ORDINANCE
AMENDING CHAPTER 12, ARTICLE 4, SECTION 10, OF THE REVISED
ORDINANCES OF ALBUQUERQUE (UNLAWFUL ADVERTISEMENT,
MANUFACTURE, AND DELIVERY OF DRUG PARAPHERNALIA) TO CONFORM
TO THE NEW MEXICO CANNABIS REGULATION ACT, NMSA 1978,
SECTION 26-2C-1 ET SEQ.
WHEREAS, The Cannabis Regulation Act, NMSA 1978, § 26-2C-1 et seq.,
("CRA") was signed into law by the New Mexico Legislature on April 12, 2021;
and
WHEREAS, The CRA contains provisions authorizing the possession,
consumption, purchase, processing, manufacturing, and transport of
cannabis and cannabis-related products by an individual who is at least
twenty-one (21) years of age; and
WHEREAS, The CRA provides the regulatory framework for the licensing
and operation of cannabis establishments which are authorized to engage in
the retail sale, cultivation, processing, manufacture, and transport of cannabis
and cannabis-related products; and
WHEREAS, The State Controlled Substances Act, NMSA 1978, § 30-31-1 et
seq. was updated to exclude from its definition of "drug paraphernalia"
equipment, products, and materials used in accordance with the Cannabis
Regulation Act or the Lynn and Erin Compassionate Use Act; and
WHEREAS, The Albuquerque Criminal Code, Section 12-4-10 declares
unlawful the advertisement, manufacture, and delivery of drug paraphernalia,
and includes language that classifies as "drug paraphernalia" equipment,
products and materials utilized in the consumption of cannabis and cannabis-
related products, including “hashish” and “hashish oil” which are
concentrated cannabis products; and

WHEREAS, The City Council finds that in order to integrate changes to
State law, conforming changes must be made to Section 12-4-10 of the
Albuquerque Criminal Code, to remove references to cannabis and cannabis-
related products, and clarify that it is not a crime to possess equipment,
products, and materials used in accordance with the CRA or the Lynn and Erin
Compassionate Use Act.

BE IT ORDAINED BY THE COUNCIL, THE GOVERNING BODY OF THE CITY OF
ALBUQUERQUE:

SECTION 1. § 12-4-10 OF THE CRIMINAL CODE IS HEREBY AMENDED AS
FOLLOWS:

“§ 12-4-10 UNLAWFUL ADVERTISEMENT, MANUFACTURE, AND DELIVERY
OF DRUG PARAPHERNALIA.

(A) Definitions. For the purpose of this section, the following definitions
shall apply unless the context clearly indicates or requires a different
meaning.

DESIGNED FOR USE. Designed, made, or modified with the specific
intent that the item so designed, made, or modified is to be used in planting,
propagating, cultivating, growing, harvesting, manufacturing, compounding,
converting, producing, processing, preparing, testing, analyzing, packaging,
repackaging, storing, containing, concealing, injecting, ingesting, inhaling, or
otherwise introducing into the human body a controlled substance in violation
of this code and the State Controlled Substances Act, Sections 30-31-1 et seq.
NMSA 1978 as it may be amended from time to time.

DRUG PARAPHERNALIA. All equipment, products and materials of any
kind which are used, intended for use, or designed for use, in planting,
propagating, cultivating, growing, harvesting, manufacturing, compounding,
converting, producing, processing, preparing, testing, analyzing, packaging,
repackaging, storing, containing, concealing, injecting, ingesting, inhaling, or
otherwise introducing into the human body a controlled substance in violation
of this code and the State Controlled Substances Act, Sections 30-31-1 et seq.
NMSA 1978 as it may be amended from time to time. It includes, but is not limited to:

(1) Kits used, intended for use, or designed for use in planting, propagating, cultivating, growing or harvesting of any species of plant which is a controlled substance or from which a controlled substance can be derived;

(2) Kits used, intended for use, or designed for use in manufacturing, compounding, converting, producing, processing, or preparing controlled substances;

(3) Isomerization devices used, intended for use, or designed for use in increasing the potency of any species of plant which is a controlled substance;

(4) Testing equipment used, intended for use, or designed for use in identifying, or in analyzing the strength, effectiveness or purity of controlled substances;

(5) Scales and balances used, intended for use, or designed for use in weighing or measuring controlled substances;

(6) Diluents and adulterants, such as quinine hydrochloride, mannitol, mannite, dextrose and lactose, used, intended for use, or designed for use in cutting controlled substances;

(7) Blenders, bowls, containers, spoons, mixing devices and screens or sifting devices used, intended for use, or designed for use in compounding controlled substances;

(8) Capsules, balloons, envelopes, plastic bags, and other containers used, intended for use, or designed for use in packaging small quantities of controlled substances;

(9) Containers and other objects used, intended for use, or designed for use in storing or concealing controlled substances;

(10) Hypodermic syringes, needles and other objects used, intended for use, or designed for use in parenterally injecting controlled substances into the human body;
(11) Objects used, intended for use, or designed for use in ingesting, inhaling, or otherwise introducing cocaine or other controlled substances into the human body, such as:

(a) Metal, wooden, acrylic, glass, stone, plastic, or ceramic pipes with or without screens, permanent screens, or punctured metal bowls;

(b) Water pipes;

(c) Carburetion tubes and devices;

(d) Smoking and carburetion masks;

(e) Roach clips: meaning objects used to hold burning material that has become too small or too short to be held in the hand;

(f) Miniature cocaine spoons, and cocaine vials;

(g) Chamber pipes;

(h) Carburetor pipes;

(i) Electric pipes;

(j) Air-driven pipes;

(k) Chilams;

(l) Bongs;

(m) Ice pipes or chillers.

(B) Relevant Factors. In determining whether an object is drug paraphernalia, a court or other authority should consider, in addition to all other logically relevant factors, the following:

(1) Statements by an owner or by anyone in control of the object concerning its use;

(2) Prior convictions, if any, of an owner, or of anyone in control of the object, under any state or federal law relating to any controlled substance;

(3) The proximity of the object, in time and space, to a direct violation of the State Controlled Substances Act, Sections 30-31-1 et seq. NMSA 1978;

(4) The proximity of the object to controlled substances;

(5) The existence of any residue of controlled substance on the object;

(6) Direct or circumstantial evidence of the intent of an owner, or of anyone in control of the object, to deliver it to persons who he knows, or should reasonably know, intend to use the object to facilitate a violation of the State Controlled Substances Act, Sections 30-31-1 et seq. NMSA 1978; the
innocence of an owner, or of anyone in control of the object, as to a direct
violation of the State Controlled Substances Act, Sections 30-31-1 et seq.
NMSA 1978 should not prevent a finding that the object is intended for use, or
designed for use as a drug paraphernalia;
(7) Instructions, oral or written, provided with the object concerning its
use;
(8) Descriptive materials accompanying the object which explain or
depict its use;
(9) National and local advertising concerning its use;
(10) The manner in which the object is displayed for sale;
(11) Whether the owner, or anyone in control of the object, is a legitimate
supplier of like or related items to the community, such as a licensed
distributor or dealer of tobacco products;
(12) Direct or circumstantial evidence of the ratio of sales of the object(s)
to the total sales of the business enterprise;
(13) The existence and scope of legitimate uses for the object in the
community;
(14) Expert testimony concerning its use.

(C) Violations.

(1) Manufacture or Delivery of Drug Paraphernalia. It is unlawful for
any person to deliver, possess with intent to deliver, or manufacture with
intent to deliver, drug paraphernalia, knowing, or under circumstances where
one reasonably should know, that it will be used to plant, propagate, cultivate,
grow, harvest, manufacture, compound, convert, produce, process, prepare,
test, analyze, pack, repack, store, contain, conceal, inject, ingest, inhale, or
otherwise introduce into the human body a controlled substance in violation
of the State Controlled Substances Act, Sections 30-31-1 et seq. NMSA 1978.

(2) Advertisement of Drug Paraphernalia. It is unlawful for any person
to place in any newspaper, magazine, handbill, or other publication any
advertisement, knowing, or under circumstances where one reasonably
should know, that the purpose of the advertisement, in whole or in part, is to
promote the sale of objects designed or intended for use as drug
paraphernalia. This provision shall not be construed to apply to any
advertisement which advertises the sale of drug paraphernalia outside the
city; nor shall it be construed to apply to any printed matter criticizing the
drug laws, glorifying the drug culture, glamorizing the use of drugs, providing
information on how to use illegal drugs, or similar noncommercial speech.

(3) Exclusion for Cannabis Paraphernalia. Nothing in this section shall
be construed to establish a criminal penalty for possession of paraphernalia
for the exclusive purpose of cannabis use, or for any activities associated with
cannabis use or commerce, in accordance with the Cannabis Regulation Act
(NMSA 1978, § 26-2C-1 et. seq.) or the Lynn and Erin Compassionate Use Act
(NMSA 1978, § 26-2B-1 et. seq.)."

SECTION 2. SEVERABILITY.

If any section, paragraph, sentence, clause, word, or phrase of this
ordinance 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 this ordinance and each section, paragraph, sentence,
clause, word, or phrase thereof irrespective of any provision being declared
unconstitutional or otherwise invalid.

SECTION 3. COMPILATION.

The ordinance amendment prescribed by SECTION 1 shall amend, be
incorporated in, and be made part of the Revised Ordinances of Albuquerque,
New Mexico 1994.

SECTION 4. EFFECTIVE DATE.

This Ordinance shall take effect immediately after publication by title and
general summary.
PASSED AND ADOPTED THIS 7th DAY OF March, 2022
BY A VOTE OF: 9 FOR 0 AGAINST.

Isaac Benton, President
City Council

APPROVED THIS 22 DAY OF March, 2022

Timothy M. Keller, Mayor
City of Albuquerque

ATTEST:
Ethan Watson, City Clerk