
The UPS store	Shipping of Water samples	\$ 175.59
Xerox	Monthly billing for Meter and print Charges	\$ 69.48
W&N Enterprises	Monthly Gasoline usage for WWTP vehicles	\$ 301.82
AT&T	Monthly Wireless service	\$ 85.63
Century Link	Phone services	\$ 328.65
TOTAL:		\$ 23,990.02

COMMUNITY CENTER FUND - 200

Century Link	Monthly Phone services	\$ 223.55
TOTAL:		\$ 223.55

LIBRARY FUND - 210

Krystal Mountain Water	Purified cold drinking water	\$	6.85
Silver City Sun News	news paper Subscription for reading	\$	14.96
Century Link	Monthly phone service	\$	162.94
Comcast	Monthly Business Internet	\$	286.03
TOTAL:		\$	463.93

MUNICIPAL STREET FUND - 240

New Mexico Self Insurers	<u>Insurance</u>	\$	3,401.85
TOTAL:		\$	3,401.85

MUNICIPAL COURT FUND - 20

New Mexico Self Insurers	Insurance	\$	5,238.69
City of Bayard	Petty Cash	\$	13.43
Century Link	Monthly phone services	\$	1,527.68
Comcast	Business Internet	\$	48.68
TOTAL:		\$	6,828.48

FIRE FUND- 30

New Mexico Self Insurers	Insurance	\$4,846.23	
W&N Enterprises	Monthly Gasoline usage for FD	\$	149.01
AT&T	Monthly Wireless service	\$	41.04
Century Link	Monthly phone services	\$	228.77
Comcast	Business Internet	\$	48.68
TOTAL:		\$	5,313.73

LAW ENFORCEMENT FUND - 60

TOTAL:		\$	0.00
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Solid Waste -160

City of Bayard	Petty Cash	\$	13.43
TOTAL:		\$	13.43

GRAND TOTAL:		\$	88,158.11
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**BAYARD POLICE DEPARTMENT
MONTHLY REPORT
JULY, 2021**

Traffic Activity

Accidents	3
Citations Issued	24
Municipal: 19	
Magistrate: 3	
Stop Sign: 2	
Written warnings: 2	
DWI	1
Motorist/Citizen Assists	16
Suspicious Vehicle or person	38
Reckless driver	5
Missing or Stolen vehicle	4
Recovered stolen vehicle	1
Parking violation	1
Traffic complaints	1

Criminal Activity

Arrests	10
Burglary/Larceny	4
Criminal damage	4
Domestic calls	4
Inj./Tamp. with vehicle	2
Harassment	10
Unwanted subject	2
Fights	2
Battery	1
Fraud/Embezzlement	2
Breaking & Entering	1
Child abuse	1

General Activity

Civil stand by	2
Welfare check	13
Meetings/classes	6
Follow up investigations	18
Alarm	3
Loud noise complaints	6
Utility issues	2
Frequent patrols	10
Shots fired	2
Disturbance	5
DVO Violation	2
Attempt to locate	1
Fireworks	10
Codes violation	1
Civil matter	4
Request for public service	16

Open door	1
Criminal trespass warning	1
Found property	1
Child exchange	6
Suicide	1
Business check	1
Citizen contact	1
Training	1
<u>Juvenile Activity</u>	
Arrests	0
<u>Agency Assists</u>	3
<u>Offense/Incident reports generated</u>	37
Welfare check	
Recovered stolen motor vehicle	
Criminal damage to property	
Criminal Trespass	
Burglary	
Information: Nuisance dog	
Domestic	
Stolen motor vehicle; Burglary	
Property Damage	
Protective custody	
Warrant arrest	
Resisting, evading, obstructing an officer	
Informational: Fight	
Battery	
Informational-Property damage	
Larceny	
Larceny	
DWI	
Warrant arrest	
Battery on a PO; Resisting, evading, obstructing an officer	
Runaway	
Injuring/Tampering with a motor vehicle	
Stolen vehicle	
Documented incident-harassment	
Possible neglect/Documented incident	
Abuse of a child x2 counts	
Embezzlement of a motor vehicle	
Suicide	
Driving while license suspended revoked	
Battery	
Aggravated assault	
Accidental property damage	
Resisting evading, obstructing; Warrant arrest	
Possible Fraud	
Informational-Welfare check possible overdose	
Warrant x2 Arrest	
Larceny	

<u>TOTAL OF GRANT COUNTY SHERIFF'S DEPT</u>	
<u>CALLS FOR SERVICE IN BAYARD</u>	58
Alarms	5
Domestics	4
Stolen vehicle	1
Frequent patrol	1
Disturbance	2
Harassment	3
Animal calls	6
Unwanted subject	2
Suspicious vehicle or person	4
Civil matter	1
Noise complaint	1
Motor Vehicle accident	1
Welfare Check	3
Custodial Interference	1
Larceny	1
Fight	1
Child exchange	1
TOTAL CALLS HANDLED BY GCSO	38
TOTAL AGENCY ASSISTS	20

To the City of Bayard,

We the residents of Virginia, Pond, and Empire Streets are facing some issues in our neighborhood which have become increasingly bothersome and hazardous. As homeowners and taxpayers in this community, we hope that our concerns will be addressed in a timely manner so that we can soon resume life as usual in our beloved community.

Virginia Street particularly, is in need of some real T.L.C. The street has been lined with several broken down vehicles, hazardous waste, and sharp debris. There are also many abandoned mobile homes left vacant to deteriorate and provide space for criminal activity. Not only are the vehicles and mobile homes unsightly, they are unsafe for our children.

We residents of the neighborhood have had issues with limited access to our own homes due to the amount of clutter on Virginia Street. This also presents potential serious accessibility issues for EMS, fire, and mail carriers. We are asking that codes be enforced in regards to waste removal and vacant trailers removed or repaired. We cannot continue to provide a safe haven for criminal activity while our children and grandchildren play outside.

Respectfully,

RLO Bth
Carlos & Bernice Pacheco
Jeannette garcia

To the City of Bayard,

We the residents of Virginia, Pond, and Empire Streets are facing some issues in our neighborhood which have become increasingly bothersome and hazardous. As homeowners and taxpayers in this community, we hope that our concerns will be addressed in a timely manner so that we can soon resume life as usual in our beloved community.

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Respectfully,

Steve Edwards 806 Virginia St
 Bill Bush 810 Virginia St
 Ed. Scudder 703 Woodl St Bayard

CANNABIS REGULATION

SECTION 1: SHORT TITLE

Sections 1 through 11 may be cited as the “Cannabis Regulation Ordinance”

SECTION 2: RECITALS

WHEREAS, The Cannabis Regulation Act (CRA) was signed into law on April 12, 2021. The CRA contains provisions authorizing the 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; and

WHEREAS, The (CRA) authorizes local jurisdictions to adopt time, place and manner rules, including rules that reasonably limit the density of licenses and operating times that are consistent with neighborhood uses; and

WHEREAS, The Town of Kirtland("Town") desires to adopt such time, place, manner and other restrictions related to cannabis establishments, and

WHEREAS, The Town finds that the CRA authorizes marijuana 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 restrictions on cannabis and cannabis establishments. The Town 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.

SECTION 3: 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;

SECTION 4: PUBLIC PROPERTY RESTRICTIONS

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

- B. It is unlawful for an individual to smoke marijuana or consume marijuana products on property that is occupied, owned, controlled or operated by the Town.
- C. It is unlawful for an individual to smoke marijuana or consume marijuana products in any designated open space in the Town.
- D. It is unlawful for an individual to smoke in a public place in the Town.

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

(a) the cannabis-related activity or activities are appropriately licensed by the State Regulation and Licensing Department pursuant to the Cannabis Regulation Act.

(b) applications for permits submitted prior to receiving a license from the RLD will be refused on the basis of an incomplete application.

B. Density Restrictions

(1) 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.

(a) 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.

(2) Cannabis retailers and cannabis consumption areas may not be located within 300 feet of another cannabis retailer or cannabis consumption area.

(a) For purpose of this section, all measurements taken in order 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.

SECTION 6: 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.

SECTION 7: TYPES OF CANNABIS ESTABLISHMENTS

A. **Cannabis Production.** This section This subsection shall apply to all applicants seeking a permit to allow for the growth of cannabis plants in quantities greater than twelve (12) mature cannabis plants. Any individual growing more than 12 mature cannabis plants must obtain a permit pursuant to this subsection.

1. The applicant shall provide:

(a) a certified survey plat depicting the proposed location for the growth of cannabis, and that identifies the total area to be covered.

(b) a map that identifies existing schools, pre-schools, daycares, trade schools, higher education facilities, churches, religious institutions, places of worship, or rehabilitation centers.

(c) the document(s) provided to the Regulation and Licensing Division (RLD) which applicant(s) utilized to apply for a producer's license pursuant to the Cannabis Regulation Act, or a copy of the actual license issued to the applicant by the RLD.

1. If the applicant fails to provide documentation or provides incomplete or otherwise insufficient documentation regarding the status of their license application through RLD, the Town Clerk shall inform the applicant of the deficiencies in writing and shall take no further action on the application until the deficiencies are remedied. If the

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

2. The Town Clerk may issue a permit only upon receipt of the applicant(s) license from RLD or a certified copy of such license, and completion of the applicable Taos County permitting process.

B. Cannabis Manufacturing. This subsection shall apply to all applicants seeking a permit to allow for the manufacture of cannabis products, packaging of cannabis products, and the purchase, acquisition, sale or transport of wholesale cannabis products to other cannabis establishments.

1. The applicant shall provide:

(a) a certified survey plat depicting the proposed location for the manufacture of cannabis, and that identifies the total area to be covered.

(b) a map that identifies existing schools, pre-schools, daycares, trade schools, higher education facilities, churches, religious institutions, places of worship, or rehabilitation centers.

(c) the document(s) provided to the Regulation and Licensing Division (RLD) which applicant(s) utilized to apply for a manufacturer's license pursuant to the Cannabis Regulation Act, or a copy of the actual license issued to the applicant by the RLD.

1. If the applicant fails to provide documentation or provides incomplete or otherwise insufficient documentation regarding the status of their license application through RLD, the Town Clerk shall inform the applicant of the deficiencies in writing and shall take no further action on the application until the deficiencies are remedied. If the applicant fails to correct the deficiencies indicated in the letter deeming the application incomplete within sixty (60) calendar days of receipt of notice of deficiencies, the application shall be considered withdrawn, and it will be returned to the applicant.

2. The Town Clerk may issue a permit only upon receipt of the applicant(s) license from RLD or a certified copy of such license, and completion of the applicable Taos County permitting process.

C. Cannabis Retailers This subsection shall apply to all applicants seeking a permit to allow for the sale of cannabis and cannabis products. to qualified patients, primary caregivers, reciprocal participants or directly to consumers. Cannabis consumption Rooms or Areas shall be allowed commercially only in a designated, co-located area of a Cannabis Retailer.

1. The applicant shall provide:

(a) a certified survey plat depicting the proposed location for the manufacture of cannabis, and that identifies the total area to be covered.

(b) a map that identifies existing schools, pre-schools, daycares, trade schools, higher education facilities, churches, religious institutions, places of worship, or rehabilitation centers.

(c) a map that identifies other existing Cannabis Retail locations within six hundred (600) feet of the proposed use that was in operation at the time of the application submission to the Town.

(d) the document(s) provided to the Regulation and Licensing Division (RLD) which applicant(s) utilized to apply for a manufacturer's license pursuant to the Cannabis Regulation Act, or a copy of the actual license issued to the applicant by the RLD.

1. If the applicant fails to provide documentation or provides incomplete or otherwise insufficient documentation regarding the status of their license application through RLD, the Town Clerk shall inform the applicant of the deficiencies in writing and shall take no further action on the application until the deficiencies are remedied. If the applicant fails to correct the deficiencies indicated in the letter deeming the application incomplete within sixty (60) calendar days of receipt of notice of deficiencies, the application shall be considered withdrawn, and it will be returned to the applicant.

2. The Town Clerk may issue a permit only upon receipt of the applicant(s) license from RLD or a certified copy of such license, and completion of the applicable Taos County permitting process.

SECTION 8: 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 a fully enclosed building or structure.
- 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 Retailers shall have business hours no longer than 7:00 a.m. until 2:00 a.m. on the following day, Mon.-Sat., and 7:00 a.m. until midnight on Sunday
- H. Cannabis and cannabis products may be sold by a dispenser or a retailer in unbroken packages, for consumption off the licensed premises and not for resale from 7:00 a.m. until midnight.
- I. Cannabis and cannabis products for consumption on the premises may be sold between 7:00 a.m. and 2:00 a.m.the following day.
- J. Cannabis establishments shall not provide drive-thru services for delivery of cannabis products.

SECTION 9: STANDARDS FOR DESIGNATED CANNABIS SMOKING ROOMS

Cannabis establishments having a Designated Cannabis Smoking Room on site shall meet the following standards to the satisfaction of the Town:

- A. The Designated Cannabis Smoking Room 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 Smoking Room shall have signage to designate established cannabis smoking areas.
- C. The Designated Cannabis Smoking Room shall have a separate heating, ventilation and air conditioning (HVAC) system such that none of the air in the Designated Cannabis Smoking Room will be recirculated into other parts of the Cannabis establishment premises .
- D. The Designated Cannabis Smoking Room shall be completely separated from the remainder of the premises, and all doors leading to the Designated Cannabis Smoking Room shall be self-closing.

SECTION 10: 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. The sale of homegrown or homemade cannabis and cannabis products without a valid license issued by the State Regulation and Licensing Department is prohibited.
- C. 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.

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

SECTION 11: 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 _____ DAY OF _____, 2021.

Mayor

Attest:

City Clerk

ORDINANCE NO. 751

**CITY OF PORTALES, NEW MEXICO:
ORDINANCE REGULATING THE TIME, PLACE AND MANNER OF
CANNABIS SALES, MANUFACTURE AND CONSUMPTION**

WHEREAS, Section 3-17-1 NMSA 2018 provides that Cities have the power to enact ordinances to “provide for the safety, preserve the health, promote the prosperity and improve the morals, order, comfort and convenience of any City or its inhabitants”; and,

WHEREAS, the Cannabis Regulation Act as adopted by House Bill 2 of the First Special Session of the 2021 New Mexico Legislature signed into law April 9, 2021, allows for recreational use of cannabis; and,

WHEREAS, the Cannabis Regulation Act has authorized a variety of uses related to the legalization of medical and recreational commercial cannabis activities, which legalization has the potential to greatly expand the legal cannabis market; and,

WHEREAS, Cannabis cultivation, production, and manufacturing creates 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 diversion to the illegal cannabis market, including possession and use by persons under the age of twenty-one; and,

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

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

WHEREAS, the Portales City Council of Portales, New Mexico finds that it will promote the public health, safety, and welfare to enact provisions regulating the use of Cannabis in the City of Portales.

NOW, THEREFORE, BE IT ORDAINED by the Portales City Council of Portales, New Mexico that:

Section 1. Title. This Ordinance may be cited as the “Cannabis Ordinance of the City of Portales, New Mexico.”

Section 2. Definitions. As used in this Ordinance:

A. **“Cannabis”** means

1. 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 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;
- B. **“Cannabis Consumption Area”** means an area where cannabis products may be served and consumed pursuant to the Cannabis Regulation Act as adopted by H.B. 2 of the First Special Session of the 2021 New Mexico Legislature.
- C. **Cannabis courier.** 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;
 8. an integrated cannabis microbusiness; or
 9. a cannabis consumption area.
- E. **Cannabis manufacturer.** 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;
- F. **Cannabis producer.** 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;
- G. **Cannabis producer microbusiness.** A cannabis producer at a single licensed premises that possesses no more than two hundred total mature cannabis plants at any one time;
- H. **Cannabis product.** A product that is or that contains cannabis or cannabis extract, including edible or topical products that may also contain other ingredients;
- I. **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;
- J. **Cannabis Retailer.** A person that sells cannabis products to qualified patients, primary caregivers or reciprocal participants or directly to consumers;
- K. **Cannabis Testing Laboratory.** A person that samples, collects and tests cannabis products and transports cannabis products for the purpose of testing;
- L. **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;
- M. **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;
- N. **City.** The area lying within the corporate boundaries of the City of Portales;
- O. **Cultivation.** Any activity involving the planting, growing, harvesting, drying, curing, grading or trimming of cannabis;
- P. **Cultural center.** An organization, building or complex that promotes culture and arts;

- Q. **Facility**. A building, space or grounds licensed for the production, possession, testing, manufacturing or distribution of cannabis, cannabis extracts or cannabis products;
- R. **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;
- S. **Homegrown or Homemade**. Grown or made for purposes that are not dependent or conditioned upon the provision or receipt of financial consideration;
- T. **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;
- U. **Integrated Cannabis Microbusiness**. A person that is authorized to conduct one or more of the following:
1. 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;
 2. manufacture of cannabis products at a single licensed premise;
 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;
- V. **Licensed Premises**. 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;
- W. **Manufacture**. To compound, blend, extract, infuse, package or otherwise prepare a cannabis product;

- X. **Medical Cannabis**. Cannabis products used by a qualified patient or reciprocal participant in accordance with the Lynn and Erin Compassionate Use Act;
- Y. **Medical Cannabis Program**. The program created pursuant to the Lynn and Erin Compassionate Use Act;
- Z. **Medical Cannabis Registry**. The system by which the department of health approves or denies applications and issues and renews registry identification cards for qualified patients;
- AA. **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;
- 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. **“Public Property”** means any property owned or occupied by the Portales City Council of Portales, New Mexico;
- DD. **Qualified Patient**. A resident of New Mexico who holds a registry identification card pursuant to the Lynn and Erin Compassionate Use Act;
- EE. **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;
- FF. **Residence**. A place where someone lives.
- GG. **Retail Establishment**. A location at which cannabis products are sold to qualified patients, primary caregivers and reciprocal participants and directly to consumers;

HH. **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;

II. **Unprocessed**. Unaltered from an original, raw or natural state; and,

JJ. **Vertically Integrated Cannabis Establishment**. A person that is authorized to act as any of the following:

1. a cannabis courier;
2. a cannabis manufacturer;
3. a cannabis producer; and
4. a cannabis retailer.

Section 3. Cannabis Smoking.

- A. No person shall smoke Cannabis products in a Public Place, except in a Cannabis Consumption Area, or on Public Property.
- B. No person shall smoke Cannabis products in any place where the smoke is detectable from a Public Place or on Public Property.

Section 4. Recreational and Medical Cannabis Zoning and other Regulations

- A. In addition to the applicable authority set forth elsewhere in State law, the zoning and other regulations in this section are enacted pursuant to the City's authority in Section 12 of the Cannabis Regulation Act, Laws 2021 (1st S.S.), Chapter 4, and NMSA 1978, §§ 24-16-2 (1985) and 24-16-20 (2007).
- B. 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.
- C. Cannabis cultivation, production, and manufacturing 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 diversion to the illegal cannabis market, including possession and use by persons under the age of twenty-one (21).
- D. 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.

- E. The smoking of cannabis products may create health risks due to exposure to secondhand smoke and vaporized cannabis concentrates.
- F. Density limits are necessary to ensure that cannabis retailers and consumption areas are not unduly concentrated and do not crowd out other non-residential uses.
- G. Cannabis consumption areas are subject to the following:
1. A cannabis consumption areas in which consumption is limited to consumption by qualified patients or reciprocal participants may be located inside any cannabis retailer; provided however, that smoking of cannabis products in such consumption areas is only allowed if the cannabis consumption area occupies a standalone building from which smoke does not infiltrate other indoor workplaces or other indoor public places where smoking is otherwise prohibited pursuant to the City of Portales Clean Indoor Air Ordinance.
 2. Cannabis consumption areas that allow consumption by consumers shall be treated the same as the following uses: Bars, taverns and nightclubs. Cannabis consumption areas that rea open to consumers are also subject to the following:
 - a. the smoking of cannabis products is not allowed outdoors;
 - b. the smoking of cannabis products is only allowed within a licensed cannabis consumption area that occupies a standalone building rom which smoke does not infiltrate other indoor workplaces or other indoor public places where smoking is otherwise prohibited pursuant to the Dee Johnson Clean Indoor Air Act, NMSA 1978, Chapter 24, Article 16; and
 - c. access to cannabis consumption areas open to consumers is restricted to persons twenty-one (21) years of age and older.
- H. 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 license 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.

- I. Minimum separation distance: 1,000 feet. A cannabis establishment must maintain a minimum separation distance of 1,000 feet from any residence, religious assembly or church, library, cultural center, community center, public park, or government facility. The 1,000 feet separation distance does not apply to a school or daycare center.
- J. Exception for Subsequent uses of Nearby Property. A cannabis establishment, lawfully operating under this Ordinance, shall not be deemed to be in violation of the location restrictions set forth above solely because a specific use subsequently locates within the minimum required distance of the cannabis establishment, or when any other lot or tract within the required minimum distance of the cannabis establishment subsequently becomes a residence.
- K. Cannabis retailers and cannabis consumption areas may not be located within 200 feet of another cannabis retailer or cannabis consumption area. For purposes of this section, all measurements taken in order 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.
- L. Cannabis retailers and cannabis consumption areas may only operate during the following hours:
 1. Cannabis products may only be served and consumed in cannabis consumption areas between the hours of 7:00 am and 2:00 am Monday through Saturday and noon to midnight on Sundays.
 2. Cannabis retailers may only sell cannabis products for off-site consumption between the hours of 7:00 am and midnight Monday through Saturday and noon to midnight on Sundays.
- M. Cannabis producers that cultivate cannabis plants indoors and cannabis manufacturers must use industry standard techniques to minimize odorous matter, toxic or noxious matter, such as activated carbon filtration and regular maintenance of HVAC systems.

- N. Cannabis cultivation and production for personal use in quantities and as permitted by the City of Portales Revised Clean Indoor Air Ordinance is allowed anywhere in the City, subject to the following. Cannabis cultivation and production for personal use must be conducted inside an enclosed and locked dwelling unit or an appropriate accessory structure (e.g., a controlled-environment agricultural structure).
- O. Any person engaged in commercial cannabis activities and activities under the medical cannabis program other than personal production and use must obtain a City business license.

Section 5: Cannabis Registration Permit. Any person seeking to operate a cannabis establishment in the City may only obtain a cannabis establishment permit under the following conditions:

- A. The permit shall be obtained from the City Manager's Office
- B. The cost of the permit shall be \$250 for the initial permit, and \$100 for annual renewal of the permit.
- C. The City Manager and/or her/his designee shall require the following information from the applicant:
1. The name, address, and business organization of the applicant and location the applicant intends to transact business, as well as the specific business to be transacted.
 2. If the applicant is an individual, the residence address of the applicant as well as the applicant's birthdate and social security number.
 3. If the applicant is a partnership, the names, residence addresses, birthdates, and social security numbers of all partners.
 4. If the applicant is a Limited Liability Company, the state of organization, address of the resident agent in New Mexico sufficient for service of process, the name of the managing member together with residence address, birthdate, and social security number and the name, residence address, birthdate and social security number of each member of the company.
 5. If the applicant is a corporation, the state of incorporation, the name and address of the registered agent in New Mexico sufficient for service of process, the name, residence, birthdate, and social security number of each officer or director of the corporation.
 6. Prior to the issuance of a permit, any Limited Liability company or corporation shall provide a certificate of good standing.
 7. The applicant shall provide Federal and State tax identification numbers.

- D. Prior to issuance of a permit, the City Manager and/or her/his designee shall confirm compliance with distancing and fencing requirements as provided in Section 2 (Location) and Section 7 (Fencing).
- E. No permit shall issue to a temporary or portable building.
- F. No permit shall issue to a drive-through cannabis establishment.
- G. Failure to meet the conditions above will result in non-issuance of a permit.
- H. If denial of an application for a new permit or renewal permit is deemed necessary by the City Manager, written notice of the decision shall be provided to the applicant.
- I. Any person or entity denied a permit may, within ten (10) days of the receipt of notice of the denial, file an appeal with the Portales City Council. The Notice of Appeal shall be delivered to the City Manager and a hearing shall be scheduled within thirty (30) days of receipt of the Notice. The appeal shall be de novo and the burden of proof shall be on the applicant to establish entitlement to a permit. The Council shall make written findings of fact and conclusions of law supporting its decision. Any further appeal shall be to the District Court, in accordance with NMSA 1978, Section 39-3-1.1 and Rule 1-074 NMRA.
- J. Operation of a cannabis establishment without a permit is a violation of this Ordinance.

Section 6: Fencing. Each cannabis producer, cannabis research laboratory, and cannabis testing laboratory is required to erect and maintain a lockable fence of sturdy construction measuring at least six feet in height enclosing and screening from view the area where cannabis is located. The enclosure shall remain securely locked during non-business hours.

Section 7: Mobile Units. Cannabis sales from mobile, portable, or temporary units or drive-through locations are prohibited.

Section 8: Existing Medical Cannabis Establishments. Any medical cannabis establishment existing as of the date of the passage of this Ordinance shall not be required to comply with the location requirements of Section 2. However, the owners of such businesses shall, within 90 days of the effective date of this Ordinance, submit an application for a permit.

Section 9: Enforcement. The City of Por Police Department may issue citations for violation of this Ordinance.

Section 10: Penalties. With the exception of Section 9, which is punishable by State law, any violation of this Ordinance may be enforced in any court of competent jurisdiction. The

maximum penalty per violation shall be \$300. Each day during the time in which a violation occurs shall be deemed a separate violation. Nothing herein shall prevent the City of Portales from seeking injunctive relief, if appropriate.

Section 11: Saving Clause. Should any portion of this Ordinance be declared unenforceable after a final, non-appeal decision of a court of competent jurisdiction, the remaining provisions of this Ordinance shall, to the extent feasible, remain in full force and effect.

Section 12: Emergency Clause and Effective Date. Because of the urgent need for regulation pursuant to this Ordinance, the Portales City Council declares that it is necessary for the public peace, health and safety that this Ordinance take effect immediately after passage when it is recorded in the book kept by the City for that purpose and authenticated by the signature of the City Clerk. In the event a court of competent jurisdiction finds that the passage of this Ordinance did not constitute an emergency, then the effective date of this Ordinance shall be 30 days after this Ordinance is recorded with the City Clerk.

Section 13: Effective Date. This Ordinance shall take effect immediately upon passage.

PASSED, APPROVED, and ADOPTED this ____ day of _____, 2021.

PORTALES CITY COUNCIL

Ronald Jackson, Mayor

ATTEST:

(SEAL)

Joan Martinez-Terry, City Clerk

Approved as to Legal Sufficiency:

Stephen Doerr, City Attorney