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SAN JUAN COUNTY ORDINANCE NO. 120 CANNABIS PERMIT VARIANCE PROCEDURE

1. An applicant may seek a variance from Cannabis Regulation Ordinance Ordinance No. 120 by filing a written petition with the Community Development Department ("Department"). The petition for variance may be submitted with the permit application or after the permit application is submitted. The application fee shall be established by the Board of County Commissioners by separate resolution, shall be due upon submission of the application for variance, and shall be non-refundable. The applicant may submit with the petition any relevant documents or material which the applicant believes would support the petition.
2. Petitions shall:
 - (a) state the applicant's name and address;
 - (b) state the date of the petition;
 - (c) describe the facility or activity for which the variance is sought;
 - (d) state the address or description of the premises upon which the cannabis establishment or activity is located;
 - (e) identify the section/subsection(s) of the Cannabis Ordinance from which the variance is sought;
 - (f) state in detail the extent to which the applicant wishes to vary from the section/subsection(s) of the Cannabis Ordinance and how the applicant will ensure public health and safety is not negatively affected;
 - (g) state why the applicant believes that compliance with the Ordinance will impose an unreasonable regulatory burden upon the cannabis establishment or activity; and
 - (h) state the period of time for which the variance is desired, including all reasons, data, reports, and any other information demonstrating that such time period is justified and reasonable.
3. Upon receipt of the Petition, the Department will gather evidence from all affected parties, including governmental entities.
4. The Department shall arrange a public hearing to be held pursuant to the Open Meetings Act, Section 10-15-1 et seq., NMSA 1978. The Board of County Commissioners may designate an individual hearing officer to preside over the hearing. The hearing may or may not be held as part of a regular County Commission meeting. The purpose of the hearing is to provide interested persons a reasonable opportunity to submit data, views or arguments orally or in writing on the proposed variance. Notice of the hearing will be given to all property owners within 300 feet of the land where the permit is sought. The hearing officer may ask questions and provide comments for clarification purposes. The Department will make a recommendation to the hearing officer on whether to grant or deny the variance based on the evidence the Department has collected. The hearing officer shall identify and mark all written comments submitted during the hearing. The public comments should be labeled as exhibits for reference, but do not require formal admission into the hearing record. Individuals wishing to provide public comment or submit information at the hearing must state their

name and any relevant affiliation for the record and be recognized before presenting. Public comment shall be taken under oath. Any individual who provides public comment at the hearing may be questioned by the hearing officer. The hearing shall be conducted in a fair and equitable manner. The hearing officer may determine the format in which the hearing is conducted, but the hearing should be conducted in a simple and organized manner that facilitates public comment. The rules of evidence shall not apply and the hearing officer may, in the interest of efficiency, exclude or limit comment or questions deemed irrelevant, redundant, or unduly repetitious.

5. Based on the evidence collected at the hearing, the hearing officer shall make written findings of fact and conclusions based on the following criteria, which shall include a recommendation to the Board whether the requested variance should be granted. The Hearing Officer's written report shall be submitted to the Board of County Commissioners who shall make a determination based on all of the evidence in the report. The Board may grant the variance, in whole or in part, or subject to conditions if a positive finding of fact can be made concerning each of the following, or, if a positive finding of fact cannot be made, if the Board specifically describes the circumstances that would outweigh the strict requirement of a positive finding of fact and determines that the variance will not be a public detriment:

- (a) That special conditions and circumstances exist which are peculiar to the land, structure or building involved that are not self-imposed, self-created or otherwise the result of actions by the applicant;
- (b) That the applicant demonstrates that the request is a minimum easing of the Ordinance requirements, making possible the reasonable use of the land, building or structure;
- (c) That the granting of the variance is in harmony with the general interest, the general purpose and intent of the Ordinance, and is not injurious to the neighborhood or otherwise detrimental to the public welfare;
- (d) That no nonconforming or permitted use of other lands, structures or buildings has been or shall be considered grounds for the issuance of the variance;
- (e) That the applicant would suffer an unnecessary hardship if the variance requested were denied. The granting of a variance should not be substantially based upon lack of reasonable economic return.

6. If the variance is granted in whole or in part, or subject to conditions, the Board shall specify the length of time that the variance shall be in place.

7. If the variance is granted in whole or in part, the Board shall specify the name of the person or entity who holds the variance. No variance may run with the land.

8. The Board shall set forth in a final order findings of fact and conclusions of law or the Board may adopt the findings and conclusions of the hearing officer. The decision and order shall be prepared, signed, and filed within a reasonable time following the Board's decision.