



# City of Albuquerque

## Planning Development

Timothy M. Keller, Mayor

Alan Varela, Director

### INTER-OFFICE MEMORANDUM

March 14, 2022

**To:** Sarita Nair, Chief Administrative Officer

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3/17/2022 | 3:06 PM MDT

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**From:** Alan Varela, Director, Planning Department

Alan Varela (Mar 14, 2022 12:56 MDT)

**Subject:** Rules Governing the Time, Place and Manner of Cannabis Retail Businesses in the City of Albuquerque

The Planning Department has drafted Rules Governing the Time, Place and Manner of Cannabis Retail Businesses in the City of Albuquerque. The Rules establish safety guidelines and hours of operation for cannabis retail establishments, establish procedures for obtaining Cannabis Retail Location Approvals, and establish requirements for cannabis retail establishments that have obtained Cannabis Retail Location Approvals.

On March 4, 2022, the Planning Department held a public hearing on the Rules. After receiving public comment, the appointed Hearing Officer recommended that the City adopt the Rules as proposed.

Pursuant to § 2-15-1, et seq. ROA 1994, I request that you review and sign the attached Rules. The Rules shall go into effect following your signature and the Planning Department's filing of the regulations with the City Clerk.

Should you have questions or concerns, please do not hesitate to contact me.

## **RULES GOVERNING THE TIME, PLACE AND MANNER OF CANNABIS RETAIL BUSINESSES IN THE CITY OF ALBUQUERQUE**

### **1.0 AUTHORITY**

- 1.1 These Rules are promulgated pursuant to 1978 NMSA Section 26-2C-12 and ROA 2-15-1 et seq.
- 1.2 In the event that these Rules are in conflict with the provisions of the Cannabis Rules Act (“CRA”), the CRA shall prevail.
- 1.3 In the event that these rules are in conflict with the Integrated Development Ordinances (“IDO”) ROA 14-16-6-1 et seq., the more restrictive provision shall apply.

### **2.0 PURPOSE AND POLICY**

- 2.1 The purpose of these Rules is to set forth rules to reasonably regulate the time, place and manner in which cannabis retail establishments are allowed to operate.
- 2.2 The policy of these rules is to responsibly and fairly allow cannabis retail establishments to operate without overly burdening any particular neighborhood or area with excessive numbers of cannabis retail establishments by fairly allocating location approvals due to the de facto cap on the number of cannabis retail establishments resulting from the IDO’s separation requirements.

### **3.0 APPLICABILITY**

- 3.1 These rules apply to cannabis retail establishments.

### **4.0 DEFINITIONS**

**CANNABIS.** As defined in Sections 26-2C-1 to 26-2C-42 NMSA 1978. These emergency rules regulate cannabis retail, cannabis cultivation, and cannabis-derived products manufacturing only. These emergency rules shall not impede any personal allowances as established by Sections 26-2C-1 to 26-2C-42 NMSA 1978. For the purposes of these rules, hemp is not regulated as cannabis. See also *Hemp*.

**CANNABIS-DERIVED PRODUCTS.** A product, other than cannabis itself, that contains or is derived from cannabis, as regulated by Section 26-2C-1 to 26-2C-42 NMSA 1978.

**CANNABIS ODOR CONTROL PLAN.** A written document, approved by a professional engineer or industrial hygienist, explaining plans for reducing cannabis odors associated with cultivation, manufacturing, or licensed on-site consumption, which shall include, at a minimum, contact information, operating hours, a floor plan, a description and schedule of

odor-producing activities, administrative controls such as employee training and maintenance, and engineering controls such as carbon filtration.

**CANNABIS RETAIL.** Cannabis retail is comprised of State-licensed Cannabis Retail businesses where cannabis or cannabis products are sold to consumers or consumed. Retail establishments selling cannabis solely for consumption by users with a medical card issued by the State under Sections 26-2B-1 to 26-2B-10 NMSA 1978 (the Lynn and Eric Compassionate Use Act) are considered general retail and are not regulated by this definition. On-site cannabis consumption licensed by the State is considered an incidental activity of cannabis retail. See also *General Retail* and *Commercial On-site Consumption in IDO*.

**CANNABIS CULTIVATION.** A facility licensed by the State to sell cannabis under Sections 26-2C-1 and in which cannabis is grown, harvested, dried, cured, or trimmed.

**CANNABIS-DERIVED PRODUCTS MANUFACTURING.** A facility licensed by the State to sell cannabis under Sections 26-2C-1 to 26-2C-42 NMSA 1978 for the processing, including but not limited to extraction, refinement, isolation, or packaging of a product other than cannabis itself, which contains or is derived from cannabis, including but not limited to concentrates, cannabis infusions, edible products, ointments, and tinctures, but excluding hemp. See also *Hemp*.

**CANNABIS MICROBUSINESS.** As establishment licensed by the State as an Integrated Cannabis Microbusiness or Cannabis Producer Microbusiness, as defined by Sections 26-2C-1 to 26-2C-42 NMSA 1978.

**LICENSED ON-SITE CONSUMPTION.** The activity of smoking, vaporizing, consuming and/or ingesting of cannabis or cannabis products in a cannabis consumption area licensed by the State that is in a fully enclosed portion of a building.

**CANNABIS RETAIL LOCATION APPROVAL.** Planning Department's required confirmation that a proposed cannabis retail business is allowed to lawfully operate at a specific location.

**DISTILLATION.** The heating of dried cannabis or cannabis extract for the purposes of separating one or more cannabinoids.

**EXTRACTION.** The use of any solvent except water to separate one or more cannabinoids from cannabis.

**HEMP.** As defined by § 20-10-2-7 NMSA 1978. For the purposed of this IDO, hemp is not regulated as cannabis. See also *Cannabis*.

**OIL ACTIVATION.** The heating of dried cannabis or cannabis extract during the manufacturing of cannabis products for the purposes of converting cannabinoids into a different form.

## 5.0 SAFETY

- 5.1 Cannabis products or cannabis paraphernalia shall not be displayed within 5 feet of an exterior window or exterior door.
- 5.2 A drive-through or drive-up facility is prohibited for cannabis retail.
- 5.3 A locked vault or safe or other secured storage structure shall be installed within the cannabis retail building and bolted to the floor or walls to store cash and cannabis products overnight.

## 6.0 HOURS OF OPERATION

- 6.1 Cannabis retail establishments shall not be open to consumers before 8:00 a.m. or after 11:00 p.m.
- 6.2 Licensed on-site cannabis consumption shall not be allowed before 8:00 a.m. or after 11:00 p.m.

## 7.0 LOCATIONS

- 7.1 All cannabis retail businesses are required to obtain a Cannabis Retail Location Approval from the City of Albuquerque's Planning Department.
- 7.2 Cannabis Retail Location Approvals will be considered on a first-come, first-served basis.
  - 7.2.1 Applications will be processed in the order in which they are submitted.
  - 7.2.2 Completed applications will be given a date/time stamp for the purpose of prioritization. This date/time stamp will establish priority if, and only if, the application is verified to be complete.
  - 7.2.3 To be verified as complete, all questions in the application must be answered and all required documents must be submitted with the application.
  - 7.2.4 Incomplete or inaccurate applications will be rejected, and will not be given a date/time stamp for the purpose of prioritization. Rejected applications will need to be corrected and resubmitted as new applications to be considered. Resubmitted applications will receive a new date/time stamp for purpose of prioritization upon verification of completeness.
- 7.3 A cannabis retail establishment may not be located within 300 feet of a school or child daycare facility.

- 7.4 Unless licensed by the State as a microbusiness, a cannabis retail establishment may not be located within 600 feet of another cannabis retail establishment.
- 7.5 Any applicant seeking to establish a new cannabis retail establishment within 600 feet of another cannabis retail establishment may seek to obtain a Conditional Use Approval.
- 7.6 A cannabis retail establishment that is granted a Conditional Use Approval per the requirements set forth in the IDO does not need to obtain a Cannabis Retail Location Approval.
- 7.7 Two or more State-licensed cannabis retail businesses may operate at a single premise.

## 8.0 LOCATION APPROVAL ELIGIBILITY

- 8.1 To obtain a Cannabis Retail Location Approval, all applicants must provide the following:
  - 8.1.1 Location of Proposed Cannabis Retail establishment, including the address for the location of the business.
  - 8.1.2 Applicant's affirmation that the application is true and correct.
  - 8.1.3 A copy of the license issued by the State of New Mexico Rules and Licensing Department allowing cannabis retail.
  - 8.1.4 A notarized copy of a signed lease, letter of intent, or deed for the property where the cannabis retail establishment will operate.
  - 8.1.5 If the lease or letter of intent does not indicate the lessor's approval of the property's use for cannabis retail, a notarized letter indicating the property owner approves of the cannabis retail use of the property. The letter shall include the property owner's contact information including phone number and mailing address.
  - 8.1.6 A photocopy of the applicant's driver's license or other government-issued identification.
  - 8.1.7 A map indicating the location of the nearest school, child daycare center and cannabis retail establishment and/or cannabis medical dispensary including a straight-line distance to each such facility. The straight-line distance shall be measured from lot line to lot line.

9.0 REQUIREMENTS OF ALL APPLICANTS FOLLOWING NOTIFICATION OF CANNABIS RETAIL LOCATION APPROVAL.

9.1 Within 10 business days of receipt of all required documents in a completed application, the City will verify all documents and, if confirmed, issue a Cannabis Retail Location Approval.

9.2 Prior to commencing retail operations, all successful applicants must provide the following:

9.2.1 Valid business registration issued by the City

9.2.2 Cannabis Odor Control plan

9.2.3 Proof of passing the required fire inspection

9.3 Within 180 days of the issuance of the Cannabis Retail Location Approval, all successful applicants must begin cannabis retail operation.

9.3.1 Failure to begin operation within 180 days will forfeit any approved Cannabis Retail Location Approval, and the location will be released back into the marketplace for consideration, unless a written extension has been granted by the Planning Department.

10.0 SEVERABILITY

10.1 If any section, paragraph, sentence, clause, word, or phrase of these rules is for any reason held to be invalid or unenforceable by any court of competent jurisdiction, such decision shall not affect the validity of the remaining provisions of these rules and each section, paragraph, sentence, clause, word, or phrase thereof irrespective of any provision being declared unconstitutional or otherwise invalid.

11.0 EFFECTIVE DATE.

11.1 These rules shall become effective immediately.

Approved:

Date:

DocuSigned by:  
  
Sarina Nair, Chief Administrative Officer

3/17/2022 | 4:18 PM MDT