

**LOS ALAMOS COUNTY  
PLANNING & ZONING COMMISSION**

**IN THE MATTER OF:**

Case No. ZCA-2021-0011: )  
A request for approval of draft Ordinance No. 02-321, Text )  
Amendments to Los Alamos County Code of Ordinances, )  
Chapter 16, Article I Section 9, and Article VII Section 288 and )  
adding new Section 289, to adopt local regulations for cannabis )  
retail sales and amending Article VII Section 277 regarding )  
home occupations. )

**FINAL ORDER APPROVING APPLICATION,  
FINDINGS OF FACT AND CONCLUSIONS OF LAW**

**THIS MATTER** came before a quorum of the Incorporated County of Los Alamos, New Mexico, (“County”) Planning and Zoning Commission ("Commission") for a public hearing, on Wednesday, October 27, 2021, via an application (“Application”), (attached as Exhibit “A”) made by the Los Alamos County Community Development Department (“CDD”). The Application requests amendments to the text of Chapter 16 of the Los Alamos County Code of Ordinances (“Development Code”). Specifically, the Application seeks to revise the text of the Development Code, Article I Section 9, and Article VII Section 288 to add a new Section 289, to adopt local regulations for cannabis retail sales. The Application also seeks to amend the text of Article VII Section 77 to address cannabis-based home occupations.

At the public hearing, the Commission directed Community Development Department staff to revise the proposed ordinance to prohibit indoor and outdoor designated vaping or smoking areas at cannabis retail establishments. The Commission's proposed revisions are reflected in the ordinance attached **as Exhibit B**,

Upon presentation of the Application at the public hearing, the Commission heard the presentations of staff, reviewed the report furnished by staff, took public comment on the matter, and deliberated on the matter. The Commission being well and sufficiently

advised on this matter, hereby issues the following:

**NOW THEREFORE**, the proposed ordinance attached as Exhibit B seeking to revise the text of the Development Code, Article I Section 9, and Article VII Section 288 and adding new Section 289, to adopt local regulations for cannabis retail sales, and amending the text of Article VII Section 277 to address cannabis based home occupations, **IS HEREBY RECOMMENDED FOR APPROVAL BY THE COUNTY COUNCIL.**

In support of this **FINAL ORDER**, the Commission issues the following:

**I. FINDINGS OF FACT:**

1. On July 28, 2021, the Planning and Zoning Commission presented to the County Council proposed Chapter 16 text amendments related to cultivation and manufacturing within the County in Ordinance 02-318.
2. The Application, ZCA-2021-0011, submitted on September 30, 2021 by the County's Community Development Department, is a request for amendments to text of Chapter 16 (the "Development Code"), Article I Section 9 (Sec. 16-9), and Article VII Section 288 (Sec. 16-288) and adding new Section 289 (Sec. 16-289), to adopt local regulations for cannabis retail sales, and amending the text of Article VII Section 277 (Sec. 16-277) to address cannabis based home occupations uses, all to be approved through the adoption of County Ordinance 02-321.
3. As required by Section 16-54 of the Development Code, on October 13, 2021 CDD presented the Application and proposed Development Code amendments to the County's Interdepartmental Review Committee ("IDRC"). The IDRC provided one comment related to the proposed amendments, which were presented and discussed by the Commission. The proposal was to include churches in the State maximum setbacks of cannabis retail, manufacturing, and cultivation of at least 300 feet from daycare and school facilities.
4. Notice of the public hearing was properly provided as required by Section 16-192(a) and included the publication and posting of the public hearing which included the nature of the request and the date, time, and place of the public hearing ("Notice"). The Notice was published in *The Los Alamos Daily Post*, a newspaper of general circulation, and was posted outside the Municipal

- Building in accordance with the requirements of §16-192 of the Los Alamos County Development Code.
5. The Application, CDD Planning Division Staff Report (“Staff Report”), and presentation as presented to the Commission at hearing are attached hereto as **Exhibit A**. Included in the Application and CDD Staff Report was the proposed ordinance to amend the Development Code presented for Commission and Council consideration.
  6. The Application’s public hearing was held on October 27, 2021, in a hybrid in-person/virtual format. A quorum of the County’s Planning and Zoning Commission (“Commission”) was present including Terry Priestly, Chair, Jean Dewart, Michelle Griffin, April Wade, Beverly Neal-Clinton, Neal Martin, Rachel Adler, and Rodney Roberson. Commissioner Nakhleh was not present at the hearing.
  7. Presenting at the public hearing for the Applicant was CDD Planning Manager, Bryce Ternet. Planning Manager Ternet presented the Application which included a presentation outlining how the proposed ordinance met the review found in Section 16-158 of the Development Code.
  8. Only two members of the public were present in-person at the County’s Municipal Building for the public hearing, Mr. and Mrs. William and Collete Hunter.
  9. CDD Staff Anita Barela was present to assist in the in-person presentations, while CDD Staff Desirae Lujan assisted those attending via Zoom™.
  10. Planning Manager Ternet was requested by the Commission Chair to first present the Application and the purpose of the proposed Chapter 16 amendments, and Mr. Ternet did so.
  11. As provided by Planning Manager Ternet, the Application meets the required Code review and approval criteria as follows:
    - a. As to Criteria 1 as found in § 16-158(1) of the Development Code the Commission finds that the proposed text amendments as presented in the Application are in response to the passing of New Mexico State Cannabis Regulation Act (NMSA 1978, §§ 26-2C-1 through 26-2C-42) legalizing cannabis cultivation, manufacturing, and retail sales in the State (hereafter “Act” or “Cannabis Regulation Act”). As provided in Planning Manager Ternet’s Staff Report, the retail sale of cannabis that is in compliance with the Act are no longer considered criminal. As such local public bodies, such as the County, are allowed to regulate the time, place and manner of retail sales. See NMSA 1978, 26-2C-12. In doing this, local public bodies are allowed to create local ordinances to dictate those zoning districts and areas

where retail sales will be authorized. The proposed text amendments presented by CDD in its Application, and from the presentation by Planning Manager Ternet, amend certain County zoning and land use provisions as found in the Development Code to clarify the allowed retail sale of cannabis in the County's various zoning districts as well as clarify the allowed home based cannabis retail, cultivation, and manufacturing uses in home based occupations in residentially zoned areas.

- b. The Commission therefore finds, based on the presentation of Planning Manager Ternet and his Staff Report that the proposed Development Code amendments provide clear guidance regarding the retail sale of cannabis and home occupations related to all cannabis uses, the proposed text amendments conform with the comprehensive plan's goal to provide for additional business growth within the County and encourage the growth of small business. As the amendments are made to comply with the Act as enacted by the State Legislature and as signed into law by the Governor, the Commission finds that the State, through the legislative enactment of the Act has declared that the retail sales of cannabis will not be materially detrimental to the health, safety and general welfare of the County or State.
- c. As to Criteria 2 as found in § 16-158(2) of the Development Code the Commission finds the proposed text amendments apply to the County Development Code only and do not require a subsequent amendment to the County's adopted Comprehensive Plan. This finding was supported by the statement of Planning Manager Ternet and the Staff Report.
- d. As to Criteria 3 as found in § 16-158(3) of the Development Code, the Commission finds the proposed text amendments will not result in land use inconsistent with the purpose of the district or result in an incompatible use allowed in a district as the Act requires local jurisdictions to allow and regulate the retail sale of cannabis no differently than how similar uses are already addressed in local controls. Therefore, the proposed text amendments consider cannabis retail sales as considered by existing code regarding retail services. Proposed text amendments specify that retail sales of cannabis shall only be allowed in zoning districts currently allowing retail sales. Additionally, specific measures regarding proximity to sensitive uses shall apply. Therefore, cannabis retail uses as proposed in the Application will not be inconsistent with existing zoning districts based on proposed text amendments.
- e. As to Criteria 4 as found in § 16-155(4) of the Development Code, the Commission finds, based on the presentation and Staff Report of Planning

Manager Ternet, the proposed text amendments will not result in land use inconsistent with the purpose of the district or result in an incompatible use allowed in a district as the Act requires local jurisdictions to address cannabis retail sale of cannabis no differently than that of similar uses already allowed in zoning and use local ordinances. Therefore, the proposed text amendments would provide clarification specifically for the County based on State law.

12. The Commission finds that the presentation of Mr. and Mrs. Hunter, which requested that the Commission allow home based cannabis retail sales, manufacturing, and cultivation was not persuasive in that those uses would not be consistent with the nature, character, and purpose of the residentially zoned districts. The Commission further finds that pursuant to the Lynn and Erin Compassionate Use Act, the allowed medical use of cannabis is allowed if conducted pursuant to State law.
13. The Commission further finds, pursuant to the presentation of Planning Manager Ternet and from the discussion of the Commissioners the proposed amendments as found in the subsection (e) of Section 3 of the proposed ordinance in the Application should be amended to allow indoor and outdoor cannabis consumption areas but exclude the smoking and vaping of cannabis products as part and parcel of the operation of a retail cannabis establishment. The Commission bases this finding on Chapter 18, Article IV of the County Code that prohibits the smoking and vaping of tobacco and cannabis products in indoor and outdoor areas of a public retail locations. The Commission's proposed changes to be recommended to Council are reflected in a revised ordinance attached hereto as **Exhibit B**.
14. After full hearing and consideration, the Planning and Zoning Commission, acting under the authority granted it by §16-452(b)(1)(a) of the Development Code, and in a vote of 7 to 1 in favor of Application ZCA-2021-0011 as amended per the findings herein, finds that the ordinance attached as Exhibit B meets the applicable text amendment criteria contained in §16-158 of the Los Alamos County Development Code and recommends forwarding of the Application and amendment to the County Council for hearing.

## **II. CONCLUSIONS OF LAW**

After full hearing and consideration, the Planning and Zoning Commission finds that the Application, and the Application as amended, meets the applicable County Development Code text amendment criteria contained in §16-158 of the Los Alamos

County Development Code.

### III. DIRECTION TO COMMUNITY DEVELOPMENT DEPARTMENT

The Commission directs the Community Development Department to forward this order to the County Council for consideration.

**SO ORDERED AND APPROVED** this \_\_\_\_ day of November 2021.

BY: Terry Priestley  
Digitally signed by Terry Priestley  
Date: 2021.11.03 14:31:16 -06'00'

TERRY PRIESTLEY, CHAIR  
PLANNING AND ZONING COMMISSION  
INCORPORATED COUNTY OF LOS ALAMOS